

**MINUTES FOR TWO (2) PUBLIC HEARING
OF THE PLANNING AND ZONING BOARD
HELD TUESDAY, APRIL 1, 2014 AT 7:30 P.M.
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Benjamin Gettinger called to order the April 1, 2014 meeting of the Planning and Zoning Board at 7:34 p.m.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

Members Present: Terrence Copeland; John Grant, Jeanne Cervin, Vice Chair; Edward Mead, Carl Moore, Tom Nichol, Tom Panzella, Jim Quish, Benjamin Gettinger, Chair.

Not Present: Michael Dolan, Tom Nichol

Staff: David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner; Phyllis Leggett, Board Clerk.

Also Present: Matthew Woods, Trial Attorney, City of Milford

C. EXECUTIVE SESSION

1. **Millwood Properties, LLC v. Milford P&Z, 141-159, 146 Merwin Avenue**
Discussion concerning pending litigation.

The Board members, David Sulkis, and Matthew Woods, Esq. went into Executive Session at 7:35 pm and returned from Executive Session at 8:16 P.M.

D. PUBLIC HEARING

2. **1770 BOSTON POST ROAD (ZONE CDD-5)** Petition of Richard Michaud for Special Permit and Site Plan Review approval for indoor batting cages on Map 109, Block 804, Parcel 17, of which M & K Post Road Associates is the owner. Remand by Judge Matasavage to reopen the public hearing solely to consider the photometric survey filed on or about October 1, 2009, allow any cross examination of the proponents of the survey, and allow public to present their own expert testimony or comment regarding the photometric plan and directing the Planning and Zoning Board to reconsider its prior decision in light of the photometric plan.

Matthew Woods, Esq., Trial Counsel for the City of Milford. Attorney Woods explained the reason this matter is before the Board again on remand from the Superior Court in accordance with the October 26, 2011 decision.

History: The property is located at 1770 Boston Post Road in Milford, which is immediately adjacent to 575 Boston Post Road in Orange. The subject property is in the CDD- 5 zone, in which all uses are special uses subject to Special Permit and Site Plan approval. In this zone, Section 3.20.2.7 of the regulations, deals with indoor places of entertainment, amusement, recreation or assembly; such as theatres, billiard rooms, bowling alleys or other similar indoor uses.

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On August 12, 2009, applications were submitted by the owner to use 14,000 SF for indoor commercial recreational use, including batting cages and a golf simulator. A public hearing was held on September 15, 2009. Verbatim minutes of that meeting were distributed to all the present board members. He referenced pages 51-61 wherein there was discussion about a photometric survey which deals with outside lighting. The P & Z Board requested an updated photometric survey be submitted by the applicant. The plaintiff's attorney in this case requested that the public hearing be kept open so that he could question the photometric survey. Despite that, the P & Z Board chairman closed the public hearing.

On October 1, 2009, M & K Associates submitted a photometric site plan and cut sheets for the light fixtures. These are Exhibits Y, the cut sheets, (copies distributed to the Board) and Exhibit Z, is the photometric survey of which two copies have been distributed. Mr. Sulkis reviewed the documents and at the October 6, 2009 public hearing, there was a little bit of discussion about the photometric survey, but the Board did not review it and did not review the cut sheets. The Board voted to approve M & K's application with one opposition. Notice of the decision was published in the New Haven Register on October 9, 2009 and on October 22, 2009, an appeal was filed. Ultimately, Judge Matasavage in his decision, in summary, said since there are health and safety issues that may be involved with the photometric survey, the Court ordered that this matter be remanded back to the Milford Planning and Zoning Board for reconsideration of this matter. The Board is only to consider the photometric survey that was filed on or about October 1, 2009; allow any cross-examination of the proponents of the survey and to allow the public to present their own expert testimony or comment regarding the photometric plan. Once the hearing is closed, the Board is directed to reconsider its prior decision in light of the photometric plan.

The Board needs to consider Exhibit Y, the cut sheets and Exhibit Z, the photometric survey. After all things considered, the public hearing can be closed and reconsider the prior decision to approve the Special Permit and Site Plan approval in light of the photometric plan.

