

**THE GLASTONBURY TOWN PLAN AND ZONING COMMISSION
REGULAR MEETING MINUTES OF TUESDAY, FEBRUARY 4, 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 {arrived at 7:21 P.M., left 10:38 P.M.}
Mr. Michael Botelho, Secretary
Mr. Keith S. Shaw
Mr. Christopher Griffin
Mr. Raymond Hassett
Ms. Alice Sexton, Alternate

Commission Members Absent

Mr. Scott Miller, Alternate
Mr. Matthew Saunig, Alternate

Chairman Zanolungo called the meeting to order at 7:07 P.M. He announced that the Commission will commence with the regular meeting, then return to the public hearings upon the arrival of Vice Chairman Purtill. The Chairman then seated Commissioner Sexton as a voting member, until the Vice Chairman arrived.

REGULAR MEETING

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

Mr. Nicholas Korns of 73 Shagbark Road expressed several concerns regarding the proposed Stallion Ridge development:

1. Bell Street is a hazardous roadway, which is used regularly by hundreds of residents in the adjoining neighborhoods. It is difficult to have safe visibility for passing on that road. The proposed development would require heavy site work, making Bell Street even more hazardous.
2. Heavy equipment will necessitate possible resurfacing on Bell Street, and pedestrian safety is compromised by a lack of a sidewalk on that section north of Bell Street. This safety hazard would be further exacerbated because of traffic. If blasting is required, the noise would be a hazard.

Mr. Korn's suggested the following actions he hopes would be enforced by the Commission.

- Limit traffic by heavy trucks to certain hours of the day.
- Require restoration of wear and tear on Bell Street.
- If blasting is required, limit it to certain hours.
- A sidewalk extension from its terminus to the town line.

Chairman Zanolungo stated there will be a public hearing and Mr. Korn's can voice his comments there as well.

2. Acceptance of *Amended* Minutes of the January 21, 2020 Regular Meeting

Motion by: Commissioner Hassett

Seconded by: Commissioner Shaw

Result: The minutes were accepted as presented unanimously (6-0-0).

3. CONSENT CALENDAR

- a. Scheduling of Public Hearings for Regular Meeting of February 18, 2020: **to be determined**

4. Chairman's Report *None*

5. Report from Community Development Staff *None*

Chairman Zanolungo called for a short recess at 7:12 P.M.

He adjourned the recess at 7:21 P.M. with the arrival of Vice Chairman Purtill, and unseated Ms. Sexton as a voting member.

PUBLIC HEARINGS

1. 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 Town staff followed up on the Commission's request to direct questions to the Town Attorney, who is present tonight.

Attorney Matthew Ranelli from the firm, Shipman & Goodwin LLP, explained that there are two categories spelled out in this application for which the activities may qualify: Sections 6.2.4a and 6.2.4b of the subdivision regulations:

- With regard to subsection a, Attorney Ranelli explained that there is a reasonable interpretation of that regulation that extends beyond the right-of-way. The Court will look at the clear and unambiguous meaning of the text. If the meaning is ambiguous, then the Court will consider other factors, including if the Commission has their own reasonable interpretation and if they have consistently applied it. This particular piece of the regulation has not been litigated, so it has been on the books, unregulated. Therefore, the analysis does not start with how the Commission has applied this in the past, but what is the plain meaning of the text.
- With regard to subsection b, if the applicant's excavation is located outside but adjacent to the right-of-way, it has to be part of a construction operation. That term is not defined in the regulations, so it lends itself to some interpretation.
- Subsection c refers to construction operations (as does subsection b), but it also refers to landscaping. Landscaping alone does not constitute a construction operation.

Attorney Ranelli concluded that it is incumbent on the applicant to prove how and why they qualify for exemptions in subsections a. and b. Secretary Botelho asked if the interpretation of the language is clear and unambiguous, regarding the right-of-way (section 6.2.4a). Mr. Ranelli stated that he cannot make that decision, but in reading it, the use of the term “within the *actual* right-of-way” sticks out. The “actual” only modifies the first several streets of that list, so an argument could be made, but it is a bit of a hurdle. In regard to Section 6.2.4b, Secretary Botelho asked if a prospective issuance will be granted on the building permit by the Town Building Official. Attorney Ranelli stated that the tense “has been issued” jumps out, but it seems almost impossible for the applicant to have a permit for buildings that will never be constructed. It is a reasonable expectation for a prospective building permit to be issued.

