

**TOWN OF KENT**  
**PLANNING AND ZONING COMMISSION**  
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*Donna Hayes TC*  
TOWN CLERK

**FEBRUARY 12, 2015 REGULAR MEETING MINUTES**

The Town of Kent Planning and Zoning Commission held a regular meeting on Thursday, February 12, 2015 at 7:00 p.m. in the Kent Town Hall.

**1. CALL TO ORDER**

Mr. Johnson called the meeting to order at 7:02 p.m.

**2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED**

Commissioners Present: John Johnson, Chairman; Karen Casey, Richard Chavka, Darrell Cherniske, Dennis De Paul, Alice Hicks, Adam Manes, Matt Winter

Staff Present: Donna Hayes, Land Use Administrator

Mr. Johnson elevated Mr. Chavka to voting status.

**3. READING AND APPROVAL OF MINUTES:**

**3.A. Regular Meeting Minutes of October 9, 2014**

*Ms. Hicks moved to approve the Regular Meeting Minutes of October 9, 2014, as re-written by order of the Commission. Mr. Cherniske seconded and the motion carried unanimously.*

**3.B. Regular Meeting Minutes of November 13, 2014.**

Mr. De Paul noted that the word "soul" in the first paragraph, line 4, on the 6<sup>th</sup> page be changed to "sole".

*Mr. Cherniske moved to approve the Regular Meeting Minutes of November 13, 2014, as re-written by order of the Commission with the change noted by Mr. De Paul. Mr. De Paul seconded and the motion carried unanimously.*

**3.C. Regular Meeting Minutes of December 11, 2014.**

Mr. De Paul noted that the word "tap" in the second paragraph, line 2, on page 2 be changed to "tape".

*Mr. Cherniske moved to approve the Regular Meeting Minutes of December 11, 2014, as re-written by order of the Commission with the change noted by Mr. De Paul. Mr. De Paul seconded and the motion carried unanimously.*

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**3.D. Regular Meeting Minutes of January 8, 2015.**

*Mr. Winter moved to approve the Regular Meeting Minutes of January 8, 2015, as written. Mr. Cherniske seconded and the motion carried unanimously.*

**3.E. Special Meeting Minutes of January 22, 2015.**

*Mr. De Paul moved to approve the Special Meeting Minutes of January 22, 2015, as written. Mr. Winter seconded and the motion carried unanimously.*

**4. PUBLIC COMMUNICATIONS (ORAL):**

No action taken.

**5. OLD BUSINESS:**

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

- 5.A.1.** Application #'s 105-14C and 106-14SP, Arthur H. Howland & Associates for Kerin & Jason Hempel, 63 Howland Drive, construction of pool and accessory dwelling unit/pool house, Map 11 Block 40 Lot 40.

Mr. Johnson reopened the public hearing at 7:08 p.m.

Mr. Jeremy Oskandy, EIT, Project Manager of Arthur H. Howland, was present to address the Commission and submitted the floor plans for the accessory dwelling unit/pool house for the record. He informed the Commission that they had made a change to the site plan based on the legal determinations by both attorneys by removing the residence restriction area. The boundary to the Horizonline was also installed on the site map along with the actual tree line and trees that would be affected by the construction. Silt fencing and the area of disturbance are also now noted on the site plan. Mr. Oskandy said that they were asking for permission to remove approximately 7 trees indicated on the plan but that he had a conversation with the architect about leaving trees that would not be required to be cut down during the construction. Mr. Manes confirmed that this whole section of trees is scheduled to be removed unless they determine it would not be necessary. Mr. Oskandy replied that was correct. Ms. Hayes asked if there was going to be any exterior lighting. Mr. Oskandy said that none is proposed but he told the Commission that the owners understood that if that were to change, they would have to appear before the Commission for a modification.

Mr. Manes asked how far the forested area was being pushed down as a result of the installation of the septic hookups. Mr. Oskandy said that they were showing 30' but he said that if one tree was removed along with some of the scrub brush they should be able to complete the installation.

Mr. Johnson said that his reading of Attorney Zizka's letter regarding the residence restriction area indicates that it has no bearing on the Commission's decision. Attorney Zizka does not agree that the residence restriction area has no meaning but it has no zoning consequence and that if this application is approved, a reference should be made in the motion. He stressed that the Commission is not taking a stand on the residence restriction area. Mr. Oskandy referred the Commission to the notes on the site plan which address the area. He continued that he feels that it is an area that should be regulated by the association of the subdivision. Ms. Hayes told the Commission that it is also noted in the revision box on the site plan so that anyone looking at this site plan in the future would see the change indicating the removal of the area.

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Ms. Casey asked if Ms. Hayes had visited the site and she replied that she had not due to the snow. Ms. Hayes also said that this area will not be seen from Geer Mountain Road. Mr. Chavka asked if there was any reason why the pool house cannot be moved to the other side of the pool. Ms. Casey asked how much room was between the pool house and the barn. Mr. Oskandy said that it was approximately 30' and that it is more natural to site the pool and pool house/accessory dwelling in the current location due to the topography. He agreed that there is a high point to the east which does buffer it somewhat. Ms. Hayes clarified that Mr. Chavka was talking about moving the pool house/accessory dwelling to the right side of the pool. She also responded to Ms. Casey that moving the structures closer to the barn would not eliminate the need to cut down the trees. The only way to save the trees would be to move the structure to the east of the pool. Mr. Oskandy said that standing on the property and seeing the actual layout makes sense.

