

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 14 July 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 14 July 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 may require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

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

ALTERNATES PRESENT: Alison Rose Egelson, Robert Thomas

MEMBERS/ALTERNATES ABSENT: William Soda, Gary Dubois

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He said Mr. Soda could not attend the meeting and asked Mr. Thomas to vote in Mr. Soda's absence. He asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **553 West Avenue** (DO-25) Brian Stone, Esq., Attorney, for Grillo Services, LLC, appellant, with consent of Kingdom Life Christian Church owner; Sec. 3.6.4.2 Vary side-yd setback to 15' where 200' req, 60.25' where 200' req. for recycling operation; Map 42, Block 335, Parcel 1.

Attorney Stone, Pelligrino Law Firm, 475 Whitney Avenue, New Haven, introduced other experts in attendance. He described the parcel of land, saying it had been Regional Water Authority (RWA) Class 3 watershed land that didn't serve the public water supply. He said the RWA has a goal of selling Class 3 land and using the proceeds to buy Class 1 and 2 land to protect watershed areas that might be usable for the public water supply. He said the original plan for the 553 West Avenue parcel was to build a church. He described the proposed use as consisting of recycling leaf and grass compost and products that result from this process. He said the site was ideally suited for this use due to its classification as watershed, the fact that much of it is in a flood plain, and because of restricted covenants put in place when the RWA sold the land to the City of Milford. He said the variance was needed to accommodate concrete bins that hold mulch, soil, and stone. He said that because those bins are identified as structures, they have to comply with the building and lot regulations of the DO-25 (Design Office, 25 acres) zone, a zone that is typically used for corporate parks with taller buildings, hence the 200' setback.

Fred Mascia, Senior Engineer of Tighe & Bond, 1000 Bridgeport Avenue, Shelton, presented more information on the proposal. He said the parcel had a total of 57.4 acres. He presented maps and described the site plan to the board. He said 42 acres were deed-restricted and cannot be developed. He said this left 15 usable acres that have other restrictions. He noted that the location of the Iriquois pipeline removes $\frac{3}{4}$ of an acre from the buildable area. He said further restrictions reduce the area to buildable 2.5 acres bisected by the gas line. He compared features of the plan to the current Grillo business site on Oronoque Road. He described aspects of the operating facilities and described the structures that hold the mulch and stone. He said the clients would be landscapers buying or dropping off cubic yards of mulch. He provided another zoomed-in view of the proposed site and described the operation in further detail. He displayed elevations of the office and retail center. He showed a Quonset-hut-style dry storage building.

DISCUSSION

Mr. Haberman confirmed that most trucks would come in via West Avenue. He asked for clarification of Attorney Stone's statement that the proposal was one of the best uses of the land. **Attorney Stone** said the site is environmentally sensitive and Grillo is an environmentally oriented business. **Mr. Tuozzola** confirmed that mulch would be manufactured onsite, not stone. He confirmed that with the variance the usable land on the site would go from 2.5

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acres to 5 or 6 acres and detailed additional approvals the project would require such as a Special Exception from the Planning and Zoning Board.

Mr. Tuozzola asked for hours of operation. **Michael Grillo**, president of the business, stated that hours would be Monday through Friday from 7:00am-4:30pm, and Saturday from 7:00am-3:00pm, closed Sunday. **Mr. Vaccino** confirmed that the office gross floor area was 3000 sf and that the Quonset hut was 3200 sf. **Mr. Mascia** provided details on anticipated customer traffic patterns. He described how leaves and wood products are reduced to topsoil or mulch and some information on seasonal variations in the operation. **Mr. Vaccino** confirmed that no pavers would be manufactured on site. He confirmed that the highest structure is 25'5". He confirmed the usable acreage. **Mr. Haberman** asked if there were odors from composting activity. **Lawrence Grillo**, vice president of the company, said no turning happened for 30-40 days, but that the first day of turning creates an odor of leaves. He said the odor dissipates in a few hours, but that the company would use a wind sock to determine whether the wind would direct any odor toward residences. He said leaves would not be turned unless the wind is blowing toward Interstate 95 or Bic Drive, which has no residential areas. **Ms. Egelson** confirmed that the nearest residential area was over 700 ft. away across West Avenue at Gloria Commons.

Attorney Stone reiterated that the legal hardship was the restrictive nature of the parcel due to wetlands, flood plain, pipeline, and other restrictions. **Mr. Vaccino** asked if the operation could be made smaller to fit the 2.5-acre usable land. **Michael Grillo** said the business had to be the proposed size to be cost effective. **Ms. Ferrante** asked if other sites had been researched. **Mr. Grillo** said it was difficult to find other sites in Milford and that he wanted to keep the business based in Milford. **Attorney Stone** said practical difficulty and unusual hardship were present. He said reasonable use of the property would be served by granting the variance.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he asked for opposing comment.

