

**TOWN OF KENT
PLANNING AND ZONING COMMISSION**

41 Kent Green Boulevard
P.O. Box 678
Kent, CT 06757
Phone (860) 927-4625 Fax (860) 927-4541

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BY *Donna Hayes*
TOWN CLERK

MARCH 30, 2017 SPECIAL MEETING MINUTES

The Town of Kent Planning and Zoning Commission held a special meeting on Thursday, **March 30, 2017** at **6:00 p.m.** in the Kent Town Hall.

1. CALL TO ORDER

Mr. Johnson called the meeting to order at 6:08 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: John Johnson, Chairman; Karen Casey, Alice Hicks, Adam Manes, Matt Winter

Staff Present: Donna Hayes, Land Use Administrator

3. NEW BUSINESS:

3.A. DISCUSSION AND POSSIBLE DECISION

3.A.1. Regulation Rewrite – review of Comparison Chart prepared by Donna Hayes

During the last meeting, Ms. Hayes was asked to find out who determines the “ordinary high water mark”. She told the Commission that she called Brian Wood who told her that First Light determines the ordinary high water mark from the bridge on Macedonia Road by the Kent School south to Bulls Bridge. North of the bridge, he believed that it is determined by FEMA. Mr. Wood suggested that the language be changed to reflect that. Ms. Hayes said it would be something to discuss with Mr. Chalder.

The Commission then moved on to §7120 which Attorney Zizka questioned whether or not this could be enforced. Ms. Hayes said that she understands his point but feels that having the standards gives the applicant fair notice of what will be expected. Both Ms. Hicks and Mr. Johnson agreed. Ms. Hayes said that noise is regulated by Torrington Area Health District. Mr. Johnson said that he would rather have them than not have them. In addition, Attorney Zizka asked that the word “which” in §7120.3.a. should be changed to “that”. He also said that the word “objectionable” in the same section was “too vague”. Both Mr. Johnson and Ms. Hayes agreed and Ms. Hayes commented that if someone were to call her office, there would be a dialog about why and the direction of where the caller should be referred would be determined at that point in time. Ms. Hicks thought that the words “volume, duration, frequency or shrillness” define what is “objectionable”. Mr. Manes asked if people didn’t call the police when someone was having a party with large speakers. Ms. Hayes said that they probably would but didn’t think this section was referring to that but to construction sites or commercial areas or industrial zones. Mr. Johnson said that Torrington Area Health District only regulates consistent noise. It was decided to make the one change (“which” to “that”) and keep the rest of the section as is.

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With regard to §7320.5, Attorney Zizka asked that the letter “r” be added to the word “Office”. Mr. Johnson asked Ms. Hayes when she can enter the property. She replied that if there is a permit she is entitled to enter the site to do inspections; otherwise she is required to knock on the door. It was suggested that Ms. Hayes wait to hear from Attorney Zizka on her question.

In §7421.1, “no drainage or erosion problems are created” was noted by Attorney Zizka as being too vague. Ms. Hayes commented that she had changed the wording to: “all work is done in accordance with soil and erosion control standards.” The Commission was okay with the change.

With regard to §7430.1, Ms. Hayes changed the wording to: “Provision shall be made at all times to be in compliance with soil and erosion control standards.” The Commission was okay with the new wording.

Attorney Zizka did not think that §7430.3.d. would work with tree stumps. After review, it was determined that the changes made to the previous part of the section would take care of Attorney Zizka’s concerns. The Commission agreed.

Ms. Hayes commented that there is a Town Ordinance regarding the applicant’s payment of engineering review. It was decided the Ordinance number be added and the word “which” be changed to “that”.

With regard to §7440, Ms. Hayes told the Commission that she is requesting that “7400” be changed to “7424” which is the actual section number for special permits. A discussion was held with regard to Attorney Zizka’s comment asking if another section should be added about special requirements for site plan approval and contours. The Commission was unsure exactly what he was referring to and they decided to leave it as is but still make the change to “7400”. Ms. Hayes also said that semicolon after the word “materials” in §7440.1.g. should be changed to a period.

With regard to §74501.a. and d., the Commission felt that the conditions apply to both site plan and special permit approval. Ms. Hicks said that she felt they should be in. Both Ms. Casey and Mr. Winter agreed. It was agreed to keep it as is.

With regard to §7450.6, the Commission requested that the word “shall” be changed to “may”.

When looking at the picture description of the signs in §8120, the Commission felt that the pictures were sufficient.

With regard to §8131, Attorney Zizka noted that subsections 2, 6 and 7 were content based. Ms. Hayes explained that these signs are permitted by right and are not regulated by her so why should it matter if they are content based. The Commission agreed. No changes will be made.