*Mr. Manes moved to close the public hearing at 7:20 p.m. Mr. Cherniske seconded and the motion carried unanimously.*

*Mr. Winter moved to approve Application #'s 105-14C and 106-14SP, Arthur H. Howland & Associates for Kerin & Jason Hempel, 63 Howland Drive, construction of pool and accessory dwelling unit/pool house, Map 11 Block 40 Lot 40. Mr. Manes seconded.*

During discussion, Mr. Johnson asked that a clause that the removal of the residence restriction area from the revised site plan has no bearing on zoning or that the Planning and Zoning Commission's referral to their attorney's opinion be added to the motion.

*Mr. Winter moved to add that the Planning and Zoning Commission has not concerned itself with the residence restriction area shown on map 637B; that the clearing shown on the most current map is the maximum clearing in the hopes that they will not clear as many trees as they show to be cleared; and that any plans for exterior lighting will have to come back before the Commission for approval. Mr. De Paul seconded as amended and the motion carried unanimously.*

- 5.A.2. Application #'s 109-14SP and 110-14C, RPTC, LLC, dba Reilly Green Mountain Platform Tennis, for Mitchell D. Cohn Trustee, 17 Richards Road, installation of platform tennis court located closer to the street than the principal dwelling, Map 16 Block 25 Lot 17.

Mr. Cherniske recused himself from this discussion.

Mr. Johnson reopened the public hearing at 7:24 p.m.

Dr. Mitchell Cohn was present to address the Commission. He told the Commission that he had left drawings of the proposed planting plan with Ms. Hayes and that no trees were removed for the construction of the raised platform tennis court. The court is surrounded on two sides (east and north) by the tree line and then an open field to the south and Richards Road to the west.

Mr. Johnson said that the concept the Commission works towards is "dark skies" and that it is more than just shielding light from Richards Road but shielding light from the sky. He continued that he did not think the regulations allowed this type of lighting. Dr. Cohn replied that he understands the concept of dark skies and that he has an observatory on the property. He did tell the Commission that the lights are perpendicular to the court and shine down on a relatively non-reflective source. The likelihood of light pollution is remote as the light is directed straight down. The lights are as high as the tree line and there is no capacity to change their direction.

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There is no one with a direct line of sight to the court and nothing can be seen from Route 341. Dr. Cohn said that he has no idea who could be impacted other than himself.

Mr. Johnson said that he had hoped that Dr. Cohn's contractor was in attendance as he puts the onus on him for constructing the tennis court without the proper permits. Dr. Cohn said that he will take some of the responsibility and that he did not realize he needed a permit until the LP company told him that they could not install under court heating without a permit. Dr. Cohn apologized. Mr. Johnson said that any contractor knows about permits and that this is beside the issue before the Commission.

Ms. Hayes explained that this was a special permit because it was an accessory structure placed in front of the main principle dwelling unit. Dr. Cohn said that the tennis court is a far distance away from the main house and that in order for the court to be placed behind the main house, trees would have had to been cut down and he did not want to do that. Mr. Johnson agreed with Dr. Cohn on that point. Ms. Hayes referred the Commission to section 6.4.1. on page 39 of the current regulations. Mr. Johnson said that he was looking for lighting and Mr. Manes referred him to page 69. Ms. Hayes pointed out that the section refers to areas other than residential. When asked if the regulations regulate lighting, Ms. Hayes reminded the Commission of the conversation that they had during the rewrite of the regulations and the changes that were subsequently made to the new regulations. It was decided during that discussion that it would be too hard for Ms. Hayes to regulate lighting on each house and the compromise was to include a listing of recommended and not recommended lighting fixtures. Mr. Johnson stated that since this is a special permit, conditions can be applied to the approval.

Ms. Casey asked for clarification about the setbacks. Ms. Hayes explained that the tennis court does meet the setback requirements, but that the reason for the special permit is because it was built in front of the main house. The main goal of the regulations is to keep accessory structures such as this behind the main house, but in some cases it is just not possible. As a result, a special permit is required. Dr. Cohn replied that if the Commission had seen the site, they would have agreed with his choice of location because of the least impact to the land and the trees. The new planting plan will help shield the structure from view of Richards Road.

Mr. Johnson said that it occurred to him that there would be more lighting coming from a house than from the platform tennis court and that the lighting from the house would most likely be on for a longer period of time. This does not totally negate the concepts that the Commission is working toward. Mr. Johnson asked if any of the Commissioners had any comments.

