

**THE GLASTONBURY TOWN PLAN AND ZONING COMMISSION
AMENDED REGULAR MEETING MINUTES OF TUESDAY, JANUARY 21, 2020**

The Glastonbury Town Plan and Zoning Commission with Khara Dodds, AICP, Director of Planning and Land Use Services, and Jonathan Mullen, AICP, Planner, in attendance held a Regular Meeting in Council Chambers of the Town Hall at 2155 Main Street, Glastonbury, Connecticut.

ROLL CALL

Commission Members Present

Mr. Robert Zanolungo, Jr., **Chairman**
Ms. Sharon Purtill, **Vice Chairman**
Mr. Michael Botelho, **Secretary**
Mr. Christopher Griffin
Mr. Raymond Hassett
Mr. Keith S. Shaw
Ms. Alice Sexton, Alternate
Mr. Matthew Saunig, Alternate

Commission Members Absent

Mr. Scott Miller, Alternate

Chairman Purtill called the meeting to order at 7:00 P.M.

ELECTION OF OFFICERS

The Commission appointed new leadership as follows:

Chairperson – Mr. Raymond Hassett nominated Mr. Robert Zanolungo, Jr.; seconded by Mr. Keith Shaw; and unanimously approved.

Vice Chairperson – Mr. Keith Shaw nominated Ms. Sharon Purtill; seconded by Mr. Raymond Hassett; and unanimously approved.

Secretary – Mr. Christopher Griffin nominated Mr. Michael Botelho; seconded by Ms. Sharon Purtill; and unanimously approved.

PUBLIC HEARINGS

- 1. Application of Hans Hansen Architectural Design for a Section 12 Special Permit with Design Review to allow use of 2nd garage space for office use or rec room, accessing back patio, for 5 three-bedroom units – 25-27 Naubuc Avenue – Town Center Zone – Tommy Li, owner POSTPONED**

2. Continued application of William M. Dufford for final subdivision approval for the 6-lot River Road Subdivision, Phase 3 involving an easterly extension of Dufford's Landing – Assessor's Lots S-4 Dug Road & S-3A Dufford's Landing – Rural Residence Zone & Groundwater Protection Zone 1 – Alter & Pearson, LLC

Ms. Dodds explained that when the public hearing opened in November 2019, there were two questions sent to the Town Attorney:

- Does the commission need to consider the excavation regulations under Section 6.2 when deciding on a subdivision application?
 - The response was yes, the commission does need to consider them, but they have discretion to determine if the activities are exempt, so the burden of proof is on the applicant.
- Do the excavation activities qualify for exemption from Section 6.2.4a and 6.2.4b?
 - The Town Attorney stated the burden of proof falls on the applicant to prove that the excavation activities proposed in the subdivision plan are exempt.

Vice Chairman Purtill stated they do not have actual issued building permits, so what is shown is just a proposed pocket for a house, so that pocket may not be what is built. Ms. Dodds explained that the applicant will have to demonstrate, for each lot, that their proposed excavation is necessary to construct that home. Secretary Botelho inquired whether they have to determine the size of the house beforehand. Ms. Dodds stated that the commission does not need to be that precise. Vice Chairman Purtill asked if all of the grading shown on the proposed plan is necessary in order to build the house shown. Ms. Dodds answered, the applicant would still have to grade the majority of the lot, depending on what the existing topography is, so there will likely still be grading on each lot.

Commissioner Shaw stated that he would like to ensure that the commission understands the scope of their review before hearing the applicant. For example, does the building permit have to be issued before they can consider this; which is the direction they are receiving from the Town Attorney. Ms. Dodds replied that they will have to infer that a building permit would be issued for the lot. Commissioner Shaw stated that they asked for an opinion because there was ambiguity in the first place, and now it looks like they are not getting clear guidance. The commission agreed to hear the applicant's case before further discussion.

Attorney Peter Alter of Alter & Pearson, LLC presented the continued application of his client, Mr. William H. Dufford. He reviewed the initial public hearing of November 19, 2019 and the follow-up since, including approvals from, among others, the Conservation Commission, the Fire Marshal and the Town Engineer, who approved their strategy to address the road grading issue with an 8.5% grade roadway. He reminded the commission that they denied Mr. Dufford's special permit application for an excavation operation previously. Mr. Dufford then proposed a 3-lot subdivision, which he later withdrew. In November 2019, he brought forth this 6-lot proposal.

