

**TOWN OF KENT
PLANNING AND ZONING COMMISSION**

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KENT TOWN CLERK
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BY *Donna Hayes*
TOWN CLERK

JUNE 8, 2017 REGULAR MEETING MINUTES

The Town of Kent Planning and Zoning Commission held a regular meeting on Thursday, **June 8, 2017 at 7:00 p.m.** in the Kent Town Hall.

1. CALL TO ORDER

Chairman Johnson called the meeting to order at 7:05 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: John Johnson, Chairman; Matt Winter, Vice Chairman; Richard Chavka, Darrell Cherniske, Alice Hicks, Adam Manes, Anne McAndrew, Marc Weingarten, Wes Wyrick, Karen Casey

Staff Present: Donna Hayes, Land Use Administrator

Mr. Manes moved to add items 6.B.5, 6.B.6, 6.B.7 to the agenda. Mr. Cherniske seconded and the motion carried unanimously.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of April 13, 2017.

Ms. Hayes noted a correction to page 5, letter V should be changed to "April 14, 2017" and letter W should be changed to "March 9, 2017".

Mr. Manes moved to approve the Regular Meeting Minutes of April 13, 2017 as corrected. Mr. Cherniske seconded and the motion carried unanimously.

3.B. Special Meeting Minutes of March 16, 2017.

Mr. Manes moved to approve the Special Meeting Minutes of March 16, 2017. 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):

5.B. DISCUSSION AND POSSIBLE DECISION

5.B.1. Rewrite of Zoning Regulations

Ms. Hayes suggested that the Commission set up three special meetings to review the proposed changes to the Zoning Regulations and then move forward to schedule the public hearing. She agreed to poll the Commissioners for available dates to arrange the special meetings.

6. NEW BUSINESS:

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

6.A.1. Application #'s 31-17C, 32-17SP and 33-17F, Kent School Corporation, 11 Skiff Mountain Road, construction of six tennis courts and surrounding fencing, Map 3 Block 9 Lot 25.

There was no one present on behalf of these applications.

Mr. Winter moved to table application #'s 31-17C, 32-17SP and 33-17F, Kent School Corporation, 11 Skiff Mountain Road, construction of six tennis courts and surrounding fencing, Map 3 Block 9 Lot 25. Mr. Cherniske seconded and the motion carried unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

6.B.1. Modification to application #'s 69-11SP and 70-11C, South Kent School Center for Innovation (Infinity Fields LLC), 170 South Kent Road, construction of a learning center for agricultural and environmental demonstration; modification to include the construction of a teaching kitchen to Phase II Barn, Map 5 Block 39 Lot 2.

Richard Chavka, Wes Wyrick, Adam Manes, and Darrell Cherniske recused themselves from this discussion and stepped down from the table. The alternate members were seated.

Ms. Hayes distributed a history of the permit and development of the site for the South Kent School Center for Innovation.

Andy Vadnais, Head of School, came forward and explained that the development of this Center is an organic process. They have found that as part of the Sustainable Earth Program the teaching kitchen should be the next phase in a farm to table format. A representative of the architectural firm for this project, Laura O'Rourke, came forward and reviewed the plan. She reviewed the rendering of the site and the location of the proposed kitchen as submitted for the file. It was confirmed for the Commission that the access road beyond the phase 2 barn is gravel. Photos of the site were viewed. The proposed layout of the kitchen was described and interior renderings were viewed. Mr. Vadnais advised that the students would be bussed to the site for the use of the kitchen as they are for other classes at the Center. Mr. Vadnais confirmed that there is no intention of serving the public with this kitchen. This is merely an educational proposal.

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Ms. Hayes explained that the plans from the engineer must be submitted to the Torrington Area Health Department for review; however, it is not believed that there will be additional septic needs. Mr. Winter inquired about storm water runoff. Mr. Vadnais advised that the storm water runoff will be part of the engineered plans. An addition to the rendering showing exterior lighting was requested. The Commission advised that they have no objection to exterior lighting as long as the proposed kitchen is only lit while the building is in use.

It was agreed that it is reasonable to treat this as an amendment to the proposal as this is in keeping with the original plan. It was advised that a Zoning permit would not be issued until Torrington Health Approval is received.

Mr. Weingarten moved to approve the modification to application #'s 69-11SP and 70-11C, South Kent School Center for Innovation (Infinity Fields LLC), 170 South Kent Road, construction of a learning center for agricultural and environmental demonstration; modification to include the construction of a teaching kitchen to Phase II Barn, Map 5 Block 39 Lot 2 contingent upon the receipt of an updated plan showing exterior lighting, Torrington Health Dept. approval and the submission of a drainage design plan to integrate drainage into the already existing drainage system. Ms. Casey seconded and the motion carried unanimously.

Richard Chavka, Wes Wyrick, Adam Manes, and Darrell Cherniske were reseated.

- 6.B.2.** Pre-Application discussion; Vanessa Byrne for John E. Casey, Trustee, 16 Landmark Lane, operation of democratic school for self-directed learners, Map 19 Block 42 Lot 43.

Ms. Hayes reported that this application was withdrawn.

