

**MIDDLEFIELD PLANNING & ZONING COMMISSION**  
***405 Main Street***  
***Middlefield, Connecticut 06455***

Minutes of the February 26, 2018 Regular Meeting

Erin Howard called the meeting to order at 6:30 pm.

Attendance:

Members

Alternates

X	Boyle, Kevin	X	Wojas, Jan
A	Brown, Jay		
X	Ekblade, Eric	Others	
X	Howard, Erin	X	Colegrove, Geoff
A	Wheeler, Scott	A	Curtis, Brian
		X	Russ, Jerry

A=Absent

X=Present

Jan Wojas was seated on the Commission.

Public Comment

None.

Michael Turecek: Application for Home Occupation Plan Review: 64 Burt Drive. Home Office to run a home and garden handyman business (an address to accept mail)

Mike Turecek explained that he is licensed and insured and would like to have a place to receive mail and not offend his neighbors. He does not anticipate having any clients visit the property or taking delivery of materials.

Kevin Boyle asked about the size of the office space and Mr. Turecek explained that it is currently an office in the home and is 14 x 14. There will be no sign and his address is not even listed on his website. He owns a truck and has no other equipment on the property.

Geoff Colegrove reviewed that this falls well within the 25 percent requirement and with no sign and no employees, this does not require a special permit. Erin Howard requested that the applicable zoning regulation be included on the agendas and the motions in the future.

Kevin Boyle made a motion, seconded by Jan Wojas, to approve the application for home occupation at 64 Burt Drive for a home and garden handyman business, per section 10.2.6. Motion carried unanimously.

#### Discussion on Fence Regulations; Attorney John Corona

Attorney John Corona, from Lang & Corona, explained that Lyman Farm has a long-term plan to begin fencing of most of the orchard area. This is driven largely by food safety requirements and the fencing will keep the deer out of the orchard and prevent animal waste from contaminating the fruit. The plan would be to surround the perimeter with an 8-foot high box wire fence mounted on wooden poles. The first phase would be the west side of Powder Hill Road with gates at particular intervals. At some places at the rear of the property, the tree line will have to be cut back to accommodate the fence. The fence will be maintained on both sides so that it is not overtaken by vegetation. Another advantage to this fencing is that it will help to prevent theft.

Attorney Corona explained that this project comes between two sections of the regulations, one that is devoted to farms which allows almost any kind of building or structure and one about fencing which seem much more geared to residences. An 8-foot high fence would exceed the maximum 6 feet that is in the fence regulations, but Attorney Corona believes that agricultural fencing has been treated differently. He comes before the Commission tonight to open a discussion about whether an amendment is necessary to the regulations or whether the Commission would interpret the regulations to say that agricultural fencing is outside the parameters of the fence section of the regulations.

Attorney Corona is prepared to make an application for an amendment to the regulations, if necessary, and would do that for the purpose of this project. He reviewed that eventually most of the Lyman property would be enclosed with this type of fencing. It would be kept out of the right-of-way and sight lines.

Erin Howard asked Jerry Russ if anything over six feet is considered a structure, per building code, and Mr. Russ explained that if it is climbable, it becomes a building code concern. Building code does contain a modification for agricultural fencing and he believes this would fall under that. Attorney Corona did not have a cut sheet on the actual fence, but thought it would be larger than a 2 x 4 grid.

Kevin Boyle asked if this would be an issue for ZBA that would require a variance, but Attorney Corona did not feel he would go to ZBA for this type of fencing. This would end up being miles of fencing. Kevin Boyle felt that the Commission would probably not interpret this in a favorable way and suggested a text change to make it more clear. Attorney Corona felt that he would offer a text change to the farm regulations so that it is limited to the farm setting. Jerry Russ felt the building code would accommodate this as an agricultural use.

Erin Howard felt that it made sense to have some agricultural text for fencing and stated that the regulations are very vague on fencing and have been applied in some areas and not in others. She proposed that the Commission look at the residential side of fencing as well. Attorney Corona noted that the regulations require pastures to be fenced, but do not address the fencing.