Chairman Gettinger: Stated in order to preserve the record, the Board members should indicate whether they have all read both sets of the Verbatim Minutes and the judge's decision. By a show of hands all eight board members present read the Verbatim Minutes and the judge's decision.

The Chairman stated the specific public hearing speaking procedure. Asked if anyone was in favor of the application.

Attorney Marjorie Shansky, 61 East Grand Avenue, New Haven, CT, on behalf of M & K Associates and Richard Michaud, principal. The remand is on a technicality on the timing of submission of the photometrics and the inability of the opponent to cross examine the expert. The expert responsible for the photometric plan and the cut sheets is present tonight.

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David Maurer, Consulting engineer from Innovative Engineering Services, the creator of the photometric plan. His company was retained by M & K Associates to provide a survey of the lighting in front of 1770 Boston Post Road. The Light Pro Software Package, Version 2.02, was utilized, which is the industry standard for such photometric data. It produced a point to point light level reading of the areas that were surveyed, and meets the required zoning regulations.

Chairman Gettinger: Asked if anyone else was in favor of the application (No response). Asked if anyone was against the application.

Kenneth Votre, attorney, 8 Frontage Road, East Haven, CT, representing the Abraham Kaoud Family Limited Partnership, the owner of the adjacent parcel of land. He represented the Kaoud Partnership in the Appeal to the Superior Court. Also present are representatives of the law firm of Cohen and Acampora.

He believes the reason this matter has been sent back to the Board was to consider the lighting situation on the property and in connection with the safety issues that arise from it.

Mr. Votre, via a site plan, showed the parking area, driveway and entrance to the building. Stated there are shadows produced by the lighting area, which affect the walking area to get to the entrance of the building.

RajeshKarki, Licensed Professional Electrical Engineer, and consulting engineer for this lighting analysis. He stated the lighting level in the area beyond the property line of 1770 Boston Post Road, based on the plan, is the lighting level is insufficient. His reference is based on Illuminating Engineering Society of NA. That is the industry standard. He stated there is not enough lighting level that meets the standard for that driveway easement and walkway. He noted the four standards that apply to this situation: Security lighting; safety lighting; pedestrian and side ways walking. He made a site visit at night which concurred his findings.

Distributed information to the Board showing the lighting measurements and their deficiencies for safety in the passage area.

Chairman Gettinger: Asked if anyone else to speak against the application. (No response)

Rebuttal:

Attorney Shansky: The opponent is into his fifth year of overcoming the Board's approval. Disingenuous information has been given to the Board. All the deficiencies that have been discussed are on the opponent's property, in Orange, which is beyond the Board's jurisdiction.

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Whatever safety issue the opponent believes exists can be remedied by adding lighting on the opponents wall on his property in Orange. The standard to which the applicant must comply is the Milford Zoning Regulations. There is now a five year track record of no incident. The applicant cannot correct the situation in Orange, but in Milford the photometrics plan addresses the requirements, but the applicant would be willing to do whatever is within the Board's purview and interest which can be made a condition of continuing approval. This approval has been working for five years. The lighting has met Milford's regulations when it was approved and still does five years later.

She urged the Board to leave its decision of approval in place.

Rebuttal by Opponent

Attorney Votre disagreed that the lighting in Orange is at fault. The photometric plan is for the Milford property and is deficient. The business has not been in the property for a number of years and has not been using the parking, so there have not been any injuries.

The existing lighting plan is the one the Board must approve. If another plan is submitted for approval, it will go back to where it was at the beginning, with the other board, where something is submitted after the hearing. The court sent back this plan and these comments.

Further Rebuttal:

Attorney Shansky: The status quo represents the equitable outcome and should be retained.

Mr. Panzella asked questions of the opponent's expert, concerning the shadow that is being cast by the lighting. Mr. Karki responded with an explanation of the lighting casting a shadow on the walkway emanating from the retaining wall. The light levels in the areas of the building in question were discussed.

Attorney Shansky: Other lighting and the easement on Mr. Kaoud's property cannot be considered. The lighting plan as it relates to the applicant's property is adequate and meets the regulations. There is other ambient light on the property and the safety issue is ameliorated by this. The defense of the rebuttal that this is unsafe because of the light deficiencies on Mr. Kaoud's property, is a misdirection of information. The lighting plan and setting for this building are amply lighted for safe traffic before and behind the building.