Commissioner Shaw stated that the issue is, how does this Commission interpret subsection b?

- Does the initial excavation have to be limited to the road, so that the applicant cannot go outside the lines of the road into prospective lots?
- If the Commission is of the opinion that it is not broad enough to go outside the roadway, does the applicant have to apply for a building permit for the lot before they can start excavation because the building official will be responsible for the operation?

Vice Chairman Purtill stated that, interpreting subsection a literally (meaning that it is only within the right-of-way), the applicant could dig out a lot of dirt in the right-of-way and once they clear a road in front of the lot, they would have to acquire a building permit. All 6 lots would need to have building permits on them, in order for the road to be completed. Mr. Ranelli also pointed out the ambiguous interpretation of the “or within” language in subsection a. Vice Chairman Purtill stated that there must have been other subdivisions with grading done beyond the right-of-way. Attorney Ranelli replied that he suspects that may be the case, but past practice alone is not enough until the Commission gets over the ambiguity of subsection a and the language of subsection b. Secretary Botelho summarized that if the applicant is able to prove that the excavation is necessary to perform the bona fide excavation operations, the Commission does not need to determine the timing of the building permit issuance, for the purposes of approving this application. Mr. Ranelli said that is correct.

Commissioner Shaw stated that, at the last public hearing, it was brought to the Commission's attention that because subsection a. is an exemption, the language has to be narrowly construed. He asked if they are required to read it that narrowly. Mr. Ranelli stated that he does not know whether that is indeed correct, so he will look into the case law referenced, in order to make a determination.

Attorney Alter of Alter & Pearson, LLC, representing the applicant, Mr. Dufford, explained that Mr. Dufford is not in attendance but his daughter is. He summarized the history of the application thus far, noting that there has been no dispute that any part of the 6 lots does not meet all of the requirements of both subdivision regulations and RR zone requirements. There is no evidence that there is no compliance; instead, the Commission has unrefuted evidence that there is compliance, so the application must be approved. Attorney Alter then passed out a copy of the 6.4 subdivision regulations, as well as a relevant subdivision application.

Attorney Alter stated that, as Secretary Botelho commented, the exception to the permit requirement, as provided for in subsection b, is not within the purview of this commission. He reminded the Commission that at the last public hearing, they presented 4 or 5 examples of properties that had significant excavation as a means to show the way in which the Building Official operates in town. While Mr. Alter acknowledged that each of these lots is a buildable lot, he explained that that is not unusual, noting that this commission does not have jurisdiction over that determination.

Mr. Alter also stated that the analysis of subsection a goes beyond what Attorney Ranelli offered. He stated that the applicant satisfies that provision after the word "or". He agreed with Vice Chairman Purtill's earlier comment that this type of subdivision must have been done before in Glastonbury. Mr. Jon Sczurek, P.E. of Megson, Heagle, & Friends, walked through 5 full subdivisions in Town that this commission approved over the years with major excavations outside of the 50-foot right-of-way. He noted that all of the examples look similar to the cuts they have proposed. Mr. Sczurek noted that, with regard to subsection a, if it is attempted to be strictly construed within the right-of-way, then the road would have to be constructed on a flat lot with zero cuts or fills because there has to be excavation outside the right-of-way, in order to construct the road, unless the grading is exactly the same.

Mr. Alter added that, in the real world, road specifications require grading that is outside the specific right-of-way, so he does not think that is ambiguous. It specifically sets aside the language from the first part, which is limited to an actual right-of-way. Mr. Alter explained that there was strenuous opposition for the Kongscut Valley application, which went all the way to the appellate court. In *Melody v. ZBA of Glastonbury* in 1969, the Supreme Court ruled that the second part of subsection a stands on its own. Commissioner Hassett remarked that theory could extend to the word "within," as well. Mr. Alter stated that the word "within" is demonstrated by the document submitted to the record, which shows that the Town expects a grade of 4:1, but it would accept a steeper grade at 2:1. That is within the road or street because they cannot have the road or street without a grading plan to accomplish that. Mr. Alter noted that they have graded the road at the steepest grade allowed, 8%, which the Town does not prefer but accepts. They have also reduced the Town's preferential grading from a 4:1 slope to a 2:1 slope as part of

roadway construction. Commissioner Shaw asked if excavation is not required for every right-of-way on a road. Mr. Alter said in other towns, yes, but in Glastonbury, realistically, no.

