

**TOWN OF SOMERS
ZONING COMMISSION
P.O. BOX 308
SOMERS, CONNECTICUT 06071**

**ZONING MINUTES
REGULAR MEETING
JUNE 15, 2009
TOWN HALL - 7:00 p.m.**

I. PUBLIC HEARINGS:

a. CONTINUATION: PROPOSAL TO SETTLE A LAWSUIT: ROBERT SMYTH, ET AL VS. SOMERS ZONING COMMISSION DOCKET #CV08-4009357S PENDING IN TOLLAND SUPERIOR COURT REGARDING ZONE CHANGE APPLICATION (PREVIOUSLY DENIED BY THE ZONING COMMISSION) FOR PROPERTIES AT 225 FIELD ROAD (MAP 02 BLOCK 50) & 251 FIELD ROAD (MAP 02 BLOCK 44 LOT 03)

Chairman Martin opened the Public Hearing at 7:11pm and the legal notice was read.

Town Attorney Landolina of Fahey, Landolina Attorneys, LLC updated the Commission on what has happened since the last Public Hearing. The motions to intervene filed by Mr. Cowles and Ms. Legg and an objection filed by Atty. Parks were to go before the court on the day of this meeting. The court was to make their decision based on review of the papers filed and the parties would not have the opportunity to present their cases. Atty. Landolina expected the decision to be made within the week. He suggested that this public hearing be continued until it is known whether Mr. Cowles and Ms. Legg would be parties to the lawsuit and to give the parties time to review Mr. Cowles revisions. Atty. Parks and his clients were amenable to continuing.

Mr. Cowles drafted a document with proposed revisions to the stipulated agreement and sent it to Attys. Parks and Landolina. This document was presented to the Commission. Mr. Cowles came forward to explain the document. He presented a map showing some of his suggestions. He said he thought that an agreement could provide a win/win for all involved.

He said he took some ideas from Enfield's practices when there is an industrial parcel abutting a residential zone. The following are some of his suggestions:

1. A deep buffer yard planting plan along the property lines
2. Certification that fill material is not contaminated
3. A performance bond
4. A deeded right for the abutters to be able to walk along the berm to view the Smyth & Avery properties
5. Notification to be given if the berm must be excavated for septic repair
6. Location of the Knox box as specified on the map provided
7. A mechanism for the abutters to have remediation of offending noises from the businesses
8. That Enfield's provision for lighting be followed
9. Other provisions from the Enfield regulations as noted
10. A provision to discourage challenges to the agreement by either party
11. A provision that does not discourage a challenge that the agreement is not being upheld
12. Notification of change of ownership of 251 or 255 Field Road.

Atty. Parks voiced his reaction to the suggested revisions. He opposed the suggested expansion of the buffer zone to 120 feet, the abutter's right-of-way provision and the noise abatement provision. He described the suggested revisions as an absurd proposal and explained the rationale for his opinion. He characterized the suggested revisions as a "trap for the unwary". He explained the difference in character of Enfield's industrial buildings and those of Somers, stating that imposing Enfield's regulations would be unfair to the small Somers businesses. Atty. Parks provided a copy of the most recent stipulated agreement signed by Mr. Smyth to the Commission and said he would provide another signed by Mr. Avery. The parties agreed to continue the Public Hearing on July 13, 2009.

Mr. Cowles defended his suggestion and expressed disappointment with Atty. Parks dismissal of them. He reminded Atty. Parks that he had asked for input from the abutters.

Atty. Landolina said he saw some good things in Mr. Cowles revisions and some unnecessary suggestions. He suggested that there be an executive session before the next Public Hearing with written responses to Mr. Cowles' revisions. He reminded the Commission that if Cowles and Legg become parties to the lawsuit the case cannot be settled without their consent. In that case the Court may order all parties back to mediation.

A motion was made by Mr. Fraro, seconded by Ms. Conklin and unanimously voted to agree to the extension and to continue the Public Hearing to Monday July 13, 2009 at 7:00pm at Town Hall.