Mr. Winter said that the special permit would allow the Commission to regulate the lighting. He continued that if Dr. Cohn had come before the Commission before the structure was built, he would have asked that the structure be built without the lighting. Mr. Winter continued that the lighting plan that was submitted with the application shows a diameter of 180' being lit which he feels is more light than he would like to see on a dark sky. Dr. Cohn said that the way it is lit and the nature of the lighting would not pollute the night sky. Mr. Winter said that it does light up the area. He continued stating that he would have had no objection to Dr. Cohn putting the platform tennis court where it was put and that he feels Dr. Cohn should have the right to utilize his property, but he would not want to be driving on Route 341 or have the neighbors see the light coming from Dr. Cohn's paddle tennis court at night. Mr. De Paul asked if the Commission thought the plantings would mitigate that at all. Mr. Winter said that assuming the platform tennis court stands approximately 6' off the ground and the lights are 10' tall, the plantings would need to be 16' tall in order to shield the light. Mr. De Paul asked if the fixtures were shielded. Mr. Manes replied that sports lighting is specifically directed down to light the court. Mr. Winter said that it probably does direct down. Mr. De Paul said that you can add a shield. Mr. Winter said that might diminish the flood. Mr. Manes commented that they are designed to provide light to a specific area. Dr. Cohn said that Mr. Johnson was right when he commented that there would be more light if a house was built instead of the platform tennis court. Mr. Johnson responded that does not negate the Commission's concerns. Dr. Cohn said that the lighting is directed downward, that those driving past who would see the lighting would be the neighbors but that

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the planting plan calls for 12' – 14' trees to be planted in front of the structure. Mr. De Paul said that the point is that if this had come before the Commission as a special permit, they would have addressed the lighting. Dr. Cohn said that if he was given the choice between a special permit where you can regulate the lighting and a regular permit where you can't, he would have cut 40 – 50 trees down and pushed the court closer to the lake which he did not think anyone would want. Mr. De Paul said that the Commission would not have liked that either. Dr. Cohn agreed but said that would have been something to get passed legally and there would have been no point because pushing it back 30' would not eliminate the lights being seen by those driving past. Mr. De Paul said that the first point was that he should have come in for a permit. Dr. Cohn said that he was not debating that point and he wished he had. He sited the court on the property where he felt would cause the least impact and angled the court in the wrong direction so that the smaller width faces Richards Road. The fencing is black so that it blends into the woods as does everything painted brown. In all the years he has lived on that property Dr. Cohn said he has never cut down one tree, but if he had come before the Commission before the construction of the court and they told him he had to move it back 40' he would have done it and the end result would have been the cutting down of numerous trees. Dr. Cohn suggested that the Commission wait for a complaint and if someone does complain, he will shut the lights off. He continued that he would be stunned if anyone driving past the court would complain and that the principle residence has much more lights than the court which are on for security reasons. So far, the court has been lit once.

Mr. Johnson asked Dr. Cohn what hours he would use the court. He replied that it's mainly used during the day and not at night during the winter. During the summer, he did not anticipate having the lights on at night. Dr. Cohn figured that the lights would be on between 8 p.m. and 10 p.m. Mr. Johnson said that he would be looking for some sort of conditions if the Commission does approve the application. If there are no conditions, future owners could do worse. Mr. Manes explained that the approval goes with the property and if the Cohn's decided to sell, the next owners would still have to abide by the conditions. Dr. Cohn suggested that the Commission to come up with something reasonable.

Mr. Johnson said that he agrees with what Mr. Winter said and that if Dr. Cohn had come before the Commission before the platform tennis court was built the Commission would have requested that there be no lights. Dr. Cohn asked the Commission if they wanted to drive by the court and see it with the lights on. Ms. Hicks asked where the lights get turned on. Dr. Cohn said that the lights are turned on at the court and there is an automatic shutoff. Mr. Johnson asked if it was a timer and Dr. Cohn said that it was. When asked how long they stay on, Dr. Cohn said that he believed that the lights stay on for an hour and then they have to be turned back on manually.

Mr. Chavka asked if all the plantings have leaves on them. Dr. Cohn said that there is a crab apple, but he thinks the rest are evergreen. Ms. Casey asked Ms. Hayes if there are other properties in Town that have this type of set up. Ms. Hayes responded that there was one on Oak Ridge for a pool. She does not believe there is any lighting. There is another pool that was built in front of the house in the Horizonline with lighting. Ms. Casey said that she is concerned with future applications and how to handle something similar. Ms. Hayes said that as long as it is a special permit, the conditions applied set the precedent. On the other hand, approving it as a special permit and not applying conditions, sets a stronger precedent. Ms. Hayes said that she would like to see more plantings wrapping the court to the Route 341 side. Mr. Johnson said that had occurred to him also and asked if there was a reason why there are no plantings on that side. Dr. Cohn said that this area was all wooded.

Mr. Manes said that he is not a fan of lighting, but he has installed this type of lighting and it is not the type of lighting that spreads out. He continued that the lighting is on a timer so they will not be on all night but feels that conditions needs to be applied.

Ms. Hicks asked if the pole height was standard and if there was a chance that they could be shortened. Mr. Manes replied that he did not know what the distance was from the bottom of the light to the court. Dr. Cohn said that the throw of the light is adjusted to cover the court.

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Mr. Manes said that he feels since the court is located in a corner of the property and the lighting will be limited, putting some restrictions on it that would prevent future owners from using the court for something other than tennis would be the way to go. Mr. De Paul asked if 10 p.m. was a reasonable shut off time. Mr. Manes said he thought midnight was more reasonable while Mr. Johnson agreed with Mr. De Paul.