Erin Howard felt that the Commission needs to look at a text amendment, but also needs to talk about requiring zoning permits for fencing. Height and building structure would still be regulated, but there are no setback requirements. Attorney Corona would like to uncouple the agricultural part from any other considerations as Lyman Farm would like to get started on this project as soon as possible. Ms. Howard felt it all needed to be done at the same time.

Attorney Corona will come back to the Commission with a proposed regulation text change as soon as possible. He will also be going to the Wetlands Commission to continue this discussion. Eric Ekblade asked if this fencing would encompass the golf courses also and Attorney Corona explained that he didn't know if it would reach that level. This year, they are limited to surrounding the west side of the property.

Erin Howard also mentioned the fee charged for a zoning permit and Jerry Russ commented that fence regulations in other towns are in harmony with neighborhoods and property lines. He also explained that Killingworth now allows a seven-foot high fence, but do require a permit. Ms. Howard stated that the majority of towns do not require a permit and feel that it would be a civil matter that is not up to the town to decide.

#### William Bellock; Application for Approval of Subdivision or Resubdivision; 8 Higby Road

Erin Howard explained that an email has been received to postpone this application, however they did actually submit an application. Geoff Colegrove explained that the Commission should deny the application at this time without prejudice. Mr. Colegrove explained that the application is inadequate per section 6 of the subdivision regulations. There has been no soil testing and it has not been determined if the property is build able. Storm water requirements will require retention on-site and there is no information to demonstrate that the property can accommodate a septic or storm water management. Mr. Colegrove met with the applicant, Brian Curtis, Jerry Russ, Randy Bernotas and Lee Vito on Friday. There are issues with the town line and first division issues. Mr. Colegrove felt that the Commission cannot approve a subdivision without knowing if the lots are build able. He also explained that 24 acres of the site are wetlands and the groundwater is high all around. Mr. Colegrove also reviewed maps that he had found of the property.

Geoff Colegrove felt that it would be best to refund the applicant's money and ask them to come back once the testing has been completed. They have no client at this point. They may, in fact, be able to do a first division and would then just need a special permit, followed by a subdivision. Erin Howard asked if money could be refunded or should they just deny without prejudice and waive the fee with the next application. Ms. Howard suggested the fee be waived for the next application as the applicant has not requested a refund.

Kevin Boyle made a motion, seconded by Eric Ekblade, to deny the application for approval of subdivision or resubdivision at 8 Higby Road for failure to comply with the requirements of section 6 of the subdivision regulations, without prejudice. Motion carried unanimously.

#### Report of the ZEO

Erin Howard stated that the Commission needs to get at least a monthly report in writing from the ZEO and that his attendance would not normally be necessary.

Jerry Russ reported that the unregistered vehicles at 481 Main Street have been removed. He also reported that an attorney's letter has been sent to Mr. Cihocki regarding the unregistered motor vehicles on his property. Mr. Russ did conduct a site visit with Mr. Cihocki's son and addressed all of the violations. Geoff Colegrove explained that the regulations don't really have a definition of junk yard, but the state statutes do. Erin Howard suggested that junk yards be part of the regulation rewrite. Kevin Boyle also mentioned blight and Ms. Howard reported that state statutes are in place and that would fall to the First Selectman.

Ms. Howard also reported that there has been a lot of discussion about blight at CCM and there would need to be specifics in a town ordinance. Jerry Russ commented that blight is very hard to enforce and ends up being a civil case with the town and the property owner. An unsafe structure would be regulated by the building code.

Ed Bailey stated that he will be meeting with Geoff Colegrove and Jerry Russ with the town attorney regarding the town's options on some of the abandoned properties in town. Mr. Bailey also stated that he has spoken to many selectmen of towns similar to Middlefield about blight and they all said to not do it. Blight is a burden to the town and is difficult, complicated, costly and leads to a lot of conflicts. Mr. Bailey did state that they may consider a living blight ordinance.

Kevin Boyle asked if the town does inspections of rental properties in town and Jerry Russ explained that that would be the responsibility of the Health Department. Discussion continued on the difficulty of enforcement of these issues.