- 6.B.3.** Application #36-17C, Preston Mountain Club, 14 Preston Mountain Road, deposition of approximately 4,000 cubic yards of fill, Map 3 Block 4 Lot 10.

Ms. Hayes reported that the application fee has not yet been received for this proposal to move soil from South Kent School and deposit it on this site. It was advised that this is a time sensitive matter and soil will be directed elsewhere. The Commission dismissed this matter.

- 6.B.4.** Modification to site plan application #72-07C, Housatonic Enterprises, Kent Green alternative signage program to include new signage for Ace Hardware at 18 Kent Green Boulevard, Map 19 Block 42 Lot 8.

Ms. Hayes reported that the Architectural Review Board did not have a quorum this week to review this application. Their meeting will be rescheduled to next week. She advised that the proposed signage is less than what the True Value had for signage.

The Commission agreed that this modification could be approved contingent upon ARB's review and the ZEO's approval.

Mr. Cherniske moved to approve the modification to site plan application #72-07C, Housatonic Enterprises, Kent Green alternative signage program to include new signage for Ace Hardware at 18 Kent Green Boulevard, Map 19 Block 42 Lot 8 contingent upon the ARB and ZEO's approvals. Mr. Manes seconded and the motion carried unanimously.

- 6.B.5.** Permit #19-16C, Vincent W. Forese for Scott Mackey, 0 Upper Kent Hollow Road, filling operation, Map 16 Block 25 Lot 46

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Ms. Hayes advised that there is some question as to whether there is a violation to the existing permit. There have been numerous complaints that there may be an excess of the permitted soils being moved and question as to whether a commercial operation is occurring on this site.

Buddy Nixon of 44 Kent Hollow Road came forward with concerns with the long-term activity on this property with no real progress. There are many tri-axel trucks consistently coming and going. He explained that he does work for Mr. & Mrs. Miner who are abutting neighbors to this property and he has counted 16 trucks per day. Currently Mr. Forese has been screening material and it is being removed from this property to the owner's Lake Waramaug property. Mr. Nixon asked the Commission what the plan is with regard to this permit as there has been no progress. He explained that he is speaking for the majority of Upper Kent Road. This activity is occurring on Sundays. There are several piles of material with the height and width that measure to be 10,000 to 20,000 yards.

Martin and Carla Miner of 69 Upper Kent Hollow Road came forward and stated that this is question of numbers. If the permit is for 4000 cubic yards, then he calculates that the permit should be exhausted by this point. The project has been going on for years and they are going beyond the extent of the permit, which is diminishing the quality of life for the neighborhood.

Vincent Forese, agent for the applicant, came forward and stated that he does not disagree that the amount in the piles on the site are 10,000 to 20,000 yards; however, much of this material came from this site. He explained that additionally he bought topsoil from Rumsey Hall because he got a good deal. The extended length of the project is because he has been working at the Lake Waramaug property as well.

Ms. Hayes advised that the permit allowed for 4000 yards of material to be deposited on this site and 2500 yards of material are to be removed. Mr. Winter concluded that 6500 yards of materials shall be transported between the two properties per what is allowed by the approved permit. It was clarified that topsoil is allowed to be moved without a permit.

Sallie Ketcham of 47 Upper Kent Hollow came forward and it was clarified for her that the Rumsey Hall topsoil is to remain on the Kent site.

Mr. Miner explained that in essence this property is now being put to a commercial use with the storage of material for another property and that in itself is a violation of the Zoning Regulations. Storing soils, refining soils and transporting it back in forth is not a permitted use. The residents of the area are entitled to get the benefits of the law being applied properly.

Chairman Johnson asked what would be an acceptable solution to all parties. Mr. Miner explained that the weekend noise is a problem. Additionally, the road has been deteriorated and causing damage with gravel and dirt being spilled onto their property. Ms. Ketcham noted that the amount of trucks and noise is ridiculous. She explained that working during week is fine with her, but not on the weekends. Mr. Forese explained that he tries not to work during the weekends, but has been recently forced to so due to the weather.

Mr. Nixon explained that the key to a resolution is knowing when this will be completed. This has been going on for years and there is no knowing when it is going to end. Ms. Hayes advised that the permit was approved 4/4/16.

Mr. Wyrick and Mr. Winter noted that this sounds like a mining operation with the screening and moving of materials. Mr. Manes agreed that this sounds like it may be becoming a storage and processing operation.

Ms. Hayes advised that State Statute allows for 5 years for this permit with and extension of 5 years. There were no limitations placed upon on this permit when it was granted. Mr. Manes questioned whether the processing and

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screening of topsoil is a permitted use. He noted that the screening of these soils was not included as part of the application.

Chairman Johnson explained that it would take resources, time and money in relation to a Cease & Desist Order for this matter. Clearly this is a huge impact on the neighbors and perhaps this impact can be lessened.

Mr. Forese agreed to not work on the property on Saturdays and Sundays going forward. Ms. Hayes noted that Mr. Forese has been working with Public Works regarding the damage to the road. It is part of the permit to restore the road when the project is completed.

