

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 8 September 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 8 September 2015, beginning at 7:00 p.m. in **CITY HALL AUDITORIUM, 110 RIVER STREET**, Milford, CT, to hear all parties concerning the following applications, some of which require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Ch), Howard Haberman (Sec), Sarah Ferrante, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Alison Rose Egelson

MEMBERS/ALTERNATES ABSENT: Robert Thomas

STAFF PRESENT: Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

Mr. Tuozzola called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **990 Naugatuck Avenue** (HDD) Brian Stone, Esq., Attorney, Pellegrino Law Firm, for The Housatonic Terminal, LLC, appellant (Recycling, Inc., owners); Appeal the Decision of the Zoning Enforcement Officer on 22 May 2015; Map 40, Block 300, Parcel 2.

Attorney Stone addressed the board. He noted that this presentation was a continuation of his presentation at the July 2015 hearing. He noted the presence of Joseph Barrett and James Barrett, owners, stating that both of them were involved in the prior use of the property as a salvage operation. He described the history of the property, which he had outlined previously. He reiterated the Barrett's desire to use the property in the same manner again. He acknowledged a lapse in the recycling/salvage use for about 10 years in the late 90s into the early 2000s. He said Coastal Recycling was operating the site for some time without permits. He submitted a copy of the lease. He said that in 2006 the property was leased to Recycling, Inc., which applied to the state for a volume reduction facility and which it received in 2008. At that time, he said Recycling, Inc. applied to the Planning and Zoning Board for a Special Permit in the HDD zone to allow recycling. He submitted a copy of the transcript of the public hearing for an attempt to file an application in 2009. He said the Planning and Zoning Board amended the Zoning Regulations to preclude a recycling use in 2009, which was subsequently litigated and submitted a copy of the judgment. He reviewed the history of jurisdiction of solid waste facilities by local and state authorities. He said that in 2012 some local oversight was restored for solid waste facilities. He handed out a copy of the relevant Legislative Act. He noted a time that the facility was active. He said the primary aim of his presentation was to establish that a valid nonconforming use of salvage and recycling has been in effect in some form since 1955. He affirmed the Zoning Enforcement Officer's original decision to issue a permit. He noted the DEEP's decision to revoke the license in 2014. He submitted a portion of the decision that discussed noncompliance that evidenced use of the facility. Attorney Stone noted that a fire at the site had destroyed certain documents. He stated that the existence of permits for demolition from the City of Bridgeport validated the use of the property. He submitted samples. He handed out a set of photographs and asked Joe Barrett to describe activities related to the business. **Mr. Soda** confirmed that Coastal Recycling was out of business by 1996.

Mr. Joseph Barrett described the demolition depicted of several buildings in Bridgeport. **Attorney Stone** asked **Mr. Barrett** if all the salvage from the depicted demolitions was taken to 990 Naugatuck. Mr. Barrett said it was. Attorney Stone handed out an aerial photo of the facility in 1956. Mr. Barrett said the photograph depicted tankers offloaded oil of various types. He said the picture showed 3 tanks that were eliminated and another that was moved to a different location. He described the use of other structures on the lot. He referred to the fire at the office building. **Attorney Stone** asked **Mr. Barrett** about any changes to the property. Mr. Barrett said somewhat over 2 acres of land were added, but that was all. Attorney Stone handed out a copy of the photo with colored areas depicting storage areas for recycled materials. Mr. Barrett described where beams, brick, and stone were stored. He said there was limited use of certain

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types of wood for recycling, often in Barrett's construction division. **Attorney Stone** asked **Mr. Barrett** to describe different ways of accessing the property. **Mr. Tuozzola** asked when the last heavy years of operation occurred. **Mr. Barrett** said he retired in the mid-1980s, but his younger brother ran the operation in 1994-1995. **Attorney Stone** said Cease and Desist orders were issued when a tenant operated the facilities without permits.