Attorney Zizka noted that §8132 is content based. Ms. Hayes said that she was not sure how to handle it and would ask Attorney Zizka. Ms. Hayes said that if a sign is proposed and there is a question as to whether or not it is content based, they could always ask Attorney Zizka for advice. She also noted that the word “for” needs to be removed from §8132.3. The Commission agreed.

With regard to §8141, Attorney Zizka commented that it was content based. Ms. Hayes noted that these are signs permitted by right and are not regulated by the Land Use Office. The Commission agreed and no changes will be made.

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With regard to §8152.2., Attorney Zizka noted that the words “which identifies the name of the development” is considered content based. Ms. Hayes suggestion is to remove the words, ending the sentence at the word “feet”. The Commission agreed. Attorney Zizka noted that §8152.2.b. was vague; the Commission agreed and it was decided to delete it.

Attorney Zizka noted that there is no statutory authority for the ZEO to create guidelines as indicated in §8152.3.e. It was decided that the sentence be changed to: “the permit shall be valid for a calendar year, shall be subject to annual renewal, and may be revoked for violations of the requirements stated above.”

With regard to §8152.5, Attorney Zizka commented that “identification” denotes content based. The Commission agreed to remove the word “identification”.

Mr. Johnson asked Ms. Hayes if she would work with Attorney Zizka on §8153 especially since the alternative signage program applies to a large part of the village center. He asked whether or not it would be practical to ask him to rewrite the whole signage section. Ms. Hayes said that she did not think Attorney Zizka picked out very much content based signage issues. Mr. Winter asked what happens if someone complains and uses the Mackenzie case as the reason for their complaint. Ms. Hayes said that she would refer them to the Commission for discussion and contact Attorney Zizka to find out how to handle the complaint. Working with both parties which is something that this Commission has no problem doing, would be strongly recommended. Ms. Hayes said that she would like to work with Attorney Zizka on learning how to figure out what is content based. Mr. Johnson said that he did not think there are clear cut guidelines. Ms. Hayes said that she did not think there are clear cut guidelines which was confirmed by Mr. Weingarten who went to the Law Review meeting at the end of March.

With regard to §8160.3, Ms. Hayes said that she will have Mr. Chalder make the change; the Commission agreed.

Mr. Johnson said that he has no suggestions on how to make §8160.4. less vague. It was decided that with Mr. Chalder’s added verbiage it further defines the section.

With regard to §8170.6.b., the Commission decided to leave it as is.

With regard to §8170.9, Ms. Hayes suggested providing a sample of a directional sign. Mr. Winter said there is a definition and because of this it was his recommendation to remove the section. Ms. Hayes suggested that the words “shall not contain advertising” in the definition. It was decided that it will remain as is.

Attorney Zizka noted that §8180.1 and §8180.3.b. were inconsistent. Mr. Johnson asked Mr. Winter if changing the wording in 8180.3a. to “such signs shall conform to these regulations and shall require a sign permit”. Mr. Winter asked if we can waive the fee. Ms. Hayes replied that once a permit is issued, a fee must be submitted to the State. Mr. Winter asked if we should strike the comment about not requiring a fee. Ms. Hayes explained that a permit with a construction value of less than \$2,000 is \$110 (\$50 to the Town; \$60 to the State). She suggested coming up with wording which states that the Town fee will be waived but the State fee must be paid. Ms. Casey asked if the Commission was doing that now. Ms. Hayes said no because non-profits usually do not come in to pull the permits. Mr. Johnson said that it was done in the past and it does not hurt leaving it in. Mr. Johnson said that he would like to go back to §8180.1 and remove “approved by the Commission” and insert “issued”. Mr. Winter said that the wording in §8180.3.a. will also need to be changed. Ms. Hayes said that she will rework the wording.

With regard to §8190.4, Ms. Hicks asked how we will handle something like this when it is content based. Mr. Winter said that the purpose of this regulation is make sure that signs are removed from businesses that are no longer operating. It was decided to leave it in.

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Mr. Johnson said that Attorney Zizka's comment on the chart under §8230, there is a purpose and intent at the beginning of the section which he believes gives the Commission the criteria. It was decided to leave it as is.

Ms. Hayes asked the Commission if they still wanted her to add the parking information for Affordable Housing. After discussion, it was decided that she will ask Mr. Chalder to add another box under "Residential Uses" which says "Affordable Housing" with 2 spaces per dwelling unit.

With regard to §8320.3.a., the Commission decided to change "acceptable to" to "approved by". They also asked Ms. Hayes to discuss the rest of the section with Attorney Zizka. Mr. Johnson and Mr. Winter said that they would still like the section to remain as is. Ms. Hayes explained that Attorney Zizka questioned what would happen if there was one owner but two different properties. Would the Commission require an easement between themselves? They replied yes because one piece of property could be sold and the new owner would have to make sure there is an easement. The Commission said they are looking at the properties and not the owners.