Mr. Winter asked what type of properties existed between the court and Route 341. Mr. Manes said that there is a house on the corner of Bald Hill Road and Route 341 which is across from Richards Road. There is another house on Davis Road that would have no view. Mr. Manes said that he did not think the house on Bald Hill Road would be able to see the lights through the woods. Mr. Johnson asked how many lots there were in between the court and Route 341 and who owned them. Dr. Cohn said that there is a smaller  $\frac{3}{4}$  acre lot adjoining Dr. Cohn's; the next lot is about 12 – 20 acres with a lot of wetlands and then he owns additional property. Ms. Hayes said that the space is all wooded. Mr. Winter asked what the possibility would be of development in that area. Ms. Casey said that it was all wetland and did not think it was developable. Ms. Casey said that the impact would be on the houses on Bald Hill Road and Davis Road. Living on Davis Road, Ms. Casey said that she can see the lighting from Dr. Cohn's house. Mr. Manes said that he thinks Mr. Winter would like to know how much can be seen from Route 341 just before you reach Richards Road.

Mr. De Paul said that some of the conditions would be hours of usage, the use of a timer and landscaping. He suggested that the landscaping be at least 16' tall and questioned the effect of the grasses. Mr. Manes asked Dr. Cohn if he anticipates using the court after 10 p.m. at night. Dr. Cohn responded that he is not sure and that the overwhelming use would be during the day and asked if the Commission would be willing to split the difference and go with 11 p.m. instead of 10 p.m. Ms. Hayes said that the other thing to remember is that the property is located within a small lake community that has recreation on it. Curtailing it to 10 p.m. does not go with the rest of the activity on the lake and is too early. She felt that 11 p.m. would be a good compromise. Mr. Manes agreed. Ms. Hicks said that she would go with midnight with a timer and assurance that the trees will protect the view. Mr. Johnson said that he would go with 10 p.m. and that after looking at the raised court, comparing it to the lighting of his own house and Dr. Cohn's main house and taking in consideration the amount of usage that is anticipated, he feels that conditions are necessary to prevent the court from becoming party central in the future.

*Mr. Manes moved to close the public hearing at 8:00 p.m. Mr. De Paul seconded and the motion carried unanimously.*

*Mr. Manes moved to approve waivers to sections: 4.3.3., 4.3.7., 4.3.8., 4.3.9., 4.3.10., 4.3.11., 4.3.13. and 4.3.14. Mr. Winter seconded and the motion carried unanimously.*

Mr. Winter said that he will renew his objections to the lights and felt it was unfair for the applicant to tell the Commission that if the Commission had not approved the lights, he would have moved the court farther back on the property and cut down some trees. He continued that if the applicant had come before the Commission before the raised platform tennis court was constructed, he would have pushed for no lighting and felt he could have convinced the Commission to agree.

Ms. Hicks asked if there could be a way to condition what the lights are used for, i.e., used for only playing platform tennis court. Ms. Hayes said that it could and it could be tied into the hours of usage. Mr. Manes said that he thought it could work. When asked what hours the usage would be restricted to, Mr. De Paul said that it should be sunset to 10 p.m. Ms. Hayes questioned the response and asked for clarification as it seemed to her that the answer would not allow use of the court during the day. Mr. Manes clarified and said that he was referring to the usage of the lights. Mr. Manes said that 10 p.m. was too early; Mr. Johnson said that 10 p.m. was a reasonable hour if there is a problem. Dr. Cohn asked if midnight could be tested. Mr. Manes said that once the condition is set, it cannot be changed. Dr. Cohn commented that Ms. Hayes was right, it is a very active lake

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community. Mr. Manes said it should be at least 11 p.m. Mr. Chavka asked if there will be different usage during the week than on the weekend. Dr. Cohn replied that it will not be used during the week. Ms. Casey asked for a compromise at 11 p.m. Mr. Manes said that the reality is that games will probably go later than 10 p.m.

Mr. Manes asked about the landscaping plan. Mr. Johnson asked if it could be conditioned on approval by the Town engineer. Mr. De Paul asked if it could be stated "landscaping sufficient to block lighting from the platform tennis court." Mr. Johnson asked if the Commission wanted someone to review the landscaping plan since the one Commissioner who could review the plan had to recuse himself from the discussion. Ms. Hayes reminded the Commission that there is a regulation regarding buffer landscaping. Mr. De Paul said that the regulation refers to a buffer required to something at ground height. Mr. Johnson said that he would prefer that the Town engineer review and approve it. Mr. Manes said that the Commission could require the applicant to supply additional information on the planting plan. Mr. Johnson said that he would prefer to not postpone the decision and would want review and approval by the Town engineer. Ms. Casey asked why the Commission cannot approve it when they know what is required. Dr. Cohn responded and Mr. Manes explained that the public hearing had been closed and no further information can be submitted. Ms. Hayes said that the Commission could require plantings of a certain height and it would be up to Kent Greenhouse to provide what has been required by the condition. Mr. Johnson said that he would prefer Town engineer review. Mr. Manes and Mr. De Paul asked that the request to the Town engineer be specific as to what the Commission is asking them to approve.