James Richard Barrett, 61 Taylor Road, Bethel, said he was Mr. Joseph Barrett's nephew. He described growing up working in the family business. He described helping to unload and sort the materials from demolitions. **Attorney Stone** prompted **Mr. James Barrett** to describe use in more recent years.

Attorney Stone referred to the statute he had submitted. He noted the Special Permit and involvement of the Planning and Zoning Board. He said he felt the state statute preempts the regulations as they exist today. He said he disputed the ZEO's decision.

Stephen Harris, ZEO, addressed the board. He handed out copies of his notes on the issue. He noted that Attorney Stone had described past uses at the site including recycling, the sorting and selling of scrap metal, and several others. He said that when someone makes a claim of a nonconforming use, the burden is on the user to prove the use existed. He said the claimant also had the burden to show that all efforts were being made to continue the use. He referred to the regulatory requirement of Section 6.2.7 to continue the uses. He read the regulation on abandonment and said it was the City's position that the use had been abandoned. He said no evidence had been submitted showing an effort to continue the use, such as advertising, as required by the regulation. He asked that the board to deny the appeal.

Amy Souchin, Esq. of Hurwitz, Sagarin, Shlossberg, and Knuff, in capacity as outside counsel, addressed the board. Attorney Souchin said there is no valid legal ability for an applicant to operate a recycling facility at 990 Naugatuck. She submitted copies of the general DEEP permit which had expired last month. She referred to the limits imposed on recycling operations on page 7 of the permit. She said no evidence had been submitted to validate the use after the mid-1980s. She said Attorney Stone was asking the board to approve the expansion of a nonconforming use. She said no evidence of volume reduction facility activity had been provided. She said there is no current application in effect now, having been denied as part of DEEP's denial. She provided description of solid waste reduction operation. She said the testimony and evidence demonstrated that the recycling use had been abandoned. She said there has been misrepresentation during presentation to the board by Mr. Barrett. She referred to a remark about a forbearance mortgage by Mr. Barrett; she said there was an excess of 4 million dollars of mortgages on a property valued at about 1 million. She said Recycling, Inc. was set up at the direction of the owner of the mortgages. She said a judgment of foreclosure existed on the property based on back taxes of \$345,000 due early next year, or the City will take ownership of the property. She said the request was to reestablish the use of the property, logically implies that it was interrupted. She said the appellant had not met the burden of proof.

REBUTTAL

Attorney Stone said **Mr. Barrett** had credibility and that evidence had been produced to support an ongoing use. He noted that Attorney Souchin's law firm had another interest in a related case. He made a distinction between Mr. Barrett and Recycling Inc. He said the forbearance issue was not relevant to the continuation of the use.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. He noted that the operation was extensive at one time, but felt there was little proof of operation after 1995. **Mr. Soda** noted a gap from 1995-2004. **Mr. Haberman** said there was a lapse in use, no proof of continued use, and no way to acquire a permit legally.

Mr. Haberman motioned to uphold the ZEO's decision and deny the appeal. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

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2. **1718 Boston Post Road** (CDD-5) Joseph DelVecchio, appellant; Sec. 9.2.1: Appeal the Decision of the Director of Permitting and Land Use for reversing an enforcement order to cease and desist use of refrigeration trailers for storage; Map 109, Block 804, Parcel 12.

Mr. DelVecchio, 275 Sarah Circle, Orange, addressed the board. He introduced 2 neighbors who also live close to the Costco Warehouse Store. He stated that for several years, Costco has used external refrigeration trucks for storage rather than just delivery of goods, resulting in a neighborhood disturbance of excessive noise. He said he tried to speak with Costco management to resolve the problem, but got no satisfaction, and contacted ZEO Harris. Mr. DelVecchio said that after ZEO Harris's inspection and issuance of an enforcement order, the matter was referred to the City Attorney's office. He said the intervention by the City Attorney's Office (CAO) resulted in the nuisance stopping for a day, but then the problem resumed. Mr. DelVecchio returned to the CAO asking that the violation letter be enforced. Mr. DelVecchio said he repeatedly asked Mr. Harris for an update and was informed that Land Use Director Joseph Griffith had reversed the order. Mr. DelVecchio said he then requested enforcement of the ZEO's original order. He reiterated that he felt the problem was with using refrigeration trucks not for delivery services, but as a means for Costco increases their storage capacity. He said he understood a need for refrigerated delivery, but that storage was not a permitted use. He said he consulted the Milford Zoning Regulations and confirmed that the Director of Permitting and Land Use is not on a list of those with authority to enforce the regulations.

