



TOWN OF KENT
PLANNING AND ZONING COMMISSION
41 Kent Green Boulevard, P.O. Box 678, Kent, CT 06757

REGULAR MEETING MINUTES

The Planning and Zoning Commission held a regular meeting on Thursday, January 12, 2023, beginning at 7:00 p.m. via zoom.

1. CALL TO ORDER

Mr. Winter called the meeting to order at 7:01 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: Matthew Winter, Chairman; Karen Casey, Darrell Cherniske, Alice Hicks, Adam Manes, Anne McAndrew, Wes Wyrick

Staff Present: Tai Kern, Land Use Administrator
Donna Hayes, Assistant Land Use Administrator

Mr. Winter elevated Ms. McAndrew to voting status.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of December 8, 2022.

Mr. Manes moved to approve the Regular Meeting Minutes of December 8, 2022 as presented. Mr. Cherniske seconded and the motion carried unanimously.

3.B. Special Meeting Minutes of December 15, 2022

Mr. Manes moved to approve the Special Meeting Minutes of December 15, 2022, as presented. Mr. Cherniske seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

No action taken.

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5. OLD BUSINESS:

5.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):

No action taken.

5.B. DISCUSSION AND POSSIBLE DECISION

5.B.1. Application #s 102-22C and 103-22SP, Emery Wisell, Jr., 7 Pheasant Run Rd. Map 9, Block 22, Lot 76, storage and processing of logs for the sale of firewood as a Major Home Occupation.

Mr. Winter reminded the Commission that the public hearing was closed in November and now the Commission was in the discussion mode for a decision on this application.

Ms. McAndrew said that she looked up the decibel level. According to what she found; the noise level was equivalent to a lawnmower. Since the processor is farther away from the neighboring home, she did not have a problem with it operating during reasonable daytime hours. Mr. Manes said that he has operated a log processor and they are much louder. Combining that with the other machinery would create a very loud process. Mr. Winter replied that it is a relatively small tractor and a chainsaw operating at the same time. Ms. McAndrew asked if he would consider that excessive noise. Mr. Winter said that the apparent continual noise would bother him.

At this point in time, the Commission discussed the Resolution of Approval. Ms. Casey suggested that the operation be moved to the other side of the property so that it would not annoy the complaining neighbor. She also questioned how this decision would affect the other people who are doing the same thing. Mr. Manes said that he did not think it sets precedent or affects them since this is a special permit application specific to this piece of property and referred the Commission to pages 177 – 179 of the current regulations which speaks to the special permit criteria that needs to be considered. He also commented that the application needs to be considered on its own merits. Ms. Casey said that she is trying to look at it and be fair to all that are doing this and doing it on a small lot. She thought it might be a good idea to have a regulation that deals with this. Ms. Hicks asked if permission is granted and the technology changes allowing the applicant to process more logs at 5 times the sound level, how can the Commission provide for any changes which might change the original approval.

Mr. Cherniske said that he believes that the Commission handled everything comprehensively at the last meeting. He did ask about sound and said that the Commission should consider sound but it should not be the controlling condition.

Mr. Winter said that he agrees with Mr. Manes and that it has to be looked at on a case by case basis, but he also agrees with Ms. Casey. He does not believe that the Commission is in a position to police the actions on property unless it is brought forward by the LUA or a complainant. Mr. Winter said that the Commission is acting as an arbitrator in this case via the special permit. With regard to Ms. Hicks comment, Mr. Winter said that the applicant will have to come forward with a request for modification should things change. Mr. Wyrick said that the Commission should not be regulating sound but because the property is in a tight residential neighborhood it should be before them.

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With no further comments from the Commission, they reviewed the Resolution of Approval. With regard to the hours of operation, Mr. Wyrick said that 5 days is not restrictive. Mr. Manes agrees with restricting the days and feels that Mr. Wisell should be able to choose the days. Mr. Wyrick agreed. Mr. Winter asked who will police it. Mr. Manes agreed and said that policing the activity would fall on the neighbor, but that was why they were discussing it. He continued that he believes the property owner will adhere to the 3 day requirement so that the special permit will not be pulled. Ms. Casey said that she agreed with the 3 days/week and with letting him decide on which days. Ms. McAndrew said that the Commission should assume that anyone who comes before the Commission will adhere to the conditions. Mr. Cherniske said that the work is weather based and that it is hopeful that the property owner will discuss any potential changes with the neighbor in good faith. Ms. Hicks said that the more general the better. She was more concerned about the hours. Mr. Winter said that he was in the minority and suggested that #2 read “3 week days during the hours of 8 am to 5 pm”.