Attorney Alter went over cases that he submitted to the record, concluding that they all speak to basic issues that he has addressed here. He explained that requiring an excavation permit first is not allowed because the Commission is not entitled to look at what comes next. They cannot condition one permit on the securing of another one. Mr. Alter noted that since this is a final subdivision, the lots can start to go with a bond posting. He concluded by summarizing that an extension of Dufford's Landing is the least impactful outcome of that land, and the exemption of subsection a clearly applies, with the rest falling within subsection b, which lies within the jurisdiction of the building official.

Chairman Zanolungo opened the floor for public comments.

Ms. Mary Louise Stover of 88 Ferry Lane, spoke to the issue of the trucks, in regard to horses and riders. She explained that the trucks that come down from Dufford's Landing are the most respectful and careful vehicles in that area. As older riders, they really need that extra care and their drivers are very good.

Christine Fahnestock of 976 Hillstown Road, punctuated what Mary Louise said, remarking that the drivers have been extremely courteous, careful, and safety conscious.

Attorney Ken Slater of Halloran Sage, representing Michael Blair and neighbors, stated that the issue here is one of statutory construction, which this commission is allowed to regulate. He explained that the commission is charged with looking at the language exactly the way it is written. Site grading is reasonably associated with a building permit. All of this excavation is construction that does not require a building permit. The only time that applies is when one has a building lot and that does not apply here, so it does not comply with the subdivision regulations, as of now. That is the only way subsection c makes sense, which highlights construction without a building permit.

In regard to subsection b, Attorney Slater stated that Attorney Ranelli is correct. There is no interpretation that says a building permit will be issued by the official when it may not. In regard to subsection a, the language says what it says: it is within the right-of-way. If it is more than that, then the applicant would have to file a special application to get an excavation permit.

Attorney Slater concluded by asking the Commission to interpret the regulations the way they are written. What happened in the past is entirely irrelevant, and they should have the discretion to enact the regulations to protect neighbors from potential impacts. He also noted that there has not been an analysis from the Town Engineer of whether this is the minimal amount of excavation to be removed; it is just permissible to be done this way. Therefore, it is not compliant with zoning, so this application should be denied.

Attorney Carl Landolina, representing three families/neighbors, explained that in order to even do an analysis on the statutory construction, one must first find an ambiguity in the language one is trying to construe. The word "within" is clear and unambiguous. Attorney Landolina also took

issue with a comment made during the presentation of Attorney Alter and Mr. Sczurek, where they stated that they were getting the lots “suitable” for development. Mr. Landolina explained that the language of subsection a. is pretty clear that the right-of-way is within the street. For subsection b., in order to acquire a building permit, one has to propose a building, which in this case, is a building that will not be built. What is intended is just to finish this construction outside of the roadway because subsection a does not apply here. Mr. Landolina agreed with Attorney Slater that subsection c. cannot be ignored because they do not need a building permit to build a road.

Commissioner Shaw pointed out that everything is subject to different interpretations. It seems that it would really be up to the Town Building Official. Mr. Landolina disagreed, stating that the Building Official works for the commission. Mr. Landolina concluded by stating that what the applicant proposes is a bizarre and unworkable result.

Mr. Skip Kamis of 152 Dug Road, expressed concern about safety as it relates to truck traffic, and he seeks protection from the Commission about this issue. He stated that the significant geological features of the site need to be protected to the greatest extent possible, and this application does not propose harmony to the grading of soil, and it will reintroduce hazards. He also stressed that scope matters, calculating that the applicant’s proposed fill of 90,000 cubic yards would fit inside this town hall building 7 times. Mr. Kamis urged the Commission to deny this proposal as submitted and protect the families.

Mr. Paul DeMaio of 148 Dug Road, stated that he remains opposed to dangerous truck traffic on Dug Road. He explained that just because something was done over and over again in the past, it does not mean that it should continue to be repeated. He hoped that the Commission would require the applicant to seek an excavation permit and maintain a safe roadway.