OPPOSED

Gerry Wilson, 663 West Avenue, said the neighborhood would be adversely affected by truck traffic. She said West Avenue is a 20 mph, 2-lane road with a sharp turn and that the site was within ½ mile of JFK School, all of which would create safety problems. She said home values would be affected. She presented a petition with 50 signatures opposing the project.

Luther Reinhold, 1433 Naugatuck Ave, provided handouts to the board. He said heavy trucks are using Plains Road and Naugatuck Avenue despite a posted ordinance to the contrary. He said he had counted numerous heavy trucks in short time frames. He described the trucks. He expressed concern for the trucks failing to come to full stops at stop signs. He referred to a map that he said described possible traffic patterns to 553 West Avenue.

Stephanie Ramsey, 448 West Ave, said she was concerned that the structures along West Avenue may contain pesticides, herbicides or other harmful chemicals and create runoff, endangering the wetlands. She said Volatile Organic Compounds (VOCs) could be given off during compost turning, creating ground level air pollution. She said trucks backing up to structures will compact and change the nature of the soil there and could affect groundwater and the ecological system. She said runoff could also affect the residential area.

Joseph Bogdan, 3 Audubon Close, said he had lived there 24 years and felt there was no hardship. He said Grillo is a heavy industrial use. He expressed concern about odors and truck traffic. He said he was a Milford police officer for 25 years, spending much of his career in the Traffic Department. He said Oronoque Road neighbors have trouble with Grillo traffic. He said the site would noisy and disruptive and the trucks would also make fumes. He said there was already disregard for the use of posted truck routes. He described 2 negative interactions with Grillo regarding trucks not

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stopping at stop signs. He expressed concern about school children and trucks sharing West Avenue. He said Gloria Commons had created residential area and the City should protect it from over-development by commercial concerns.

James Trowbridge, 18 Audubon Close, said he had filed a statement and a petition with the Planning and Zoning Office objecting to the project. He read the statement.

Chris Sweetwood, 12 Manor House lane, said the area was a wetland and open space. He noted the fire on the site several years ago. He expressed concern about traffic, smell and noise.

Pat O'Bryan, 80 Audubon Close, said she had been involved in a landscaping business. She said Grillo was understating the potential toxicity of material being left at the site. She said hazardous chemicals would be on grass clippings.

Anthony St. Marco, Gloria Commons, wanted to know if there was a waiting area for idling trucks. He said he didn't hear a fire protection plan. He was concerned with the proximity to the gas pipeline.

Shirley Leto, 11 Sharon Court, said the neighborhood had been degraded since she moved there in 1968. She said traffic is so heavy that it prevents her getting out of her street onto West Avenue. She was concerned with her property value. She said the trucks are loud and have an odor. She said she was begging the board to deny the request.

Gerry Wilson, 663 West Ave, spoke again with reference to the fire on the site, saying a recycling facility is susceptible.

Lynn Larock, 22 Lucius Court, said she liked the old nature trail. She said there was odor from the wastewater plant in the area and did not want any additional odor.

Ed Cilento, 16 Manor House Lane, said additional traffic would come through neighborhood in many different ways.

REBUTTAL

Attorney Stone said he did not want to minimize concerns, including traffic. He said that a traffic study didn't indicate a problem, but that the proper forum for that concern was the Planning and Zoning Board. He said he hadn't heard any testimony contradicting the hardship. He said environmental concerns should be presented to the Inland Wetlands Agency and that it had been approved by them. He said the pipeline had stringent safety requirements. He said much of the commentary given was speculative, such as property values being affected.

Michael Grillo addressed soil compaction concern saying the site would be given good drainage. He described the degradation of the site due to storms and a phragmites infestation. He said Grillo has a \$300,000 site clean-up plan. He said the plan would improve the wetlands and site. He described the depth and encasement of the Iroquois pipeline. He said there would be fire hydrants on the site. He said there was no proof of VOCs from leaf composting and that composting takes carbon out of the atmosphere. He said he wanted this site for a smaller retail site and that the operations there would not be large.

Ms. Ramsey corrected remarks she thought had been misinterpreted by Mr. Grillo.

Lawrence Grillo said the 15 structures were adjacent to state property near I-95. He rebutted runoff concerns.

Mr. Tuozzola closed the hearing. **Mr. Haberman** expressed concern about the use, but said he felt that the wetlands being part of the parcel did not represent a hardship.

Ms. Ferrante confirmed that a Special Exception would be required for this use. She agreed with Mr. Haberman. **Mr. Vaccino** said he agreed with both of their comments.

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Mr. Haberman motioned to deny the application. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of lack of a hardship. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**.