*Mr. Manes moved to approve Application #'s 109-14SP and 110-14C, RPTC, LLC, dba Reilly Green Mountain Platform Tennis, for Mitchell D. Cohn Trustee, 17 Richards Road, installation of platform tennis court located closer to the street than the principal dwelling, Map 16 Block 25 Lot 17 with the conditions that the light usage be restricted to the use of playing tennis only; that the lights will be on an automatic one-hour shut-off timer; that light usage be restricted to sunset to 11:00 p.m.; and that the landscape plan submitted with the original application be approved by Anchor Engineering to ensure that the lighting from the court is blocked or mitigated from view. Mr. De Paul seconded and the motion carried unanimously.*

*Mr. Manes moved to add item 6.B.3. to the agenda. Mr. Winter seconded and the motion carried unanimously.*

*Mr. Winter moved to hear agenda item 6.B.2. at this point in the meeting. Mr. Manes seconded and the motion carried unanimously.*

Mr. Cherniske returned to the meeting.

## **5.B. DISCUSSION AND POSSIBLE DECISION**

### **5.B.1. Rewrite of Zoning Regulations**

Ms. Hayes reminded the Commission of the February 19, 2015, informational meeting. She told them that First Selectman Adams had included the information in his February monthly newsletter and that a press release was sent to Lynn Worthington. Ms. Hayes said that she would send the same announcement to Catherine Boughton. The next meeting to discuss the regulations would be March 26, 2015.

Mr. Johnson said that he would not want to get into a lot of discussion with the public at the informational meeting and that he would like to let Mr. Chalder run the meeting as he sees fit.

### **5.B.2. Discussion on the possible change to the fee structure effective December 8, 2003.**

Ms. Hayes told the Commission that she had sent them a determination from Attorney Zizka on penalties and changing the fee structure. Mr. Cherniske said that Attorney Zizka basically said that the penalties that can be

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assigned could be tied into administrative costs that might be needed to investigate similar issues. When asked if penalties could be assigned, Ms. Hayes said that they can only be assigned according to the statutory requirements. Mr. De Paul added that even then, they can only be assigned if the Town has an ordinance to handle it. This ordinance would require the Town to set up a board to assess the penalties. Mr. Cherniske said that most Towns do that with regard to blight. Mr. Manes asked how other Towns handle it. Mr. De Paul said that it is done via the ordinance. Mr. Manes asked if this is a discussion that should be held with First Selectman. Mr. De Paul said that Mr. Johnson made a good point in stating that 99% of residents follow the regulations and did not think it would be worth going through the exercise of setting up that layer of government. Mr. Johnson said that the Commission could consider charging penalties based on additional staff time, but that it would have to go to a Town meeting because it would be a change to our fee schedule. Mr. Manes asked if the Commission would have to prove that they spent more time on the permit because it was presented late. Ms. Hayes said yes. Mr. De Paul said that the issue is how to prevent the misbehavior in the first place.

Mr. Johnson said that he did not think he wanted to hammer this out tonight and suggested speaking with Mr. Chalder about it. He continued that it might end up that a subcommittee would be created to work on it. Ms. Casey used the Historic Commission as an example of a Commission who did not have any recourse for work done without property approvals and that it wasn't until they had an ordinance in place that it changed. Ms. Hicks commented that there needs to be something in place and wondered if the best way to prevent it would be education. Mr. Johnson referred the Commission to the information that Ms. Hayes had gathered regarding what other towns are doing. Mr. Manes said that in most cases, the property owner is hiring someone to do the work.

### **5.B.3. Election of Officers**

Mr. Winter reminded the Commission that they had tabled this from a previous meeting. Mr. De Paul suggested that the position of Vice Chair/Secretary be rotated year to year in order to give every Commissioner an opportunity to sit in for the Chairman in his absence. Mr. Cherniske said that there are some people who can run a meeting very well and that he is not one of them and that the success of the meeting is driven by the person who is sitting in the Chairman position. Mr. Manes agreed. So, the current slate of John Johnson, Chairman; Dennis De Paul, Vice Chair/Secretary; and Adam Manes, Treasurer will continue.

*Mr. Winter moved to keep the current slate of officers. Mr. Manes seconded and the motion carried unanimously.*

## **6. NEW BUSINESS:**

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

#### **6.A.1. Application #'s 04-15SP and 05-15C, Kent Affordable Housing, Construction of Phase II, 15 Maple Street Extension, Map 4 Block 42 Lot 4.**

Ms. Hayes said that she had contacted the architect for the project who told her that they had not been able to get any of the surveying done due to the weather and would be withdrawing the application. Ms. Hayes asked that he put this in writing, which he did.

#### **6.A.2. Application #'s 01-15SP and 02-15C, Elissa Potts, 59 North Main Street, convert 2/3 of Fife N Drum Gift Shop (ground floor) from retail to 2 hotel/motel rooms, Map 19 Block 15 Lot 9.**

Ms. Hicks recused herself from this discussion.

Mr. Johnson opened the public hearing at 8:21 p.m. and read the legal notice into the record.

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Ms. Potts, owner of 59 North Main Street, presented the application to the Commission. She explained that she was before them to request a change of use to the gift shop by reducing its size by 2/3 in order to convert that space into two more hotel rooms. Each room would have their own entrance and egress windows. The bay window will be removed to accommodate the door and a new window will be added to the front room. The entrance door to the back room is already in existence. The interior staircase in the back room, will have a fire rated door installed and the basement, that is now storing items for the gift shop, will be used to hold non-flammable items. Mr. De Paul asked if the guests could access the basement and Ms. Potts said that the door will be locked allowing no access by those staying in the room. This back room will also be handicap accessible.

