

**NAUGATUCK ZONING COMMISSION
REGULAR MEETING
APRIL 16, 2014**

Bill Stopper opened the meeting with the following in attendance:

MEMBERS:

William Stopper, Chair
Sally Brouillet, Vice Chair
Richard Cool, Absent
Kathy Donovan, Absent
April Slauson, Secretary, Absent
Matthew DeBarber, Alternate
Neil Mascola, Alternate

OTHERS:

Steve Macary, ZEO
Sue Goggin, AZEO
Attorney Edward Fitzpatrick
Public - 0

1. At 6:00 P.M., Bill Stopper opened the meeting with the Pledge of Allegiance and then took attendance and noted there was a quorum. Neil Mascola and Matthew DeBarber were made regular voting members.
2. Executive session with the Borough Attorney and the Zoning Commission.

There was no executive session. Attorney Fitzpatrick said he had a comment on the Wargo case. He said the Wargo case has not been appealed. He said the decision is public and it's posted on the judicial website. He also said the time period for an appeal would have been noted on the judicial website and that has not been done. He said he can say with a fair amount of certainty that the case and the appeal are finished. There was a discussion between Attorney Fitzpatrick and the commission regarding procedures. There was a discussion over what is given to new commissioners such as regulations. It was suggested that Attorney Fitzpatrick hold a workshop for the commissioners. It should be scheduled for the May meeting at the end of the agenda. It should be titled "Work session with Borough Counsel". The commissioners should look over Sections 32 & 33 before the work session. They should also get any questions they want answered to Sue and she will get them to Attorney Fitzpatrick.

3. Approval of the March 19, 2014 Meeting Minutes. The secretary will sign previously approved minutes.

VOTED: Unanimously on a motion by Sally Brouillet and seconded by Matthew DeBarber to **APPROVE** the March 19, 2014 Meeting Minutes.

4. **NEW BUSINESS:**

- A. Accept application, refer to Planning Commission, set Public Hearing for a text addition to Section 32.2.1 (21); Applicant: Naugatuck Zoning Commission

Steve explained that this is for a proposed addition to Section 32.2.1 involving location of dumpsters, waste systems and trash bins. It was clarified since the borough is the applicant there is no time frame to decide.

VOTED: Unanimously on a motion by Sally Brouillet and seconded by Neil Mascola to **ACCEPT** the application, **REFER** to the Planning Commission, **SET** the Public Hearing for June 18, 2014 at 6:15 P.M. for a text addition to Section 32.2.1, to add as follows: #21 location of all proposed outdoor dumpsters, waste systems, trash bins and their like and the method and materials of the required enclosures, i.e. barriers, fences or plantings be included; Applicant: Naugatuck Zoning Commission.

- B.** Accept application, refer to Planning Commission, set Public Hearing for text amendments to Sections 24, 24.1, Schedule B, line 5.4, Section 24.4.10 ad Section 26.5.8, additional language added to Section 24.4.3; Applicant: Attorney Dominick Thomas, Jr.

Attorney Dominick Thomas, 315 Main Street, Bridgeport, representing first Hartford Realty and Cumberland Farms, said they are in the first stage of a proposal by Cumberland Farms to renovate their North Main Street property. They would also need to purchase one additional lot. Their intent is to put in their new signature store. He explained that they would need certain text changes to the regulations. He said if the text changes are not approved they would not be able to move forward with the project. He asked that they consider holding the public hearing in May. Steve clarified that a change would apply to all B-2 zones. Attorney Thomas showed the commission a picture of one of their new stores.

VOTED: Unanimously on a motion by Neil Mascola and seconded by Matthew DeBarber to **ACCEPT** the application, **REFER** to Planning Commission, **SET** the public hearing for May 21, 2014 at 6:00 P.M. for text amendments to Sections 24, 24.1, Schedule B, line 5.4, Section 24.4.10 ad Section 26.5.8, additional language added to Section 24.4.3; Applicant: Attorney Dominick Thomas, Jr.

- C.** Commission discussion for a proposed community garden (Special Permit) located at Cross Street School; Applicant: Borough of Naugatuck

Alex Olbrys, 608 Maple Hill Road, explained the background and the reasons for choosing the Cross Street site. He said the plan is for 30 plots and each person will pay about \$25.00 per plot which would help to cover the expenses. He said in some towns the parks department has governance over the garden and in others a beautification commission has governance. This would be discussed at a later date. Sally asked about insurance and who would be liable if anyone got hurt. Alex said they need to look into that. Alex said there is a lot of grant money out there that they would like to apply for. He said the gate would be locked and the residents who bought into the garden would have a key. There was no further discussion.

VOTED: Unanimously on a motion by Sally Brouillet and seconded by Nail Mascola to **ADD** the application for a proposed community garden to the

agenda and also **ACCEPT** the application, **REFER** it to the Planning Commission, and **SET** the public hearing for June 18, 2014 at 6:30 P.M.

- D.** Commission discussion for a letter received from the City of Waterbury concerning fill to be hauled into a site at 909 Prospect Street.