A motion was made by Ms. Conklin; seconded by Mr. Fraro and unanimously voted to close this portion of the Public Hearing at 7:18pm.

b. SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, SOUTH & EGYPT ROADS, CHARTER

Peter Charter of 516 Somers Road, Ellington presented a map of his property and pointed to the reclaimed and presently active excavation areas. He expects to be finished with the E4 – Egypt Road and the E8 – South Road areas by October 2009. Ms. Carson provided a map of the E8 section. Mr. Charter said the property has been inspected and David Askew had expressed some concern about a sediment pond. Since then the sediment pond had been dug and a silt fence installed. Ms. Carson stated that this work has been approved by Mr. Askew. She added that there are two bond amounts; \$10,000 for the E4 site and \$33,240 for the E8 site totaling \$43,240. This application has been reviewed by the Planning Commission and they had no issues with it and there have been no other complaints.

The floor was opened to any comments for or against the application. There was no comment so this part of the Public Hearing was closed.

c. SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, SOUTH ROAD, PLEASANT VIEW FARMS REALTY

Jeff Lipton said that the existing gravel pit is anticipated to close in August. Most of the area has already been seeded with hay. He presented a lot map of the proposed expansion of the other gravel pit that abuts the Town landfill. The Town Engineer inspected the site and found no issues with it. David Askew has also given his approval regarding any wetland issues.

Mr. Lipton presented an agreement from 1975 between his father and the Town. Mr. Lipton explained that per the agreement the Town excavated Town land to the Lipton's property line. At this time there is a steep embankment up to 40 feet high where the properties meet. To fulfill the Lipton's part of the agreement, they must excavate their property to be level with the Town land. An area of about 20 acres

will be affected and the excavation is anticipated to take about 20 years. Mr. Lipton explained that much of the material will be useful as septic sand. There will be no new entrance necessary, as the entrance to the current site will be used for this site as well. A screener and crusher will be on site.

Ms. Carson said that the bond will be \$31,000 and if the Town intends to do any significant work in the area the Planning Commission should be asked for an 8-24 referral. She added that the agreement allows for coordination between the landowners as required by the regulation and is therefore a valid agreement.

The floor was opened to comments for or against the application.

Selectman Pinney spoke on behalf of the Town stating that over 30 years ago it was agreed to level the topography between the property lines. The current Town Engineer has reviewed the site and has reaffirmed the concept. The Town would like to work an agreement with Mr. Lipton for further excavation of material on the Town property for which the Town would be paid.

No one else offered to speak so this portion of the Public Hearing was closed.

d. SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, STAFFORD/ROOT/WOOD ROADS, WOOD GRAVEL OPERATION LLC

Jay Ussery of J.R.Russo & Associates represented the applicant. He provided the Commission with an updated as-built and said that little has changed on the site since last year. He said that the operation is 75% completed and showed on the as-built where the area had been loamed and seeded. The steep vertical slope that had concerned Mr. Strauss in the past has been taken down however, Mr. Cafarelli inspected the site and voiced concern regarding another slope that will be addressed by the applicant. A memo from Mr. Cafarelli had been provided to the Commission.

Ms. Carson said that the bond is \$56,228 and there is a screener and crusher on site. She reported that young trees are becoming established on the berm along Wood Road and there have been no further complaints from the neighboring properties.

The floor was opened to comments for or against the application, hearing none this portion of the Public Hearing was closed.

e. SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, 164 HAMPDEN ROAD, GROWER DIRECT FARMS

Herb Holden of Herb Holden Trucking spoke on behalf of the applicant and presented the lot map. He said that due to the current economy operations have temporarily ceased. The long-term plan is to remove material in layers to eventually bring the area down to grade to allow for an outdoor planting area.

The ZEO and Town Engineer had reported on a steep slope with trees falling over the edge that needs to be stabilized and that the safety fence could not be found. The existing stone and erosion protection on Hall Road is in need of repair and the pond was covered in green algae indicating fertilizer runoff. The Engineer warned against burying the piled up stumps and branches on site. The piles of tires, palettes and concrete debris must also be disposed of properly.

Mr. Holden said that a silt fence could be installed along the steep slope but said the area can't be stabilized because it is too dangerous to go up there. He said nothing can be done about the algae covered pond and the stumps are the result of beaver activity. Ms. Carson provided a copy of the town Engineer's report to Mr. Holden to review with the applicant.