Mr. Johnson asked if the proposed landscaping would impact the parking. Ms. Potts said that the landscaping was not set in stone. Her plan was to add birch trees to block the view of the parking lot by the upper rooms. There already is a garden in front of the gift shop and the plan is to just extend it out 3' or 4'.

Ms. Potts said that the office and bathroom in the gift shop will remain where they are. Mr. Johnson said that it looks like the configuration will be 50/50 instead of 2/3 and 1/3. Ms. Hayes asked if Ms. Potts could add 2 more rooms in the place of the gift shop. She replied that she could based on conversations with the Fire Marshall. Ms. Potts continued that she would not add any more rooms and if they did decide to close the gift shop, they would rent out the space as another retail spot.

Mr. Manes asked if there were any restrictions that the Commission should be made aware of. Ms. Hayes said that she was concerned with the parking, but while doing her research she found that there was a variance granted by the Zoning Board of Appeals in 1980 to allow the enlargement of a non-confirming building in the business zone and relief from the "250 sq. ft. for every 3 restaurant seat regulation" and that the variance applies to the current use only. She interpreted this to mean that the parking requirement had been waived via the variance. Ms. Potts agreed and explained that the property that houses the restaurant has no parking at all and that the parking lot is on the same lot as the hotel/motel and gift shop. Mr. Winter said that he did not interpret the variance the same way. To help better understand, Ms. Potts read a letter from Mary C. Williams, Chairman of The Kent Fire Association dated July 3, 1983 (copy attached) which explains the variances. Mr. Winter said that he thought it was a great idea and would like to clean up the variance. Ms. Hayes said that the variance is on the land records and cannot be cleaned up. Mr. De Paul said that the sections that are being referred to no longer exist so the Commission can rely on the intent of the variance. He said that from a planning standpoint, the expansion of the motel in the center of the Town makes perfect sense. Mr. De Paul did ask if any parking spaces were going to be eliminated as a result of the addition of these two new rooms or landscape change. Ms. Potts said that the parking lot will be a little smaller if the landscaping was done, but it does not have to be done. She continued that some sort of screening can be put on the second floor. Mr. Manes said that he was all for it and that because the use is being changed, he did not think the variance comes into play. Mr. Chavka said that he did not believe the use would be changed. Mr. Manes said that the owner would still have a gift shop, but a portion of the gift shop would be changing its use. Mr. Johnson said that it was the motel part that was changing and he did not think it negates the variance that was granted for the gift shop and restaurant. Mr. Manes said that he did not think it was proper to go forward.

Ms. Hayes asked how many rooms there were in the building. Ms. Potts said that there were 6 on the second floor and then the 2 new proposed for a total of 8 rooms. According to the current regulations, 12 parking spaces would be required for the motel and that according to the information presented in 1995, there were 42 parking spaces. Mr. Johnson said that reducing the space in the gift shop should not change the variance and that the Commission should be concerned with the parking of the motel use. Ms. Potts asked the Commission to remember that for 6 months of the year, it is very quiet with mostly weekend use.

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TOWN OF KENT PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES FOR FEBRUARY 12, 2015

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Mr. Johnson said that taking up 4' in parking space due to some additional landscaping is a net plus and that the only hardship caused would be to the business and not the public. Ms. Potts said that she will make sure that the trees will not take up a lot of space and that the plan is to add birch trees because they grow tall.

Mr. Winter asked what the new square footage of the gift shop will be and Ms. Hayes replied that it would be 770±. He calculated that the business would need 16 parking spaces (4 for the gift shop and 12 for the motel) and that according to the way the variance is written, no parking is needed for the restaurant or the gift shop as long as it remains the gift shop; therefore, the hotel/motel would require a total of 12 parking spaces. When asked how many parking spaces were on the property, Ms. Potts replied 42. Ms. Hayes added that there are also 2 handicap and 5 spaces for employees. Mr. Winter stated that there would be enough even though they would be losing 4 spaces with the conversion. Ms. Hayes clarified that they would not be losing 4 spaces, but 4 feet in depth in front of the motel and gift shop. Mr. Winter said that he now understands and has no problem with the conversion. Mr. De Paul said that even if the parking lot were full, there are plenty of other spaces along North Main Street where people could park.

Mr. Winter asked if any lights will be added and Ms. Potts said no, there already was lighting. Ms. Potts asked if she would need to go to the ARB and Ms. Hayes said that she would and that she would add the conversion to the March agenda. Ms. Hayes also said that she would like a letter from the Sewer Commission agreeing to the additional hookups. Mr. De Paul asked if there were any waivers that needed to be submitted.

*Mr. De Paul moved to close the public hearing at 8:47 p.m. Mr. Winter seconded and the motion carried unanimously.*

*Mr. Winter moved to approve Application #'s 01-15SP and 02-15C, Elissa Potts, 59 North Main Street, convert 2/3 of Fife N Drum Gift Shop (ground floor) from retail to 2 hotel/motel rooms, Map 19 Block 15 Lot 9 conditioned on the receipt of the requested waivers; a letter of agreement from the Sewer Commission with regard to the hookup of 2 additional rooms; and approval from the Architectural Review Board regarding the replacement of one bow window with a standard, flat front window. Ms. Casey seconded and the motion carried unanimously.*

Ms. Hicks returned to the meeting.