Jerry Russ also reported that the Peters Lane property has been fully transferred to the bank and they are aware of all liens against the property. Mr. Russ has also addressed the sign on Baileyville Road.

Geoff Colegrove reported that he met with Ed Bailey, Nick Xenelis and his consultant and there was discussion about leasing the property which abuts 30 and 34 Old Indian Trail. A proposal has been submitted to the Board of Selectmen for review and the Assessor is reviewing the proposal. Mr. Colegrove will meet with the consultant next week to go over 11 Old Indian Trail to bring the site into compliance. He also stated that the consultant commented that they are aware that the leasing offer is low and would probably go up. Erin Howard stated that it would have to come back to the Commission for lease or sale of town property, but Mr. Colegrove did not feel that a lease would have to. Ed Bailey felt that a disposition of town property would come to the Commission, not a lease.

Kevin Boyle commented that Mr. Xenelis is in violation and has an active cease and desist order against him. He would still need to come before the Commission, but Mr. Colegrove explained that that would happen after the Board of Selectmen make their decision about leasing the property. Eric Ekblade felt that the issue was just being drawn out farther by submitting an offer that they know is too low. Geoff Colegrove explained that the consultant doesn't necessarily speak for his client when making those comments.

Geoff Colegrove also reported that Randy Bernotas has been visiting the Monarca property on a weekly basis and little or no progress is being made. Mr. Monarca has attended some Wetlands meeting. Kevin Boyle asked if there is a lease opportunity for this property too and Mr. Russ explained that the wetland violation is more egregious. Ed Bailey stated that if Mr. Monarca showed some good will on one issue that the Town may be more cooperative on the second one. Mr. Colegrove stated that Mr. Monarca would need substantially more than one acre. He also explained that Mr. Xenelis does not intend to use the leased property.

Kevin Boyle asked about the property next to the Red Dog and Jerry Russ stated that he has been pretty good, but just noticed something last week.

#### Report of the Town Planner

Geoff Colegrove explained that the River COG meeting is now the same night as the Commission's meetings and no one from Middlefield has been attending. He suggested that maybe someone outside the Commission could attend and report back. Ed Bailey stated that each town normally has a representative and an alternate and suggested maybe that the Commission's alternates could attend the COG planning meeting. Mr. Bailey also stated that attendance from Middlefield has been poor and Mr. Johnson rarely, if ever, attended.

Erin Howard explained that there are still two openings for alternates on the Commission and Mr. Bailey stated that he is working on replacing several alternates. Kevin Boyle also stated that Jay Brown's attendance has been pretty sporadic. Mr. Boyle also explained that the revised charter dealt with attendance issues with boards and commissions.

Geoff Colegrove also mentioned that Mark Branse had sent a rough draft of subdivision regulations and some changes will be coming along from DEEP requiring on-site storm water retention. Brian Curtis will send some information on that.

#### Chairman's Report

Erin Howard reported that she is working with Nancy and Deb Waz to have the processes flow a little better and stated that she felt that the Commission members should not be talking to applicants outside of the meeting. She is trying to push responsibilities back to where they belong and explained that Geoff Colegrove and Jerry Russ are the Commission's representatives for applications. She also thought that some more education should be provided for the Commission. Ed Bailey suggested that the Commission

have their counsel make a presentation regarding statutory responsibilities and codes of conduct, etc. He also felt that the Town could arrange an FOI workshop. Everyone agreed that it would be a good idea.

Erin Howard asked who should reach out to Attorney Branse and Ed Bailey felt that that should come from the Board chair or staff. Geoff Colegrove will reach out to Mark Branse and Ms. Howard asked to have it be on a night other than a regular meeting. Mr. Bailey stated that his office could coordinate an FOI presentation for all of the boards and commissions.

Ms. Howard also stated that she has had conversations with Ed Bailey, Geoff Colegrove and Nancy Davidson about revising the zoning regulations. There are several ways to do this and there are several issues that need to be addressed. One example would be to allow home occupation applications to be handled administratively. There was discussion about copies that are required and Ms. Howard felt also that site plan reviews should be done by the Town Planner and Zoning Enforcement Officer. She is trying to make the process go smoother for everyone.