BOARD DISCUSSION

Mr. Tuozzola said he was surprised to learn that Costco was not being a good neighbor and asked when he learned of Mr. Griffith's decision. **Mr. DelVecchio** reiterated that he felt store management did not take his concerns seriously. He said Mr. Griffith made the decision that the use is in compliance on July 3rd. **Mr. Tuozzola** noted that **Mr. DelVecchio** had researched the regulations. **Mr. Harris** asked Mr. DelVecchio when he became aware of the reversal; **Mr. DelVecchio** said on or about July 26th, expressing concern that no one notified him of Mr. Harris' original enforcement recommendation nearly a year prior to that. He said he filed his appeal on August 5th, within 15 days of becoming aware of Mr. Griffith's reversal. **Mr. Tuozzola** noted that Mr. Griffin was not present to discuss his decision. Mr. Tuozzola closed to the hearing. He asked who has the authority to make the decision. He reviewed Section 8.2 list of authorities—ZEO, Planning and Zoning Board Chairman, City Planner, Assistant City Planner, and said there was no Director of Permitting and Land Use on the list. **Mr. Haberman** noted that Mr. Griffith's title was absent from that list, so he said that based on the regulations, the Land Use Director does not have authority. **Mr. Vaccino** said the board must base decisions on the regulation book. He also wished Mr. Griffith was at the meeting to explain, but it seemed clear that Mr. Griffith doesn't have jurisdiction.

Mr. Vaccino motioned to overturn the director's decision. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by referencing his earlier comments, namely by reason of adhering to the regulations where zoning enforcement positions are listed and the absence of Mr. Griffith's title from that list. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino and Tuozzola** voting with the motion.

3. **247 High Street** (SFA-10) Michael Goodman, agent, for Nicholas Bate and Kerry Bate, owners; Vary Sec. 3.1.4.1 front-
yd setback to 9.9' and 11.8' where 20' req, north side-yd setback to 7.8' where 10' req, south side-yd setback to 2'
where 10'req, all to connect 2 bldgs into 1 single family home; Map 65, Block 321, Parcel 26.

Michael Goodman, 7 Jason Wright Drive, Ansonia, addressed the board. He submitted a letter from the Bates, which he read aloud. The letter cited safety concerns for their daughter given the short driveway. He said the house was built in 1790. He said a neighbor of the Bates family told him (Mr. Goodman) that he (the neighbor) approved of improvements being made to the house.

DISCUSSION

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Mr. Vaccino asked for the legal hardship. **Mr. Goodman** said the buildings were in a preexisting location. **Mr. Vaccino** described the constraints of legal definition of hardship that the board must consider. **Mr. Haberman** confirmed that there is no living space over the garage.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. **Mr. Haberman** noted the slope of the property and that there would be no increase in the nonconformity. After a short discussion, there were no issues in dispute, so **Mr. Tuozzola** asked for a motion.

Mr. Haberman motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM 11 AUGUST 2015 HEARING; motion carried unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR 13 OCTOBER 2015 HEARING; one appeal was noted.

The meeting was adjourned at 8:38 p.m.

Any other business not on the agenda to be considered upon two-third's vote of those present and voting.

ANY INDIVIDUAL WITH A DISABILITY WHO NEEDS SPECIAL ASSISTANCE TO PARTICIPATE IN THE MEETING SHOULD CONTACT THE DIRECTOR OF COMMUNITY DEVELOPMENT, 203-783-3230, PRIOR TO THE MEETING IF POSSIBLE.

Attest:

Meg Greene
Clerk, ZBA