2. **990 Naugatuck Avenue** (HDD) Brian Stone, Esq., Attorney, 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 said James Barrett was present representing The Housatonic Terminal, LLC. Attorney Stone reviewed the history of the property. He said Mr. Barrett and his brothers operated businesses on the site from 1955 to 2006 when it was sold to Recycling Inc. He said that a subsequent foreclosure and forbearance agreement returned the property to Mr. Barrett. Attorney Stone cited the regulation that requires issuance of a Certificate of Zoning Compliance (CZC) to let Mr. Barrett reestablish the nonconforming use of the property. He submitted copies of the CZC application, reviewed its contents, and reviewed Mr. Harris' CZC of 22 May. He noted that Mr. Harris had subsequently rescinded the order because the state had revoked the 2008 permit. Attorney Stone said the state permit didn't affect whether a nonconforming use existed, so he disagreed with the rescission of the order. Attorney Stone submitted a substantial document for the record describing judicial rulings in the cases involving 990 Naugatuck. He said regardless of the outcome of the appeal, his client wanted to secure permission for an expanded use based on historic use of the property. He said approval of the expanded recycling use would allow for issuance of a full permit.

Mr. Tuozzola confirmed the site was used in the same manner historically despite different terminology; it was called salvage in earlier times, rather than recycling.

Joseph Barrett, 990 Naugatuck Avenue, said he holds a mortgage on the property. He reviewed how he and his brothers acquired the property and the history of the businesses he ran on the property. **Mr. Haberman** confirmed that construction materials were recycled and sold in his earlier businesses on the site. **Mr. Barrett** said oil was sold on the property, and there were also other businesses. **Mr. Tuozzola** remarked that uses have changed over the years. **Attorney Stone** asked Mr. Barrett to confirm when the property had been put on the market.

Stephen Harris, Milford Zoning Enforcement Officer, said he issued the 22 May 2015 CZC on based on information in the file indicating that CT Department of Energy and Environmental Protection (DEEP) had issued a permit for limited recycling. He said he learned today that in 2014, DEEP revoked that permit. He read the 14 July 2015 rescission of the CZC into the record. He respectfully asked that due to the emergence of this late-breaking information, the hearing be held open until August. He submitted the DEEP document.

Attorney Stone said he didn't dispute the revocation, but that he wanted to prove there was a valid, nonconforming use on the site. He said Mr. Barrett listed the uses during the sale. He asked Mr. Barrett if he intended to abandon any uses of the property when he sold it; Mr. Barrett said that he did not. Mr. Barrett confirmed that his understanding was that the site would be used for recycling when it was sold in 2006. **Attorney Stone** said there was no reason to continue the hearing. **Mr. Tuozzola** said there was no proof of use of the operation and that there would be an expansion of the use granted by the state. **Attorney Stone** confirmed that there wasn't any limit on the volume of what he was allowed to recycle. **Mr. Barrett** discussed Mr. Tuozzola's question about inactivity on the site and how it could affect present use of the facility. **Mr. Tuozzola** expressed a concern that the sale of the site relies on an expanded use.

Mr. Harris asked to respond to new evidence from Attorney Stone. He said disagreed with the statement about the irrelevance of the state permit.

BOARD DISCUSSION

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Mr. Haberman motioned to keep the hearing open until next month to obtain additional information. **Mr. Thomas** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**.

3. **262 Seaside Avenue** (R-12.5) Maria Koursaris, owner; Vary Sec. 4.1.4, front-yd proj to 21' where 26' perm for deck; Map 44, Block 432A, Parcel 14.

Ms. Koursaris submitted a mail certification. She said her corner lot is long and narrow and that the placement of the house created a hardship. **Mr. Tuozzola** confirmed the location of the deck.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

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

- B. OLD BUSINESS: RATIFY VOTE** taken on 13 January 2015 with variance request language corrected as follows:
33 Melba Street (R-5) *Dave Salerno, agent, for O.M.D.P., owner, Vary Sec. 3.1.4.1 side-yd to 4' where 10' req; 4.1.4 eave proj to 3' where 8' perm to build a new single family home, Map 29, Block 587, Parcel 11*

Ms. Greene said a scrivener's error had resulted in inaccurate language on the variance certificate recorded on the land records for this property. She said she had reviewed the audio for the session and that it was clear that the board intended to approve the particulars discussed during the meeting per the original application. She said the correct language had to be ratified by a new vote to fix the error. **Mr. Haberman** motioned to ratify the correct language and the motion carried unanimously.

C. NEW BUSINESS: ZBA APPLICATION FORMS

Ms. Greene said the supply of ZBA application forms must be replenished, presenting an opportunity to correct errors. She reviewed the proposed corrections. **Mr. Haberman** made a motion to approve the corrected form, **Mr. Vaccino** seconded, and the motion carried unanimously.

D. STAFF UPDATE: None.

E. ACCEPTANCE OF MINUTES FROM 9 JUNE 2015 HEARING **Mr. Vaccino** motioned to accept; the motion carried.

F. ACCEPTANCE OF APPLICATIONS FOR 11 AUGUST 2015 HEARING

The meeting was adjourned at 9:33 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