Mr. Scott Bissell of 156 Dug Road, explained that his property abuts the previous excavation operations and lies within the area of this proposed application. Mr. Bissell remains opposed to the ongoing excavation and dangerous truck traffic. He stated that Dug Road is narrow, and this further impairs the ability of vehicles to pass safely. An application that sends trucks down Dug Road is a no-starter. He quoted comments made by commissioners during previous hearings, when they rejected the applicant’s prior excavation application. Mr. Bissell concluded that an excavation permit is necessary and the parcel in question is unsuitable for excavation activity.

Mr. Alter responded to the comments, taking exception to Attorney Landolina’s characterization of how this matter will progress. The insinuation that Mr. Dufford would conduct anything as a sham is inappropriate. Mr. Alter remarked that he disagrees with Attorneys Slater and Landolina on what this Commission should be doing, in terms of applying the regulation. He agreed with Secretary Botelho that it is a timing issue, which is addressed through the building permit process. He stated that the same people who just told them to apply for an excavation permit were the same who opposed an excavation permit the last time.

In regard to Mr. Kamis’ comments, Mr. Alter explained that the hill is the result of the receding glacier. The regulations say to preserve what they can “to the greatest extent possible.” It is not a prohibition. In regard to Mr. Bissell’s comments, he stated that he does not recall going through

other property. On the map, it looks like everything goes through Dufford's Landing but it cuts through Dug Road. Because it is not an excavation application, they do not have control over the location and buffering, etc. Ms. Dodds added that, going from east to west, they are removing land that is natural but going the other way around (west to east), they could cause more of an impact, in terms of the erosion.

Mr. Alter stated that subdivision approvals have a five-year timeline for completion. On average, the applicant is able to remove about 25,000 cubic yards in one year, so in that case, it would take about 3-4 years, but it could end up taking the full 5 years. The bond will be well over \$1 million, so it would be in the applicant's best interest to have it done as quickly as possible. Commissioner Hassett asked, if the Commission interprets the language to say that it has to fall within the roadway, does this application fail? Mr. Alter stated that he does not think the application would fail, but the Commission could make it a condition that only excavation within the roadway would be approved.

The Commission then posed a series of questions for Attorney Ranelli:

Mr. Botelho asked if he believes that section 6.2.4a applies outside the roadway, as per Attorney Alter's interpretation. Mr. Ranelli replied, out of deference to the work that all of the attorneys did, he would like to review the cases that were referenced by Attorney Alter and the canons that were referred to by the other attorneys. However, he noted that Attorney Alter's argument was not so much an interpretation of what "within" means but rather, what "the street" means. Mr. Ranelli agreed to review it and get back to the Commission.

Secretary Botelho asked Mr. Ranelli to respond to Attorney Slater's claim about the timing of the building permits. Mr. Ranelli stated that, before the excavation work associated with the hypothetically approved subdivision plan is undertaken, a building permit must be issued. The applicant's position is that they are seeking a final subdivision approval, which even if they do not build, they can sell the lots. Vice Chairman Purtill explained that each of these lots show excavation. If the Commission approves them with all of the grading lines on them, even though they are hypothetical, the building official would issue a permit and that would include everything that the Commission approved at the subdivision. She asked if that would come up as a follow-up question when the applicant applies for a building permit. Mr. Ranelli stated that he was not aware of anything in the building code that would make a building official deny a permit based on approved grading shown on a subdivision map. Commissioner Griffin asked if they need that specificity upfront. Mr. Ranelli said that is hard because specificity is relative. He would like to do a little research on that because he does not think it is spelled out in the regulation itself. Vice Chairman Purtill stated that that was the concern the Commission was trying to understand: there is an argument that only the excavation in the road could be done without a building permit. They need to clarify whether that applies to section 6.2.4a or 6.2.4b, before approval. Commissioner Shaw added that, in regard to subsection b, he would like to verify whether a building permit has to have been issued prior to the time of excavation.

Ms. Dodds asked if the Commission can condition a subdivision approval on obtaining an excavation special permit. Mr. Ranelli said that the Carpenter case is the controlling case. He can freshen up on that and get back to the Commission. Ms. Dodds stated that they need a time

extension request to their February 18, 2020 meeting, which would be the last public hearing, unless they schedule an additional special meeting before February 26, 2020, the date by which a decision must be rendered.

With no further comments, Commission Zanolungo announced that they will continue the public hearing at their February 18, 2020 meeting.