Ms. Hayes questioned the grade §8320.4. She continued that initially §8350 said that "driveways shall not exceed 30' in width or 10% in grade". Mr. Chalder took that sentence out and moved it to §8320.4. The question is whether or not the Commission wanted to include a maximum grade clause in §8350. Mr. Winter asked if any of the driveways in the Industrial District could be more than 10%. Mr. Manes said yes. It was decided that a new section, §8350.3, be created that says: "Driveways shall not exceed 10% in grade." Ms. Hayes asked the Commission if they wanted §8320.4 to remain. Mr. Johnson said yes and asked that "except as noted in §8350" be added; the Commission agreed.

With regard to §8340.2.c., the Commission decided to leave it as is.

Ms. Hayes said that the First Selectman does not approve driveway permits; the Highway Foreman is the one who approves them. It was decided to make the change and to add the fact that the State will need to approve driveways on State owned/maintained roads.

With regard to §8360.5, Mr. Johnson said that the statutory authority has changed and asked Ms. Hayes to address this with Attorney Zizka. If he says the section can stay, the word "not" needs to be added after "such performance guaranty shall ...".

With regard to §8360.6, Attorney Zizka said that this was unenforceable. Ms. Hayes believes that this is handled by the First Selectman and will check the Town Ordinances to see if that is the case. The Commission agreed to remove the section.

Mr. Johnson said that he agrees with Ms. Hayes' comment that §8420.2.a. remain. He believes that "similar durability" will be decided by the Commission. The Commission agreed that it should remain.

With regard to §8420, the Commission decided that all subsections of 8420 (3.4. and 5.) should remain as is.

Ms. Hayes agreed with Attorney Zizka's comment in that §8530.1.a.i., would be hard to enforce, but feels that its inclusion sets up expectations for the developer. Mr. Johnson agreed as did the rest of the Commission.

With regard to §8530.1.a.iii., the Commission said that it should remain.

Ms. Hayes asked the Commission if the Commission wanted to keep "four feet above ground level" in §8530.b or did they want to change it to 4'. The Commission agreed to change it to "DBH".

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Mr. Johnson suggested that §8540 read as follows: "The Commission may accept existing topography and/or vegetation as satisfying the landscaping requirements of this Section." The Commission agreed. Ms. Hicks asked what would happen if it was not acceptable and why it was a separate section. Mr. Manes said the application would have to then provide a buffer. Mr. Johnson agreed with Ms. Hicks but it was decided to leave it as is.

With regard to §8550.5, Ms. Hayes will discuss it with Attorney Zizka.

With regard to §8620, Ms. Hayes suggested that §8620.1. be removed. Mr. Winter said that it should remain so that the ZEO can point to the fact that they are exempt from the regulation. It was suggested that it be changed to "temporary lighting". Ms. Hicks said that she felt it should remain because of the RLUIPA protection. Ms. Hayes commented that when Attorney Zizka first commented on this section, the actual holidays were not stated and Mr. Chalder then made the change. It was decided to leave it as is.

Ms. Hayes started the discussion by stating that the numbering in §8640 would need to be corrected. With regard to §8640.2, Ms. Hayes suggested that the word "objectionable" be removed. Mr. Johnson said that he did not see anything wrong with "transitional" and the Commission suggested that it stay as is.

With regard to §8820.1, Mr. Manes said that it was not really deemed necessary by the Commission because they are relying on guidance from the Fire Department. Mr. Winter asked if they are a requirement of the site plan. Mr. Johnson asked Ms. Worthington, who was in the audience, if she knew if the Fire Department has such a plan. She responded that she did not know. Mr. Johnson commented that Attorney Zizka had circled "where deemed necessary by the Commission" but feels that it should remain because it gives the Commission discretion to require them. The Commission decided to leave them in and asked Ms. Hayes to check with the Fire Department on whether or not they have a Fire Pond Plan.

Mr. Manes moved to continue Regulation Rewrite – review of Comparison Chart prepared by Donna Hayes to the next special meeting. Mr. Winter seconded and the motion carried unanimously.

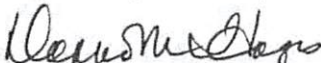
3.A.2. Regulation Rewrite – Incentive Housing Zone Subcommittee Final Report and discussion of regulation acceptance.

Mr. Manes moved to continue Regulation Rewrite – Incentive Housing Zone Subcommittee Final Report and discussion of regulation acceptance to the next special meeting. Mr. Winter seconded and the motion carried unanimously.

4. ADJOURNMENT

Ms. Hicks moved to adjourn at 7:58 p.m. Mr. Winter seconded and the motion carried unanimously.

Respectfully submitted,


Donna M. Hayes, CZEO
Land Use Administrator

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