## **6.B. DISCUSSION AND POSSIBLE DECISION**

### **6.B.1. Schedule Public Hearing for Change to Regulations by adding Sections 6.2.20, 6.2.21 and 21.4.4.**

Ms. Hayes told the Commission that this public hearing would be for the acceptance of the new temporary farm worker housing into the current regulations. The hope was that she would be able to schedule it for the regular meeting of March 12<sup>th</sup>, but when the review letter came from Attorney Zizka, it became evident that the proposed regulations might need to be tweaked. In addition, Ms. Hayes said that she had a meeting with Mr. Bill Arnold, President of the Kent Land Trust, at the Kent Land Trust Farm to look at adding a bedroom to the basement of the southern barn instead of installing a temporary trailer. As a result, Ms. Hayes determined that there would not be enough time to schedule the public hearing according to the statutes. Mr. De Paul said that he would like to point out that this change to the regulation is not just for the Kent Land Trust Farm and that there are other farmers that would benefit from this change. Ms. Hayes agreed but commented that the change to this portion of the regulations has always been driven by the Kent Land Trust. She continued that Mr. Chalder received the letter from Attorney Zizka and he feels that the Commission will need to review this.

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## **TOWN OF KENT PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES FOR FEBRUARY 12, 2015**

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Ms. Hayes also told the Commission that she had a conversation with Cathy Weber, Town Sanitarian, who said that she did not think that the State would give permission for the use of a trailer as temporary housing. It was her recollection that the only time the State did allow it was for temporary housing while a property owner rebuilt their house after a fire. Mr. De Paul said that he did not know what the rationale for that decision would be after the sanitary requirements are met. Ms. Hayes said that she did not know and suggested that Mr. De Paul contact the state.

Mr. Johnson confirmed that no public hearing should be scheduled and Mr. De Paul said that it should remain on the agenda for next month and that during that time the Commission should review Attorney Zizka's comments. Mr. Manes suggested that it be brought up during the February meeting for comment and told the Commission that he got some negative feedback from some residents that an annual fee would have to be paid for the continued use of the trailer. Mr. Johnson said that he thought that the Commission had decided not to charge a fee for the renewal at which time the site conditions would be reviewed. Mr. De Paul and Ms. Hayes agreed. Ms. Hayes said that she remembers there only being the one-time fee and the filing of the special permit on the land records. Mr. Johnson said that he was fine with having it discussed at the February 19<sup>th</sup> meeting. Mr. Manes said that at the current time, Kent Land Trust Farm does not have an imminent need for temporary housing. Mr. Cherniske said that we do need some sort of temporary housing for the rest of the farms.

*Mr. Manes moved to continue the scheduling of a public hearing for the change to the regulations to the next meeting. Mr. Cherniske seconded and the motion carried unanimously.*

#### **6.B.2. Housatonic River Overlay Zone mapping.**

Ms. Hayes told the Commission that the Northwest Conservation District was offering the river towns the opportunity to have new maps of the Housatonic River Overlay Zone printed for them at a cost of \$666. Mr. De Paul thought it would be a great idea. Ms. Hayes agreed and told the Commission that she has money in the budget to pay for it. The initial cost is \$1,000, but the Housatonic River Commission would be able to pay \$334 leaving the remainder to be paid by each Town. In addition to 2 copies of the map, a PDF file on CD would be provided. Mr. Cherniske asked if the parcels would be accurate. Ms. Hayes said that she understood that they would work with the assessor to get the most recent information.

*Mr. De Paul moved to approve the appropriation of money to have a new Housatonic River Overlay Zone map created by the Northwest Conservation District. Mr. Winter seconded.*

Mr. Johnson asked if the Commission would get any more utility after spending the money. Mr. De Paul said that he thought it would be very helpful. Mr. Manes agreed as did Ms. Casey and Mr. Chavka.

*After discussion, the motion carried unanimously.*

#### **6.B.3. Application #07-15Si, Guy Mauri, 52 Kent Cornwall Road, installation of 6 sq. ft. sign for Spirit Horse Farm lodging, Map 9 Block 43 Lot 15.**

Mr. Winter recused himself from this discussion.

The applicant was not present to address the Commission.

Ms. Casey said that she did not understand how Mr. Mauri could be putting up this kind of sign. Ms. Hayes said that the property has an approved use as a boarding house. Mr. Manes asked if there was any reason why the Commission should not be approving this. Mr. Chavka asked if approving this application would, in any way,

affect the current litigation. Mr. Manes said that the litigation has to do with the unapproved event usage and not the usage as a boarding house. Ms. Hayes said that her main concern was that when he filled out the application he put down “commercial” use, which she changed to “residential” because the property is not located in the commercial zone. Mr. Manes said that he agrees it should be run past Attorney Zizka and asked that Ms. Hayes ask him if it is permissible for Ms. Hayes to have changed the application. Ms. Hayes said that the property is not in the commercial zone. Mr. Chavka said that he believes that anything submitted by Mr. Mauri, at this point in time, should be referred to the Commission’s attorney. Ms. Casey, Ms. Hicks and Mr. De Paul all felt that Ms. Hayes should have not changed the application. Ms. Hayes responded that she expected to see Mr. Mauri at the meeting at which time this change would have been discussed. Ms. Hicks felt that the change to the application was very crucial and that she did not think it could be accepted.