Attorney Alter explained that the amount of the material excavated for this proposal would be a 55% reduction from what was originally proposed in his excavation permit application. He noted that the opposition stated that Mr. Dufford needed to acquire a special permit for excavation operations before this subdivision application can move forward, but he maintains that Mr. Dufford's application is exempt from having to obtain an excavation permit under Sections 6.2.4a and 6.2.4b. for the following reasons:

1. The Town Attorney specifically points out that they do not accept the proposition put forward by Attorney Slater that the special permit requirement be strictly within the building footprints. As long as they are bona fide operations for which a building permit has been issued, they fall within that exemption. The applicant agrees with the Town Attorney's assessment.
2. With respect to the roadway, Attorney Alter noted that they have prepared a number of maps to provide the commission with more information. They will also speak to the issue of 6.2.4b as they go along.

Mr. Jonathan Sczurek from Megson, Heagle & Friend Civil Engineers, went over the proposed subdivision plans. He explained that the roadway will be on an 8.5% grade based on the recommendation by the Town Engineer. The stormwater will be directed into dry well structures. They performed soil testing and found suitable septic locations on all of the lots. The Health and Engineering Departments both reviewed it favorably. Also, the lots will have south-facing exposure to allow the opportunity for solar power.

He then distributed an excerpt from the Town's Public Improvement Standards (PIS) and pointed out the pertinent sections, including the street design standards and retaining walls. Mr. Sczurek then presented a plan showing a typical roadway with side slopes at a steeper 2-foot horizontal by 1-foot vertical ratio and where it would match to the existing grade as soon as possible. He explained that 4:1 is typical and 2:1 is the maximum for the side slopes. The PIS does not allow for retaining walls along the roadway.

He also noted the PIS section on residential driveways. The proposed driveways on lots 9, 37, and the beginning part of lot 36 are all at the 15% maximum grade. For lots 10, 11, 35 and 36, excavation will allow for 25-foot deep back yards before a steep incline. Mr. Sczurek explained that the proposed plans depict a reasonable minimum grade which allows creation of a backyard with a grade around it sufficient to keep water from coming down into the house.

Attorney Alter stated that by going to the maximum allowed percentages, such as the 15% grade on the driveways, they have minimized the excavation. Mr. Sczurek's design meets the recommendations of the Town's PIS with the least amount of excavation possible. The Town Engineer found the grading plan to be acceptable, though not preferred. Attorney Alter also noted that the Town Attorney's opinion letter, with respect to the roadway, does not infer that the only excavation that could occur would be within the 50-foot strip. He explained that the Town Engineer would not accept an application whose standards for roadway construction are not met.

He noted that a review of Section 6.2.4b is more complex than 6.2.4a. He explained that concluding whether or not a building permit is required is not this commission's determination to make, but the Town Building Official's, because the TPZ does not issue building permits. Each lot they propose is a bona fide lot that meets the zoning requirements. He noted that the opposition may say that this is simply an excuse to excavate but Attorney Alter would disagree.

Historically, houses have been successfully developed without this commission ever exercising Section 6.2. Mr. Alter showed examples of five developments nearby where homes were constructed without excavation permits, even though they were in excess of the requirements. Each of the lots presented here are consistent with the historical activity of how the Building Official feels about the lots and what would be issued in this application.

Under Section 6.2.4a, the plan is the minimum required to meet the Town standards for a local roadway. With respect to Section 6.2.4b, the grading shown on the lots is what would be required for bona fide construction activities for a building permit. Therefore, the exemption of Section 6.2.4a and 6.2.4b clearly applies to this application. Mr. Alter noted that if Mr. Dufford meets all of the subdivision regulations, under the law, he is entitled to a subdivision approval. Commissioner Shaw asked, based on the modifications, will the originally proposed 95,000 cubic yards to be excavated for the 6 lots be reduced? Mr. Sczurek stated that it will be a 93,000 cubic yard excavation. Commissioner Hassett asked how many trucks that would require. Attorney Alter replied that each truck would carry between 18 and 20 cubic yards of material per trip.