Vice Chairman Purtill exited the meeting at 10:16 P.M. Chairman Zanolungo seated Commissioner Sexton as a voting member in her absence.

2. 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

Architect Hans Hansen presented on behalf of his client, explaining that they are proposing no change to the exterior or the site itself. The proposal is just to add one more unit (building 3) to convert the portion of the garage to a bonus room. That would still not affect their parking count, though the FAR would be affected. Mr. Hansen explained that in the previous FAR calculations, he had misinterpreted the regulations, so this has changed to include the stairs in the calculations. Mr. Hansen explained that the FAR is still below the regulations allowed. After some discussion about whether or not future residents could return for a special permit, Ms. Dodds clarified that if, at some point, a resident would like to change the space, they should have the ability to come before the Commission and ask.

Chairman Zanolungo opened the floor for public comments.

Mr. Bill Campbell of 94 Juniper Lane explained that he owns the commercial property across the street at 26 Naubuc Avenue. When he saw the original application for 5 units (as opposed to the current application, which concerns just 1 unit), he was concerned that all of the parking spaces might be full, which could potentially expose him to some legal liability, if people were to use his parking spots. He stated that if the Commission allows 1 unit, that could set a precedent for the next person and the next person. The applicant, Mr. Li, replied that these are smaller units, so typically, a big family will not be coming. Most units, thus far, have only 1 car per household. Chairman Zanolungo asked if the applicant and Mr. Campbell could exchange contact information to discuss parking information. Mr. Li agreed.

With no further comments, Chairman Zanolungo closed the public hearing at 10:38 P.M.

Motion by: Secretary Botelho

Seconded by: Commissioner Shaw

MOVED, that the Town Plan & Zoning Commission approve the 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, with access to the back patio, for 1 three-bedroom unit – Unit 3, 25 Naubuc Avenue – Town Center Zone – Tommy Li, owner, in accordance with plans on file in the Office of Community Development, and:

1. In compliance with the standards contained in a report from the Fire Marshal, File # 20-004, plans reviewed 1-14-2020.
2. This is a Section 12 Special Permit with Design Review. If unforeseen conditions are encountered during construction that would cause deviation from the approved plans, the applicant shall consult with the Office of Community Development to determine what further approvals, if any, are required.

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

3. **Text Amendment- Insertion of Section 4.19 - Planned Business & Development Overlay Zone – Recommendation to Town Council**
4. **Proposed Changes to the Official Zoning Map to establish a Planned Business & Development Zone Overlay over the following numbered properties on Main St in the Town of Glastonbury: 3039, 3041, 3025, Lot W-2, 3017, 3011, 2997, 3000, 2963, Lot W-10A, 2955, 2941, 2915, Lot W-14, 2952, 2944, 2928, 2934, 2900, 2875, 2855, 2851, 2847, 2839, 2833, 2831, 2868, 2834, 2800, 2813, 2807 and 2815 - Recommendation to Town Council**

Ms. Dodds stated that the Council requested that the Commission review the text amendment for the PBD overlay zone, which would have a total of 33 parcels in that zoning district. Commissioner Sexton noted a typo in Section 4.19.1. It should read “forty-two and **three-quarters** (42 $\frac{3}{4}$) feet.” Secretary Botelho also noted a typo in Section 4.19.5, which should read “a height of three (3) stories...” Ms. Dodds explained that they alerted the public, letting them know of this zoning change. When it comes to the Council, they will also get the direct notice plus the newspaper notice.

With no further comments, Chairman Zanolungo closed the public hearing on Items 3 and 4.

Motion by: Secretary Botelho

Seconded by: Commissioner Hassett

MOVED, that the Glastonbury Town Plan and Zoning Commission recommend the text amendment insertion of section 4.19 Planned Business and Development Overlay Zone with the proposed edits.

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

Motion by: Secretary Botelho

Seconded by: Commissioner Shaw

MOVED, that the Glastonbury Town Plan and Zoning Commission recommend to make the proposed changes to the Official Zoning Map to establish a Planned Business & Development Zone overlay over the following numbered properties on Main Street in the Town of Glastonbury, with the edits proposed.

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

There being no further business to discuss, Chairman Zanolungo adjourned the meeting at 11:01 P.M.

Respectfully Submitted,

Lilly Torosyan
Lilly Torosyan
Recording Clerk