*Mr. Manes moved to continue Application #07-15Si, Guy Mauri, 52 Kent Cornwall Road, installation of 6 sq. ft. sign for Spirit Horse Farm lodging, Map 9 Block 43 Lot 15 to the next meeting during which time Ms. Hayes will ask Attorney Zizka if the approval of this permit will influence the current pending lawsuit. Mr. De Paul seconded and the motion carried unanimously.*

**7. STAFF REPORT:**

**7.A. Executive Session; Legal Litigation: 52 Kent Cornwall Road**

*Mr. Manes moved to go into Executive Session; Legal Litigation: 52 Kent Cornwall Road. Mr. Cherniske seconded and the motion carried unanimously.*

The Commission came out of executive at 9:30 p.m.

Mr. Winter returned to the meeting at this time.

**8. REPORT OF OFFICERS AND COMMITTEES:**

No action taken.

**9. OTHER COMMUNICATIONS AND CORRESPONDENCE:**

**9.A. January 12, 2015, and January 26, 2015, letters from the Connecticut Siting Council regarding Sprint PCS notice of intent to modify an existing telecommunications facility located at 136 Bulls Bridge Road.**

No action taken.

**9.B. Proposed Amendments to the Zoning Regulations, Town of Sherman**

No action taken.

**9.C. FY 14 – ’15 Actual vs Budget, July – December, 2014**

No action taken.

**9.D. Murtha Cullina, Statement for Services Rendered through December 31, 2014, Invoice #503243, \$112.50.**

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**TOWN OF KENT PLANNING AND ZONING COMMISSION  
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*Mr. De Paul moved to pay Murtha Cullina, Statement for Services Rendered through December 31, 2014, Invoice #503243, \$112.50. Mr. Manes seconded and the motion carried unanimously.*

**9.E.** 2015 Land Use Academy

No action taken.

**9.F.** Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter, Winter, 2015.

No action taken.

**9.G.** Administrative Permits and Certificates of Compliance

No action taken.

**10. ADJOURNMENT**

*Mr. Chavka moved to adjourn at 9:40 p.m. Ms. Casey seconded and the motion carried unanimously.*

Respectfully submitted,

  
Donna M. Hayes, CZEO  
Land Use Administrator

*The Kent Fire Association*

*Kent, Connecticut*

July 3, 1983

RECEIVED FOR RECORD  
KENT TOWN CLERK

2015 FEB 18 A 11:41

BY *Jenny Treacy JR*  
TOWN CLERK

A. R. EDWARDS  
PRESIDENT

TO: Members of the KFD Zoning Commission  
FROM: Mary C. Williams, Chairman

As instructed at our June meeting, I have been researching past zoning experience at the Fife N Drum location.

At present, that lot has zoning permission to: operate a restaurant, operate a gift shop, and maintain office space above the gift shop. By virtue of variances granted 9/29/80, parking requirements were essentially waived for all three uses. However, the variances were granted "for current use only."

The present application #175 requests approval for a 6-room motel in place of the office space.

The use, as such, is a permitted one, under Sec. 6.2.2.

The ZBA, in granting the parking variances (they granted variances of Sections 4.1.1b,c, & e) has left our Commission in a tough spot. Although the ZBA did NOT grant a variance of Sec. 4.1.1g, which applies to motels, the other two variances remain in force for the restaurant and gift shop.

Therefore, since the restaurant and gift shop still have the right to reduce the number of parking spaces required by those two remaining uses, the requirement for a motel parking area equal to 250 sq. ft. for every two guests, plus 160 sq. ft. for each employee, can be met on that lot.

It appears that so long as the restaurant and/or gift shop remain on the lot, the parking requirements for those uses remain waived. The ZBA did not designate how many parking spaces were allocated to each use; it reads as if the restaurant and gift shop can operate regardless of parking space available.

Considering all this, I would propose that we approve the application, specifying that a minimum of 1820 sq. ft. of that lot be designated for the motel use. (250 x 6 = 1500; 160 x 2 = 320; 1500+320=1820). Then, if the gift shop use should change, the new use will have to meet parking requirements; same with the restaurant, although I doubt the restaurant use will change in our lifetimes.

If we wanted to be sticky about it, we could maintain that the variances granted clearly state that "Granting of the variances applies to current use only." I don't think we would get too far on that, because the variance does specifically waive the "250 square feet for every three restaurant seats" but does not set a minimum number of parking spaces for the restaurant. Apparently they could have two spaces and still be in business, since the restaurant is still the use.

The Traymons are anxious to begin work on their new proposal so that they might enjoy some trade during the foliage season. In view of the fact that there are 5 weeks between meetings this time, I understand their concern. Therefore, as Chairman, I am calling a Special Meeting to act on this and other applications that I have received. DATE: MONDAY, JULY 11, Town Hall, 8 p.m. Those of you who cannot make it, please call me with your thoughts. 927-3376; 914-832-6535.

*M.B.*