Mr. Martin opened the floor to comments for or against the application.

Henry Broer spoke against the application. He complained of incessant truck traffic on Hamden Road at this time. He is concerned that more gravel removal means expansion of the growing operation and therefore even more truck traffic. He also reported on tow trucks bringing FedEx trucks to the area.

A motion was made by Mr. Fraro; seconded by Ms. Rasid and unanimously voted to close this portion of the Public Hearing at 8:28pm.

II. CALL TO ORDER

Chairman Rob Martin called the regular meeting of the Zoning Commission to order at 8:29pm. Members Jill Conklin, Rob Martin, Dan Fraro, Wes Smith, and alternate member Paige Rasid (seated for Ray Hafford) were present and constituted a quorum. Also present: Town Planner Patrice Carson.

III. MINUTES APPROVAL: MARCH 26, 2009 & JUNE 1, 2009

The minutes of June 1, 2009 were unavailable.

A motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to approve the minutes of March 26, 2009 as written.

IV. OLD BUSINESS

a. DISCUSSION/POSSIBLE DECISION: PROPOSAL TO SETTLE A LAWSUIT: ROBERT SMYTH, ET AL VS. SOMERS ZONING COMMISSION DOCKET #CV08-4009357S PENDING IN TOLLAND SUPERIOR COURT REGARDING ZONE CHANGE APPLICATION (PREVIOUSLY DENIED BY THE ZONING COMMISSION) FOR PROPERTIES AT 225 FIELD ROAD (MAP 02 BLOCK 50) & 251 FIELD ROAD (MAP 02 BLOCK 44 LOT 03)

This portion of the Public Hearing was continued until July 13, 2009 at 7:00pm at Town Hall.

b. DISCUSSION/POSSIBLE DECISION: SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, SOUTH & EGYPT ROADS, CHARTER

A motion was made by Mr. Smith; seconded by Mr. Fraro and unanimously voted to approve the Charter's special use permit application for gravel bank at South & Egypt Roads and to approve the use of a screener and crusher on site and to set the bond amount for \$43,240.

c. DISCUSSION/POSSIBLE DECISION: SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, SOUTH ROAD, PLEASANT VIEW FARMS REALTY

A motion was made by Mr. Fraro; seconded by Ms. Rasid and unanimously voted to approve Pleasant View Farms Realty's special use permit application for gravel bank at South Road and to approve the use of a screener and crusher, to set the bond amount at \$31,000 and to make an 8-24 referral if needed and to allow graveling to the boundary line as per prior agreement.

d. DISCUSSION/POSSIBLE DECISION: SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, STAFFORD/ROOT/WOOD ROADS, WOOD GRAVEL OPERATION LLC

A motion was made by Ms. Rasid; seconded by Mr. Smith and unanimously voted to approve Wood Gravel Operation Llc's special use permit application for gravel bank at Stafford/Root/Wood Roads with a \$56,228 bond and with a screener and crusher on site.

e. DISCUSSION/POSSIBLE DECISION: SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, 164 HAMPDEN ROAD, GROWER DIRECT FARMS

A motion was made by Ms. Conklin; seconded by Mr. Fraro and unanimously voted to approve Grower Direct Farm's special use permit application for gravel bank at 164 Hampden Road with the following contingencies: That the applicant meet with the Town Engineer and ZEO to make a satisfactory solution for the steep slope on the north side of the excavation and also a permanent solution for the stone and erosion protection on the south side of the hauling road, that the safety fence at the slope top be replaced, that stumps, tire and other debris shall not be buried on the site. The on site use of a screener and crusher is approved and bond is set at \$54,000.

f. OTHER – There was no other Old Business

IV. NEW BUSINESS

a. OTHER

A motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to add to the agenda a determination of staff review for a site plan for change of use of antiques and gifts retail store at 635 Main Street, White.

Ms. Carson showed a floor plan of the building and said that applicant only intends to use two rooms in the front for the business. A picture of the proposed sign was shown to the Commission.

The Commission agreed by consensus to allow the application to be handled by staff review.