Chairman Gettinger: Asked if the applicant's property emanates enough light to satisfy the Milford Zoning Regulations.

Attorney Shansky: Yes.

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Chairman Gettinger: The argument is on the other property, which includes the path of travel, there may not be enough light.

Attorney Shansky: Did not concede to that.

Chairman Gettinger: Noted the issues: 1) Is there enough light on the applicant's property in Milford; 2) Does the Board consider the amount of light in Orange on the neighbor's property?

Attorney Shansky: Agreed with #1 and said #2 is a problem for the Board.

Chairman Gettinger: Asked Attorney Woods to address these issues for the Board.

Attorney Woods: Referred and read from Section 5.2.3 of the zoning regulations which deals with exterior lighting regulations and how it relates to this situation. He interpreted it to mean that a certain amount of light trespass is allowable off the property as long as it does not exceed 0.5 foot candles on commercially zoned property.

Mr. Quish: Asked if a back door could be installed to alleviate the "safety" problem. Did not know if the Board is allowed to ask the applicant to install lighting on that walkway as long as it meets the zoning regulations.

Attorney Woods: Based on Judge Matasavage's remand, he is not sure what the answer would be. The judge said after the proponents and opponents discuss the photometric survey and the hearing is closed, the Board is directed to reconsider its prior decision in light of the photometric plan.

If the Board determines that the photometric plan either does not comply with the zoning regulations by casting too much light on the neighboring property, or it does not generate enough light for safety purposes, then, he believes the Board can reconsider its prior decision in light of that photometric plan. He does not think it would allow the Board to require another entrance to the building. The Board needs to approve or deny the application in light of the photometric plan.

Mr. Mead: Asked the opponent's attorney if there could be a compromise on both sides for more lighting, if safety is the main concern of the opponent.

Mr. Votre: That is not before the Board based on the court's remand. Agrees with Mr. Woods' observation this is a very unusual procedural circumstance.

Mr. Maurer: Stated the photometric plan strived for .00 light trespass which meets the zoning regulations.

Mr. Mead: Asked if lighting was increased to spillage of 0.5 foot candles into the easement, would it be sufficient for people to walk through there at nighttime?

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Mr. Maurer: They could evaluate re-aiming the fixtures, tilting and shining more light onto the easement area. It would have to be metered for the light spillage. It would be possible to adjust the lighting that is there.

Chairman Gettinger closed the public hearing.

The Board will discuss and vote on this matter at the next meeting.

E. PUBLIC HEARING – Close by 5/6/2014; expires on 7/10/2014

3. **0 WESTMOOR ROAD (ZONE R-12.5)** – Petition of Warren K. Field, Jr. for Special Permit and Coastal Area Management Site Plan Review approval to construct a single family residence within 25 feet of high tide on Map 30, Parcel 613A, Parcel 34-37, of which Field and Son Builders LLC is the owner.

Jeffrey Gordon, President, Codespoti and Associates, PC, Orange, CT, representing Field & Son, builders. This is a basic CAM application, but the Special Permit Application is due to the fact that this property is partially in a flood zone, elevation 12. The house is designed to be a slab on grade house at elevation 13. Variances have been approved by the Zoning Board of Appeals, in order to pull the house forward and to the side to get as far away from the inland wetlands as practical. The Inland Wetlands Agency has approved the plan for construction and mitigation. Also providing for storm water quality structures on the site. John Gaucher of the DEEP has approved the CAM application. Mitigation requirements and bonding was set by the Inland Wetlands Commission.

Ms. Harrigan: This is a fairly straightforward application that is very close to the wetlands.

Mr. Mead: Asked if this property was one that the City owned for which there was a swap.

Mr. Gordon: Recalled that upon approval of this lot, the last two of the old lots would be conveyed as open space back to the City.

Mr. Mead: Asked about the square footage of the property and the usable amount of space.

Ms. Harrigan: The lot size is determined by what the particular property owner owns, not what is usable by them.

Chairman Gettinger opened the hearing to the public. No one responded in favor of the application. No one responded against the application.