It was explained that the applicant can agree to self-imposed conditions. Mr. Forese advised that he will work on making arrangements to end the hauling of materials onto the Kent site and will redirect it to another location. He agreed to communicate to the neighbors when topsoils will be hauled onto the Kent site and a weekly report will be submitted to the Land Use Office regarding the hauling activities.

The Commission calculated the number of trucks of materials required to fulfill the permitted amount to be 140 trucks going out. They agreed that they will allow for 27 additional truck loads of material coming onto the Kent property. The Commission expects the conclusion of activities regarding this permit to be within 90 days.

Mr. Forese agreed to self-imposed conditions to modify the site plan approval to allow operations to occur during weekdays only with no Saturday and Sunday operations and a weekly report of the number of trucks loads of material moved regarding this permit shall be submitted to the Land Use Office. A letter showing these modifications will be mailed to the applicant for his signature.

- 6.B.6.** Application #37-17C, Devon Dobson for James and Abby Babski, 15 Iron Mountain Road, installation of inground swimming pool in HorizonLine Conservation District, Map 10 Block 41 Lot 13.

Ms. Hayes reported that the pool was not part of the original HorizonLine application for this property. She reviewed the trees that have been removed from the site as part of the original application. Mr. Wyrick noted that he sees no issues with this request being that they are not clear cutting and the pool will not affect or obstruct the sight line.

Mr. Wyrick moved to approve application #37-17C, Devon Dobson for James and Abby Babski, 15 Iron Mountain Road, installation of inground swimming pool in HorizonLine Conservation District, Map 10 Block 41 Lot 13. Mr. Winter seconded the motion and carried unanimously.

- 6.B.7.** Application #38-17C, Karen Butler for Kent Station Square, LLC, 21 Railroad Street, change of use from retail/residential to residential, Map 19 Block 42 Lot 18.

Ms. Hayes reported that this application has been withdrawn.

- 7. Executive Session. Completed Litigation: Mauri v Town of Kent, Docket No. LLI-CV-14-6009906-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel.**

Mr. Winter moved to enter into executive session at 8:58 p.m. regarding completed litigation: Mauri v Town of Kent, Docket No. LLI-CV-14-6009906-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel. Mr. Cherniske seconded and the motion carried unanimously.

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Mr. Winter recused himself and stepped down at 9:16 p.m.

Mr. Wyrick moved to exit executive session at 9:32 p.m. regarding completed litigation: Mauri v Town of Kent, Docket No. LLI-CV-14-6009906-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel. Mr. Manes seconded and the motion carried unanimously.

Mr. Weingarten was seated for Mr. Winter.

Mr. Cherniske moved that the Commission will not prevent Mr. Mauri from going forward with the remaining two weddings as a courtesy to the innocent parties but only if he agrees to participate in a cooperative court proceeding under which an enforcement agreement of the type described in option 2 would be entered as an order of the court. Option 2 says that he would specify what consideration he is willing to make, and the Commission recommends the refund of guest fees, and acknowledges that he will be responsible for civil penalties and the Town's attorneys' fees if the Commission has to seek enforcement against any future special events on the property. Mr. Wyrick seconded.

Mr. Johnson added that the agreement must be signed by June 23, 2017. Mr. Manes, Ms. Casey, Mr. Weingarten and Ms. Hicks both thought that the agreement seemed vague and felt two weeks was too long. Mr. Manes said that nothing should be up to Mr. Mauri and suggested that the wording be changed to "that Mr. Mauri will participate in a cooperative court proceeding and the agreement must be signed by June 23, 2017." Ms. Hicks said that she did not think Mr. Mauri would sign the agreement and the Commission said that the agreement should be signed within a week not two. Mr. Cherniske commented that his motion would remain at 2 weeks and urged the Commission to cast their vote. Mr. Johnson elevated Mr. Weingarten to voting status since Mr. Winter left the meeting at the beginning of the Executive Session.

The motion carried 4 Yea and 3 Nay.

Mr. Chavka and Ms. McAndrew were dismissed at 9:40 p.m.

8. STAFF REPORT:

Ms. Hayes reviewed the financials, and reported on her attendance of the FEMA workshop regarding the remapping of the flood plain. She will work with Public Works to provide the history of recent flooding.

9. REPORT OF OFFICERS AND COMMITTEES:

No action taken.

10. OTHER COMMUNICATIONS AND CORRESPONDENCE:

- 10.A. Administrative Permits and Certificates of Compliance
- 10.B. Monthly Financials – July 2016 through April 2017
- 10.C. Federal Emergency Management Agency's Risk Mapping Assessment and Planning Discovery Meeting for the Housatonic Watershed.
- 10.D. Leggette, Brashears & Graham, Inc. 2016 Annual Monitoring Report, Bull's Bridge Golf Club.
- 10.E. Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter, Spring 2017.

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11. ADJOURNMENT

Mr. Manes moved to adjourn at 9:42 p.m. Ms. Hicks seconded and the motion carried unanimously.

Respectfully submitted,

Tai Kern

Tai Kern,
Land Use Clerk

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BY *Sharon Bradley*
TOWN CLERK

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