Commissioner Shaw asked if the road would be constructed without building permits. Attorney Alter stated that Mr. Dufford has applied for final subdivision approval which means that he will post a bond for public improvements and he will be able to sell the lots during road construction. Commissioner Sexton asked what the net cut is on the drawing and if any of the examples Mr. Alter presented were of the order of magnitude of this application. Mr. Sczurek replied about one-third with the roadway and two-thirds with the lots. In response to the latter question, Mr. Alter said he does not think so. Commissioner Shaw stated that the applicant has up to 5 years to complete the total project, but they have to excavate the 30,000 cubic yards for the roadway first. Commissioner Hassett asked what is the applicant's estimate of the timeframe on finishing that up? Mr. Alter stated that Mr. Dufford has taken as much as 25,000 cubic yards out in one year, so it could be about a year. Vice Chairman Purtill stated that the Police Chief has recommended that they cut the truck traffic in two. She inquired if there is ever a time when the trucks will go in both directions. Mr. Alter said yes.

Commissioner Griffin asked if they need the opinion of the Building Official. Ms. Dodds stated that the commission has to determine what is necessary and unnecessary for the grading, and whether or not the application is exempt from seeking an excavation permit. Secretary Botelho stated that they cannot determine what excavation activities support the

construction activities here, so he disagrees with the Town Attorney. Vice Chairman Purtill stated that they do not have retaining walls, so everything has to be excavated. She noted that this hardly ever comes up at this commission; they usually rely on the Town Engineer to see if it is appropriate.

Commissioner Shaw asked if the Building Official rejects it, could the applicant come back to this commission for an excavation permit. Mr. Alter stated that, historically, that has not happened, but legally, yes that could happen.

Chairman Zanolungo opened the floor for public comments.

Attorney Carl Landolina of 487 Spring Street of Windsor Locks, representing three families on Dug Road, explained that the last time he was here, he discussed a point of law that exemptions to zoning regulations must be strictly construed. Section 6.2.4a limits the exemption to only the 50-foot right-of-way. Anything outside falls under the other two exemptions; otherwise, a permit is required. Section 6.2.4b is important because the way that this construction is proposed, in order to meet the road specifications, the applicant has to get a building permit to excavate outside of the right-of-way for fictitious houses that will never be constructed. Since Mr. Dufford cannot do that, he is caught in a catch 22. Attorney Landolina stated that the commission is approving something that will never happen, which is the real problem here.

The Town Attorney has addressed that in her opinion. The first exemption only applies within the actual right-of-way. Outside the right-of-way, the applicant needs to go to Section 6.2.4b and they cannot do that because these houses are not going to be built. He concluded by reaffirming that these exemptions must be strictly construed.

Attorney Kenneth R. Slater, Jr. of Halloran & Sage, representing Mr. Blair and his neighbors, stated that if no building permit will be required to excavate 95,000 cubic yards of material, then this commission will have to make sure that all of the protections are in place (such as bonding, controls for noise, machinery, etc.) because the Building Official does not control that; this commission does. Taking an entire parcel of land and putting a bunch of lines on it is not a bona fide plan. He stated that this does not comply with zoning and is not ready for a subdivision. The applicant should come back for the subdivision approval, not the other way around. Section 6.2.4c states that construction would result in no more than 600 cubic yards of excavation. Attorney Slater concluded by urging the commission, because there is no building permit issued, this is not compliant with zoning.

Mr. Paul Demaio of 148 Dug Road, whose property abuts the development, expressed that his primary concern is the truck traffic and the timeline. He remains opposed to any application that repeats the conditions on Dug Road from previous excavations by the applicant. The disruption does not include large scale heavy truck traffic. He asked that the commission maintain a safe roadway for all, especially children.

Bethanne Couture of 498 Tryon Street, stated that farmers must use their land in the best way possible, and they must have community support. Otherwise, many building lots will become available in Glastonbury, which would be a detriment to the Town's farming culture and history; she therefore supports the applicant.

Attorney Alter returned to answer some of the issues raised during the public comment session. He noted that the commission must ask themselves the following questions:

1. Will the commission return to the Town Attorney to ask about the roadway construction specifications?
2. Does the application meet the subdivision regulations?
3. Is Section 6.2.4b really part of this commission's deliberation?

Attorney Alter also noted a couple of corrections: he explained that they are applying for final subdivision approval, which would require them to post a bond, so Attorney's Slater's concern about that is ill-placed. The suggestion that this is something "phony" is something he takes exception to.

Vice Chairman Purtill stated that the commission needs clarification on whether or not the applicant has to acquire a building permit to excavate outside the roadway, in order to provide guidance to the applicant and his neighbors. She explained that, normally, it is just all part of a package deal and the grading happens along the roadway. In this particular case, there is a lot of excavation on the lots. She asked if there is an opportunity to move some of this material to the rest of the site? Attorney Alter said that, right now, all of those other lots are used for farming purposes, so there will be very little opportunity to push material for fill. Vice Chairman Purtill asked how much fill they will keep on the site. Mr. Sczurek stated about 4,400 cubic yards. Commissioner Sexton asked if they have to get slope easements for that area in the right-of-way? Mr. Alter replied that they do not own the property. Typically, they will see the granting of a temporary slope easement in favor of the Town of Glastonbury.