With regard to #3, Mr. Winter said that it satisfies the screening requirement. Ms. Hicks, Mr. Wyrick and Mr. Manes all agreed. Mr. Wyrick asked if Ms. Kern was concerned about sight lines. She replied that that was brought to her attention after the public hearing was closed, but felt that as long as everyone was careful it should not be a problem especially since it is a very small, private road. Mr. Manes suggested stating that the fence end 10’ before the driveway in order to provide for a better sight line. Mr. Winter suggested that the wording be changed to read “to within 10’ of driveway entrance”.

With regard to #4, Mr. Winter and Mr. Manes thought it was fine as written.

Mr. Winter said that the Resolution of Approval is satisfactory to him as modified. Mr. Wyrick concurred.

Mr. Manes asked if the Commission wanted to read the Resolution of Denial and Mr. Winter said he did not think so because he felt that the Commission was all on the same page. Mr. Manes said that he does not feel that he can vote for the Resolution of Approval because he feels the regulations say that he can not. Mr. Winter thought it was an interesting interpretation. Mr. Manes explained that Page 177 states that the Commission “shall evaluate the application” using the 11 factors that followed. He sees a number of items applicable and used #3, #4 and #9 as examples. Mr. Winter said that he believes that the conditions mitigate those requirements. Mr. Winter continued by referring the Commission to Sec. 10350.5 which addresses the site plan submission. He said that Mr. Manes was correct and said that he believes all the considerations were taken into account during the discussion of the application.

Mr. Manes said that he feels the Resolution of Approval covers most issues, but still feels that the approval will negatively impact the neighbor significantly. Ms. Casey said that the Commission has to be fair to all and feels that has been done with the presented Resolution of Approval.

Mr. Wyrick moved to accept waivers to #'s 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Wyrick moved to approve Application #s 102-22C and 103-22SP, Emery Wisell, Jr., 7 Pheasant Run Rd. Map 9, Block 22, Lot 76, storage and processing of logs for the sale of firewood as a Major Home Occupation via the following Resolution of Approval as amended during discussion.

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WHEREAS, Application #'s 103-22SP and 102-22C, 7 Pheasant Run Rd, Map 9 Block 22 Lot 76, Major Home Occupation – Storage and processing of logs for sale of firewood.

WHEREAS, the Planning and Zoning Commission (Commission) opened a public hearing on Application #'s 103-22SP and 102-22C on November 10, 2022

WHEREAS, the Commission closed the public hearing on all applications on November 10, 2022.

WHEREAS, the Commission conducted deliberations on the closed applications on November 10, 2022 and December 8, 2022.

WHEREAS, at the conclusion of deliberations, the Commission finds that the applications do not satisfy all of the relevant criteria for approval as submitted, but that they would satisfy those criteria if the following limitations and conditions are incorporated into an approval.

THEREFORE, BE IT RESOLVED, that upon a motion made by Wyrick and seconded by Cherniske, the Commission approves Application #'s 103-22SP and 102-22C subject to the following modifications, limitations and conditions:

- 1. The Commission considers the factual representations made by the applicant and its agents, representatives and consultants with regard to the nature, scope, location, extent, timing, frequency and all other aspects of the proposed use to have been critical in the Commission's determination that the Special Permit could properly be approved. Therefore, this approval incorporates by reference all such factual representations as though expressly made conditions of this approval, except as may be modified by subsequent conditions of this resolution. The applicant's factual representations include, but are not limited to, those made at the public hearing and in the following documents:*
 - A. Special Permit Application #103-22SP, dated October 24, 2022 and received on October 25, 2022.*
 - B. Site Plan Application #102-22C, dated October 24, 2022 and received October 25, 2022.*
 - C. Statement of Use dated November 7, 2022.*
 - D. General Location Survey #7 Pheasant Run by Surveyor Robert Hock dated October 26, 2022*
 - E. Plot Plan by Emery Wisell Jr. dated October 24, 2022 with attached sheet noting distances from processor to adjoining properties.*
 - F. Final subdivision plan for Colonial Village filed on Land Records October 11, 1979.*
- 2. That the utilization of equipment associated with the Major Home Occupation be restricted to 3 week-days during the hours of 8:00 am to 5:00 pm.*
- 3. That a 6-foot-tall solid fence be erected along property lines noted on General Location Survey as Northwest to run a midway distance from Pheasant Run and Southwest to run from NW corner at Pheasant Run to within 10 feet of driveway entrance.*
- 4. That the existing vegetative buffer be maintained along all property lines.*

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5. *Any changes to information represented during this application process shall require a modification of this Special Permit. The Commission does not, by this condition, guarantee that it will approve any such modification.*
6. *Each condition attached to this special permit approval is an integral part of the approval and inseparable from it. Should any of the conditions attached hereto be found by a court of competent jurisdiction on appeal to be void, then, in that event, the special permit granted herein shall be void and of no legal effect.*
7. *The violation of any of the conditions of this special permit approval may be grounds for revocation of the special permit pursuant to Section 10470.3 of the Zoning Regulations.*

In granting the above special permit applications, the Commission finds that the proposed project as conditioned, modified and limited by this motion will conform to the requirements of the Rural District and that it satisfies the factors the Commission must consider in reviewing such amendments, as set forth in the Plan of Conservation and Development and the Zoning Regulations of the Town of Kent.