A motion was made by Mr. Fraro; seconded by Mr. Smith and unanimously voted to add to the agenda a discussion regarding the Selectman's recommendation to eliminate the Town Planner position.

b. DISCUSSION REGARDING THE SELECTMAN'S RECOMMENDATION TO ELIMINATE THE TOWN PLANNER POSITION

Mr. Martin said he had attended the Selectmen's meeting on the subject and all who attended spoke in favor of keeping the position. He does not think removing the position would be a wise move. Mr. Smith said he does not think the Commission could operate effectively without the Planner's guidance, expertise and direction.

Ms. Rasid asked Mr. Pinney what were the projected savings anticipated by this elimination of the Planner's position. Mr. Pinney explained that the alternate staff for the Zoning Commission would be the Building Official. He added that the ZEO position could also be re-expanded as it had previously been prior to Ms. Carson's employment.

Ms. Carson asked for specifics regarding this suggestion since the ZEO has never staffed the Zoning Commission in an advisory capacity. Mr. Pinney said he could not speak to that.

Mr. Pinney continued that the BOS would aspire to having the Town Engineer address technical issues for the Zoning Commission. Mr. Martin expressed concern regarding whether the Town Engineer and

other ancillary staff have the expertise in Town Planning to serve the Town's needs. He cited a letter from the President of the CT Chapter of Planning who wrote to the Selectmen appealing their position on eliminating the position. Mr. Martin pointed out that the real estate market in Somers has not been affected as in other areas and is already beginning to rebound. He feels the Selectmen are being shortsighted because things will become busy in the near future. He suggested that if people in other positions have time to take on the Planner's responsibilities perhaps it is those other position's hours that should be cut.

Mr. Pinney said the Commissioner's should review the material he posted on the Town's website, which shows the activity for the Planning function has been declining. He said that prior to his discussing the concerns and comments voiced by the Commissions with the other Selectmen he is not prepared to articulate his rationale.

It was pointed out that the anticipated cost of a Planning consultant in the document on the website seemed to be very low. Mr. Pinney explained that much of the technical review work for the Commissions is performed by the Town Engineer who is a Town employee. He said that the Town Engineer would attend Planning and Zoning meetings.

Mr. Smith said that in the 10 years he has been on the Zoning Commission has never seen the Town Engineer at a Zoning meeting. He questioned if the Engineer would provide the guidance the Commission needs as the Planner does. Mr. Pinney reiterated that the discussion regards the Town Planner position not Ms. Carson personally.

Mr. Martin asked for a list of Towns who have no Town Planner, which Mr. Pinney said he would provide. Mr. Pinney stated that it is the Zoning and Planning Commissions who are responsible for keeping to a vision of a Town and the Selectmen nominate the members. He then discussed a situation in Somers past where a Zoning Commissioner had a particular agenda and exerted undue control. It was pointed out that 100% of the Zoning and Planning Commission members are saying that they need the Town Planner to effectively perform their responsibilities. The Town Planner was described as the glue that holds the Land Use department together and that the Planner has an understanding of how all the other aspects of Land Use work together and is the perfect go to person for answers. It was suggested that about \$5,000 a year could be saved by eliminating the ZEO position by having the Planner perform these duties during this slowdown.

A motion was made by Mr. Smith; seconded by Mr. Fraro and unanimously voted to make a non-binding vote of confidence in the Town Planner's position as it stands now.

V. DISCUSSION: PLAN OF CONSERVATION & DEVELOPMENT

a. RIDGELINE REGULATIONS

Ms. Carson said they are still waiting for the ZEO to provide her comments regarding possible enforcement issues with the current draft of the Ridgeline Regulations. After the ZEO's review the regulations will need to go to CROG, to the Town Attorney and to the Planning Commission.

IV. STAFF/COMMISSIONER REPORTS – There were none.

V. CORRESPONDENCE AND BILLS– There were none.

VI. ADJOURNMENT

A motion was made by Mr. Smith; seconded by Ms. Rasid and unanimously voted to adjourn the June 15, 2009 meeting of the Zoning Commission at 9:14pm.

Respectfully submitted,

Wesley Smith, Secretary

Jeanne Reed, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.