Other members of the Commission believed that it makes sense to look at the regulations. Eric Ekblade agreed that fencing has come up in the past and there are some issues at the lake. Geoff Colegrove felt there were two things that could happen: a legal review of the regulations and a planning review of the regulations. He would start by thinking about where the Town is out of compliance with State statute and case law which would be something that counsel can do. He also mentioned that work has been done on the industrial section of the regulations, but certainly more could be done. He also believes that there are probably a lot of definitions that need to be changed. Ms. Howard envisions three components including a comprehensive legal review, updating parts of the POCD and revising the zoning regulations. She is not sure that the legal review should be the first step. Ms. Howard would like to make life easier for development and make the Commission more business friendly. Attorney Corona commented that the thing that most applicants want is predictability.

Discussion continued about the current regulations and what they require with regard to the economic environment. Attorney Corona also pointed out that there is not a lot of developable land left in Middlefield and there are virtually no sewers or public water and applicants can go to nearby towns, like Wallingford, and get those services.

Erin Howard also felt that it should not be as easy as it has been to get a variance from the regulations. She feels that there needs to be better cooperation between Planning and Zoning and ZBA. Geoff Colegrove felt that a consultant would go to ZBA minutes first to see what the problem areas are. Ms. Howard also felt they needed to look at route 66 specifically. She also felt that there needs to be a public component/engagement of some sort as the regulations are revised.

Ms. Howard also stated that she feels that P&Z meetings do not need to go any longer than an hour and a half.

Jerry Russ added that there had been a comprehensive review of the Design Districts on Route 66 and he hopes that the Commission would consider that.

Miscellaneous

Geoff Colegrove stated that one of the proposed uses that was being proposed as the subdivision on Higby Road was a Cumberland Farms and he felt that that would fall under the category of retail, but they will also sell gas. Erin Howard stated that Cumberland Farms is a gas station and Mr. Colegrove explained that gas stations are not mentioned in the zone, but automotive sales, service and repair is prohibited. Mr. Colegrove would like to get that clarified. Ed Bailey stated that an argument could be made that that adding gasoline, air, oil or water would be servicing a vehicle. Ms. Howard felt that that should be something that is talked about when rewriting the regulations. She also suggested that a text amendment may be necessary to have a gas station, but Mr. Colegrove felt that that was not necessary as it was retail and that is a permitted use.

Erin Howard suggested that they look at how other towns define gas stations. Mr. Colegrove felt that this was a convenience store and the gas station is an accessory to the building. Ms. Howard felt that selling gas significantly changes the use and the increase in demand and traffic. Discussion continued about traffic studies and curb cuts on the property.

Attorney Corona commented that a lot of the large grocery stores have added gas facilities to their use and he agreed that this would be a store that sells gas and other things. It is called self-service because they do not provide service; they just sell the gas. Ms. Howard wants to make sure the Commission does their due diligence and looks into the definition of gas stations. Jan Wojas also felt that a Cumberland Farms would be retail because there are no servicemen present. Attorney Corona explained that every principle use is thought to include all of the accessory uses that are normal, customary and incidental to the principle use. Convenience stores can include a lot of things.

Erin Howard asked Geoff Colegrove and Jerry Russ to bring more information on this issue to the Commission and the issue will be on the agenda for next month. Geoff Colegrove asked if selling grave stones would also be permitted in the Design Development District II as retail and it was generally agreed that it would be a permitted use.

Approval of Minutes

Eric Ekblade made a motion, seconded by Erin Howard, to approve the minutes from the January 8, 2018 meeting, as submitted. Motion carried unanimously.

Adjournment

A motion was made by Erin Howard, seconded by Kevin Boyle, to adjourn the meeting. Motion carried unanimously. The meeting was adjourned at 8:32 pm.

Respectfully submitted,

*Debi Waz*

Debi Waz  
Alwaz First