Chairman Zanlungo asked about the viability of the lots because the roadway is not complete. Mr. Alter stated that, once the hill is removed, the rest of the road will be boxed out, and at that point, these lots will have access from Dufford's Landing. He agrees that there has to be some coordination of the development of the lots, which are all viable, and the development of the roadway. Chairman Zanlungo asked what a bond would be. Mr. Alter stated that they received an estimate of roughly \$800,000 to \$900,000, which would be held by the Town until the road was accepted. The amount gets released when the roadway is constructed.

Secretary Botelho agreed with Vice Chairman Purtill that the commission should go back to the Town Attorney to examine whether Section 6.2.4a is limited to just the right-of-way or if it could go outside, as well as could the excavation outside the right-of-way be

satisfied by Section 6.2.4b, even if no building permits are issued? The commission agreed to have staff direct these questions to the Town Attorney. Commissioner Hassett asked what the timeline is for this. Ms. Dodds replied that the final day for this application is February 26, 2020, so they can continue until this commission's February 18 meeting.

Ken Slater returned to clarify that, in regard to the bonding, he was referring to the excavation permits because there will be no mechanism for the Town to regrade. To clarify, he did not mean anything negative directed to Mr. Dufford's character, just that someone else in the future could take advantage of this precedent and not build houses with the building permits they acquire.

Chairman Zanolungo stated that the commission will keep the public hearing open. A short recess was taken at 9:05 P.M., and the meeting resumed at 9:11 P.M. Vice Chairman Purtill left the meeting.

REGULAR MEETING

1. Informal session for the purpose of hearing from citizens on Regular Meeting agenda or non-agenda items

Mr. Alter requested that the commission consider appointing some alternate members to the Plans Reviews Subcommittee, which meets bi-monthly, so that it would not be such a burden to the three commissioners who serve. Commissioner Griffin expressed interest in volunteering but noted that he has an issue with the 8:00 A.M. start time. Chairman Zanolungo stated that the commission will think about it.

2. 2020 Meeting Schedule

Ms. Dodds suggested that the commission remove the January 5, 2021 meeting, since it is very close to the holidays. The commission agreed.

Motion by: Commissioner Hassett
Zanolungo

Seconded by: Chairman

MOVED, that the Glastonbury Town Plan and Zoning Commission cancel their regular meeting of January 5, 2021.

Result: Motion passed unanimously (6-0-0).

Motion by: Commissioner Griffin

Seconded by: Commissioner Hassett

MOVED, that the Glastonbury Town Plan and Zoning Commission approves the 2020 Meeting Schedule as presented.

Result: Motion passed unanimously (6-0-0).

3. CRCOG Regional Planning Commission representative and alternate appointments

Commissioners Griffin and Sexton agreed to stay on as the representative and alternate appointments, respectively.

4. Planned Business and Development Overlay Zone text amendments

Ms. Dodds explained the text amendment allows for the creation of an overlay zone for properties in the PBD Zone on north Main Street; only those properties would have the benefit of increased building height. Ms. Dodds stated that there is a scheduled public hearing on this February 4, 2020. The commission agreed to go over these amendments at that meeting.

5. Acceptance of Minutes of the December 10, 2019 Regular Meeting

Motion by: Commissioner Shaw
Hassett

Seconded by: Commissioner

Disc: Commissioner Hassett stated that the strikeouts in the minutes are confusing, so he requested that they be removed in the final version of the minutes that is presented to commissioners. Staff agreed to consider that suggestion.

Result: The minutes were accepted as presented with one abstention (5-0-1) from Secretary Botelho, since he was not present at the meeting.

6. CONSENT CALENDAR

- a. Scheduling of Public Hearings for Regular Meeting of February 4, 2020:
 1. Planned Business and Development Overlay Zone text amendments – Recommendation to Town Council

7. Chairman's Report *None*

8. Report from Community Development Staff *None*

There being no further business to discuss, Chairman Zanolungo adjourned the meeting at 9:25 P.M.

Respectfully Submitted,

Lilly Torosyan
Lilly Torosyan
Recording Clerk