Mr. Gettinger: Closed the public hearing.

Motion: Ms. Cervin made a motion to approve the application of 0 Westmoor Road contingent upon meeting the Inland Wetlands requirements.

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Second: Mr. Copeland.

Discussion: None.

Vote: All members voted in favor.

Motion: Approved.

F. MARIJUANA GROWTH AND DISPENSARIES- Discussion

Mr. Sulkis: At the point for the Board to determine what they want to do, if anything, with the regulations to address the marijuana grow and dispensary facilities.

Mr. Grant: Reviewed the information Mr. Sulkis had given the Board. In favor of grow facilities in an industrial area. Dispensaries, which are considered professional, can go in the allowable professional districts, such as DO-10, DO-25, BD-1, ID, LI. The regulations are specific for this purpose. He saw no reason to change or add to the regulations for these uses.

Ms. Cervin: Thinks the dispensaries should be allowed anywhere that pharmacies are allowed because the license requirement is so strict. The State regulations are very explicit.

Mr. Grant: The State Department of Consumer Protection has added a lot more things to the requirements as to location. Also thinks the State will review where the proposed locations will be before they come to the City. He described how these dispensaries will be overseered.

Mr. Sulkis: Definitions of growth facility and dispensaries could be added to the zoning regulations. It can be further fine tuned based upon the Board's review. If the dispensaries will be treated like pharmacies, there will be no distance requirements, i.e. from schools, churches, etc.

Mr. Quish: Suggested this matter be discussed by a subcommittee.

Mr. Sulkis: The Moratorium expires on April 30th. If a subcommittee is formed, it might make sense to extend the Moratorium.

Ms. Cervin: Made a motion to extend the Moratorium for four months to August 1, 2014.

Second: Mr. Quish.

Discussion: **Chairman Gettinger:** Clarified that the Board is not delaying anything by extending the Moratorium because there is not going to be an application process within four months.

Ms. Cervin: By getting the Subcommittee on Regulation Changes up and running, that could be one of the first things on the agenda and could be worked out within four months.

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Vote: All members present voted in favor of extending the Moratorium to August 1st.

Motion: Approved.

The Regulation Subcommittee will formulate a regulation on the marijuana growth and dispensary matter and present their findings to the entire Board for its review and comments.

G. LIAISON ASSIGNMENTS AND LIAISON REPORTS

Ms. Cervin: The Board of Aldermen will hold a public hearing on the proposed City Budget. She believes the proposal to remove the City Planner position was made by the Board of Finance. She asked that the Board allow her to present the Board's feelings on the loss of this position and the person who holds this position. She asked for a consensus of the support she would have from the Board on this matter.

Chairman Gettinger: Stated this is a slippery slope the Board is getting into by commenting on other departments. He does not believe it is the Board's function to comment on the Board of Finance's proposed budget. He has his own opinion concerning the position and the great job Ms. Harrigan does. This is a budget issue, not a merit issue and it is not within the Board's authority to go before the Board of Aldermen to question the action of the Board of Finance budget. The Board members, in their individual capacities, can do so.

Mr. Quish: Thought this topic was not appropriate for the liaison report.

Chairman Gettinger: Reviewed the liaisons and their commissions:

Mr. Mead to the Police Commission
Ms. Cervin to the Board of Aldermen
Mr. Quish to Conservation Commission
Mr. Copeland to the Golf Commission

Three commissions yet to be assigned are: Fire, Inland Wetlands, Tree Commission

H APPROVAL OF MINUTES – (3/18/2014)

Motion: Mr. Grant moved to approve the Minutes.

Second: Mr. Copeland

Discussion: None.

Vote: All in favor of approval of the Minutes of 3/18/2014.

Motion: Approved.

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I. CHAIR'S REPORT

A Regulation Subcommittee will be formed consisting of Mr. Quish, Ms. Cervin, Mr. Grant and the Chair. Mr. Moore was added as the fifth member.

J. STAFF REPORT

Training for Board members this Saturday, April 5h.

Motion: Mr. Grant made a motion to adjourn.

Mr. Quish: Second.

All members voted to adjourn the meeting at 9:45 p.m.

*Phyllis Leggett*_____

Phyllis Leggett