Adopted by the Kent Planning and Zoning Commission this 12th day of January, 2023.

The motion was seconded by Mr. Cherniske and carried with Mr. Winter, Mr. Wyrick, Ms. Casey, Ms. McAndrew, Ms. Hicks and Mr. Cherniske voting Aye; Mr. Manes voted Nay.

6. NEW BUSINESS:

6.A. PUBLIC HEARINGS: (Possibility of closure, discussion and decision on the following):

- 6.A.1.** Application #'s 118-22SP and 117-22C, Soo Zin Hugh and Jeffrey Kane Weiser, Trustees, 100 North Main Street, Map 19 Block 42 Lot 1, renovation of existing barn into a 2-bedroom accessory dwelling unit.

Mr. Winter read the legal notice into the record and opened the public hearing at 8:16 p.m. Ms. Kern explained that since the property is hooked up to the Town sewer, the Sewer Commission would have to approve the proposal and at this point in time, there was no approval. Mr. Corrigan of Fox Architecture said that they were not able to appear before the Sewer Commission due to a lack of information but hoped to have what was needed by the next meeting.

Mr. Winter asked Mr. Corrigan to explain the project. He explained that there is an unused barn on the property that they wish to turn into an accessory dwelling unit with 2 bedrooms, kitchen and gym. There will be a small amount of landscaping with no change to grading. They will be connecting the utilities and moving the pool equipment to the outside near the hedge. There is no change to the footprint or massing of the barn. There will be some changes to the windows which has been approved by the ARB.

Mr. Edward Matson said that he takes care of the lawn at that property and the lateral for the sewer comes out at the front of the property. He is excited to see the barn renovated.

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Mr. Tim Sneller, contractor on the job, said that he feels that the project will shore up the barn and would be a good thing for the Town.

Mr. Winter said that this is a Special Permit Application due to the regulations and the use does fit within the regulations. Other criteria to consider would be parking, setbacks and approval from the Architectural Review Board.

Mr. Winter asked if the barn meets the setbacks, which it does. He also asked that the required 2 parking spaces be delineated on the site plan. Mr. Winter confirmed that this project will appear before the Inland Wetland Commission. Ms. Kern said that the disturbance was minimal and she feels that an agent permit can be issued for the minimal work to be done. Mr. Winter asked about lighting. Mr. Corrigan replied that there will be minimal path lighting from the drive to the building. These will be downward lights and will conform to the regulations. They do not have a finalized lighting plan yet due to the utilization of the existing sliding barn door but anything that they use will conform to the regulations. Mr. Winter asked if there are any provisions to mitigate the light bleed. Mr. Corrigan said that the two locations on the south have the barn doors that will block the windows. Interior attempts will be made to put up some light blocking treatment to prevent the east light bleed.

Mr. Matson said that it was determined that the brook was seasonal with no wetlands. Mr. Winter understands what is being said and said that he will defer to the Inland Wetlands Commission in that regard.

Mr. Winter asked that the public hearing remain open and asked the Commission members if they had anything in particular that they would like to see.

Mr. Wyrick moved to keep the public hearing open. Mr. Cherniske seconded and the motion carried unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

- 6.B.1.** Application #'s 118-22SP and 117-22C, Soo Zin Hugh and Jeffrey Kane Weiser, Trustees, 100 North Main Street, Map 19 Block 42 Lot 1, renovation of existing barn into a 2-bedroom accessory dwelling unit.

Mr. Wyrick moved to continue Application #'s 118-22SP and 117-22C, Soo Zin Hugh and Jeffrey Kane Weiser, Trustees, 100 North Main Street, Map 19 Block 42 Lot 1, renovation of existing barn into a 2-bedroom accessory dwelling unit. Mr. Manes seconded and the motion carried unanimously.

6.B.2 Acceptance of Resignation from Regular Member David Birnbaum

Mr. Winter said that Mr. Birnbaum was a great Commissioner and will be missed by the Commission. He wished him well in Idaho.

Mr. Manes moved to accept the Resignation of Regular Member David Birnbaum. Mr. Wyrick seconded and the motion carried unanimously.

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6.B.3. Possible elevation of Alternate to fill Regular Member vacancy

Ms. McAndrew said that she had a conversation with Ms. Kern and has decided to remain as an alternate.

6.B.4. Recommendation for alternate appointment(s) to the BOS.

Mr. Manes stated that he had recommended Mr. Christopher Harrington and reminded the Commission that they wanted to possibly come forward with other recommendations.