Steve said, in the letter, the applicant is requesting to haul in 80,000 yards of material from Waterbury. Waterbury cannot give the applicant approval until they get a letter from the Naugatuck Zoning Commission saying it's okay to bring the material to Naugatuck. Steve referenced the April 8th packet that he gave them. In an e-mail from James Sequin, Steve said that it states that there are public hearings and that the City of Waterbury is requesting a letter from Naugatuck to let the applicant haul in the fill. Steve showed the commission a map which shows the route the trucks will be taking and that there will be about 30 trucks per day. Sally asked exactly what they gave him permission to do when they voted. Steve said he didn't have those minutes with him. Attorney Fitzpatrick said apparently this is a legal non-conforming use and a letter written by Mr. Macary from 2009 which indicated that the applicant established a legal non-conforming use for mining materials and removing them from the site. He said his understanding is that the applicant came in and asked for a site plan approval to allow him to bring into the site mulch and salt/sand mix. He said the commission did grant that permit so they have to see if the commission agreed that this is a legal non-conforming use. He said assuming it is a valid non-conforming use, which means that it's not permitted under the zoning regulations, but it pre-existed those regulations. He said the question is whether or not the permit allows any other material but what they approved to be brought in. The considerations are that this is a legal non-conforming use and they should be eliminated over time by attrition, expiration, abandonment or by non-use. The commission gave him an expansion of the non-conformity by their vote in December. He said there may be a question about whether or not he had been doing this, but even if he had been doing it, that doesn't mean that it was being done with authority. He said the access road to this site is through Prospect and it is clear in the letters from the Town of Prospect that they have documented the use of that property and the access road. He said it is pretty clear, at least in their view, that the activities are an illegal expansion of that use, both as a matter of common law and also a violation of Section 43. He said at some point the commission will have to determine if bringing in 81,000 cubic yards of earth is permitted and if he would be required to obtain a special permit for that purpose. Neil asked if Spring Road is Naugatuck or Prospect. Steve said it is in Prospect and so is a little way into the driveway. Neil asked how they are going to decide if he can bring it in if the residents are Prospect residents. Attorney Fitzpatrick said it is the use of the property in Naugatuck. The question is would bringing in the 81,000 cubic yards expand the use of the property or the non-conformity. He said the commission should respond to Waterbury as to what is the nature of the extent of the applicant's permit. It should be outlined in a letter to Waterbury what the nature of his current use is, which is apparently a legal non-conforming use and that it's grandfathered use allows for the extraction of materials. He said the next comment is that no materials may be brought in, with the exception of mulch and sand/salt mix (which was permitted) until the Warren's come in seeking a permit for such. Attorney Fitzpatrick said there is no application yet, so they don't need to make

a decision on the question of bringing in 81,000 cubic yards of material tonight. Steve said he gave Jim Sequin a letter saying that the applicant must adhere to Section 42.3.1, which says that no earth material can be hauled into the site. There was a discussion over what should be included in the letter to Mr. Sequin. Bill read Keith's recommendations that they would like incorporated into the letter.

Keith recommends to Commission to have Steve compose a letter to the Waterbury Planning Commission to be edited and signed by the Chairman that says:

1. The Naugatuck/Prospect Street site is currently a legal, non-conforming commercial earth excavation facility under Naugatuck's current regulations. Its grandfathered use primarily allows for the extraction of earth materials with the exception of mulch and salt/sand mix.
2. No material can be placed in the Naugatuck site.
3. Any other items recommended by the Commissioners.

Steve will draft a letter for the commission to approve. Sally asked if they could control the number of trucks bringing in salt and mulch. Attorney Fitzpatrick said they cannot regulate that because they didn't request that when they approved it. He said they can regulate the hours of operation and days of the week. They can impose reasonable restrictions on legal non-conforming uses.

VOTED: Unanimously on a motion by Bill Stopper and seconded by Sally Brouillet for staff to draft a letter to Mr. Sequin in the City of Waterbury, regarding the letter he had sent to Steve Macary on March 24th referring to the project of removing 81,800 cubic yards of material and transporting it to the 24.2 acre site on Prospect Street, Naugatuck, currently the site of Capital Quarry, 909 Prospect Street, owner James Warren. In that letter to define 2 issues, the first being the 2008 approval to have them operate that site as a quarry which is to extract material and also the second approval by the zoning commission to allow him to bring in and sell mulch and salt/sand mix.

Neil asked what they are going to do about the Prospect letter. Bill said the complaint seems to refer to the current operations not the new proposal. Attorney Fitzpatrick suggested that Steve copy Bill Donovan and Mayor Chatfield. He also said that Steve should find out the hours of operation. There was a discussion over the PDD. Attorney Fitzpatrick asked Steve to get the final set of maps that was signed and the site plan showing the phase lines and he will review it with him and they will report back to the commission at the next meeting. The Warren's attorney, Bill Ryan, wants a copy of all correspondence. Attorney Fitzpatrick said Steve can ask Mr. Warren the hours of operation and the scope of their use. He said the permit will go before the zoning commission before it is issued.

5. Additional items require a 2/3 vote of the Commission.

There were no additional items.

6. Chairman Report

There was none.

7. Public Comment

There was none.

8. Adjournment

VOTED: Unanimously on a motion by Matthew DeBarber and seconded by Neil Mascola to adjourn the meeting at 7:37 P.M.

RESPECTFULLY SUBMITTED:

April Slauson, Secretary/sg