Mr. Manes moved to recommend to the Board of Selectmen the appointment of Mr. Christopher Harrington to the position of Alternate on the Planning and Zoning Commission. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Winter reminded the Commission that they will need to find someone to fill the member position. Ms. Hicks asked that potential candidates submit some information on themselves.

6.B.5. 8-24 Referral – Kent Commons Playground Project

Ms. Kern noted that in her Staff Report she referenced the areas of the POCD that spoke to Kent Commons Playground with regard to the needs for improvements. She then asked Mr. Kuczenski, P&R Director, to give a brief background to the Commission. He explained that the current park needs to be updated/improved and there was \$100,000 in the Capital Plan. Bids were submitted and Creative Recreation ultimately received the winning bid. They are hoping that they will be able to start in the middle of the year.

Mr. Winter said that the project clearly fits within the new POCD.

Ms. McAndrew asked if this would be handicapped accessible. Mr. Kuczenski said that it is ADA compliant which means that a handicap child could use some of the equipment but not all. Ms. McAndrew asked what the surface would be and Mr. Kuczenski said that it would be engineered wood fiber.

Mr. Wyrick moved to submit a positive referral to the Board of Selectmen as it refers to the 8-24 Referral. Ms. Casey seconded and the motion carried unanimously.

7. STAFF REPORT

Ms. Kern said that she had an interesting question regarding the interpretation of the regulation. She received a request to use an AirStream as a farmstand and referred the Commission to the farm stand regulation and section 3231.10 with regard to recreation storage. Ms. Kern said that the AirStream would be retrofitted to become a farm stand and would be very much like a farm stand. After some discussion, Mr. Wyrick said that he feels that the Commission is getting hung up on the word “AirStream”. Mr. Wyrick said that the “farm stand” was the use and not an aesthetic. Mr. Winter agreed.

Ms. Kern also reported that she is working on the budget and that she is looking at a permitting program; and enhancing the GIS. She noted that there is an issue with the fee schedule since it does not accommodate high

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costs of the required legal notice when statutorily required and she is going to ask the Town to reevaluate the fee schedule at a Town meeting.

8. REPORT OF OFFICERS AND COMMITTEES

No action taken.

Mr. Winter asked that the members check their schedule with regard to the special meeting scheduled for next Thursday at 5:00 p.m. He is hopeful that the meeting can start at 5:00 p.m. with a break to allow those members interested in attending the Town Meeting, which starts at 7 p.m.

9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

9.A. Administrative Permits and Certificates of Compliance:

Information received; no comments.

9.B. Actual vs. Budget July through November 2022

Information received; no comments.

- 10. EXECUTIVE SESSION: Pending Litigation: The Roberti Family, LLC v Town of Kent, Connecticut and Planning & Zoning Commission of the Town of Kent, Connecticut in the United States District Court for the District of Connecticut filed April 24, 2020. Discussion of strategy and negotiations with legal counsel.**
- 11. EXECUTIVE SESSION: Pending Litigation: Committee to Protect Rural Kent, LLC, Yewer, Dorothy and Yewer, David vs Town of Kent Planning and Zoning Commission, et al in Superior Court, Judicial District of Litchfield at Torrington dated December 21, 2021.**
- 12. EXECUTIVE SESSION: Pending Litigation: CT Judicial Branch Supreme/Appellate Case, Docket #: AC220015, High Watch Recovery Center, Inc. v. Town of Kent Planning and Zoning Commission.**

Mr. Winter asked Ms. Speck to remain for the Executive Sessions.

Mr. Manes moved to go into Executive Session at 9:12 p.m. for agenda items 10, 11 and 12 at 7:52 p.m. Mr. Cherniske seconded and the motion carried unanimously.

The Commission came out of Executive Session at 9:53 p.m.

- 13. Open session involving discussion and possible action on Pending Litigation: The Roberti Family, LLC v Town of Kent, Connecticut and Planning & Zoning Commission of the Town of Kent, Connecticut in the United States District Court for the District of Connecticut filed April 24, 2020.**

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14. Open session involving discussion and possible action on Pending Litigation: Committee to Protect Rural Kent, LLC, Yewer, Dorothy and Yewer, David vs Town of Kent Planning and Zoning Commission, et al in Superior Court, Judicial District of Litchfield at Torrington dated December 21, 2021.
15. Open session involving discussion and possible action on Pending Litigation: CT Judicial Branch Supreme/Appellate Case, Docket #: AC220015, High Watch Recovery Center, Inc. v. Town of Kent Planning and Zoning Commission.

Mr. Manes moved to follow the recommendations of the Attorney with regard to the two remaining items of litigation with the Commission. Mr. Cherniske and the motion carried unanimously.

16. **ADJOURNMENT**

Mr. Manes moved to adjourn at 9:54 p.m. Mr. Cherniske seconded and the motion carried unanimously.

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Assistant Land Use Administrator

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