

**DRAFT MINUTES  
BROOKFIELD ZONING COMMISSION  
Thursday, November 10, 2011 – 7:00 p.m.**

**MEETING ROOM #133 – TOWN HALL, 100 POCONO ROAD**

**1. Convene Meeting**

Chairman W. Mercer convened the meeting at 7:00 p.m. and established a quorum of members.

**Present:** Chairman W. Mercer, Vice Chairman R. Blessey (arrived at 7:11 p.m.), Secretary C. Lynch, F. Weisman, Alternate and Voting Member F. Lollie, Alternate M. Grimes (arrived at 7:33 p.m.)

**Absent:** S. Parker

**Also Present:** Zoning Enforcement Officer A. Dew

- a. **Review Minutes of Previous Meetings: 10/27/11 – Commissioner Lollie moved to approve the Minutes of the October 27, 2011 Meeting. Commissioner Weisman seconded the motion, and it carried, 3-0-1, with Secretary Lynch abstaining.**

**2. Land Use Enforcement**

- a. **Enforcement Officer's Report:**

*ZEO Dew reported on the following:*

**Requests for Voluntary Compliance**

**13 Hillside Court #201100836** – ZEO Dew inspected this house on Saturday, November 5, 2011, and found it to be a split level ranch, with no separate apartment, kitchen or doorway. The complaint originated through an email to the Board of Selectmen from an alleged previous tenant. It will be removed from the Report.

**74 Candlewood Lake Road, #201100755** – This complaint relates to unregistered vehicles on the property. The owner was given until November 12, 2011 to respond. ZEO Dew has not heard from him/her yet.

**72 Gray's Bridge Road, #201100869** - The property is in need of a Certificate of Zoning Compliance and a tenant fit-up, both of which are in process.

**Cease and Desist**

**164 Federal Road, #201100941** – The property is in need of a Site Plan Modification for a temporary storage container in the buffer that has not been approved. A Cease and Desist Order was sent on November 10, 2011.

**Citations**

**6 Autumn's Way #201100480** – Hearing Officer B. Froehlich has provided his written decision, a copy of which was attached to the Commissioners' reports. The Citation was not upheld by the Hearing Officer. Chairman Mercer noted that the complaints of commercial activity originated from neighboring condominium owners, and asked ZEO Dew that if the complaints continue, that she request the abutting property owners to provide more detailed information.

**54 Ironworks Hill Road #201100755** – A Citation was sent to Kristoffer Bouchard, and he was given until November 14, 2011 to respond. The violation involves collected scrap metal on the site, which often disappears for out-of-state sale, and then begins accumulating again.

**Town Counsel Action**

ZEO Dew referenced the Letter from Town Attorney included in packet (*Attorney-Client Privileged Communication*) (listed below under Agenda Item 2.b.) for the following matters: **20 Station Road #200101116; 533 Federal Road, #200900708; 45 Riverford Road, #200900768**. She indicated she had not heard from Special Town Counsel P. Olson regarding the following: **1 High Ridge Road #201001067; and 9 Stoney Farm Lane #20110095**. Chairman Mercer requested that ZEO Dew contact Attorney Olson for an update.

Chairman Mercer inquired regarding the level of debris at 54 Ironworks Road. Secretary Lynch indicated that the site “looks terrible” and that, while the amount of debris is reduced at times, “it never goes away”. Chairman Mercer asked that if there is no response from Mr. Bouchard by November 14, 2011, that ZEO Dew contact Town Counsel to take further action.

*Vice Chairman R. Blessey arrived at 7:11 p.m.*

**b. Enforcement Correspondence:**

1. Letter from Town Attorney included in packet (*Attorney-Client Privileged Communication*) – See discussion above.

**3. Review Correspondence**

- a. Minutes of other Boards and Commissions: Inland Wetlands Commission 10/31/11; Zoning Board of Appeals; Planning Commission 10/20/11; Zoning Committee 10/20/11 (minutes on tape in Land Use Office)**
- b. Memo from Katherine Daniel to Planning and Zoning Commissions dated 11/1/11**  
Re: Review of procedures for accepting surety bonds or passbooks for bonding
- c. Letter from John S. MacLean, Jaymack Properties, LLC, to Katherine Daniel dated 11/1/11 Re: Land Use Application – 7 Del Mar Drive**

**No discussion/no motions.**

**4. Old Business:**

- a. Proposed Regulation Change #201100838: Section 242-501 – Table of Permitted Uses**  
(PH scheduled for 12/1/11)
- b. Proposed Regulation Change #201100827: Section 242-305C(11) – Handicapped Parking (PH scheduled for 12/1/11)**
- c. Proposed Regulation Change #201100881: Section 242-202 – Definition of Commercial Vehicles; Section 242-305F – Commercial Vehicles in Residential Zones and Section 242-401A(2)(g) – Commercial Vehicles for Customary Home Occupations (PH scheduled for 12/1/11)**
- d. 125 Commerce Drive (Petro, Inc.) #201100877: Certificate of Zoning Compliance**

within the Aquifer Protection District (*dec date 12/31/11*)

1. Hazardous & Contaminant Materials Control Plan
2. Letter from S.C. Altman & Associates, Inc. to Bob Dance dated 8/27/11

Re:

Wash Water Recycle System (report attached)

3. Map "Site Plan" prepared by CCA, LLC dated 2/25/08 revised 7/16/08 – sheet

S1

*S. Sullivan, P.E., CCA, 40 Old New Milford Road, was present on behalf of the applicant.* He discussed the design review approval of 2008. Mr. Sullivan indicated that his client is attempting to secure a tenant prior to beginning construction of the planned addition. The proposed tenant is Petro, Incorporated. *R. Boullianne, 12 Hollis Dr., Brookfield, was present.* Mr. Sullivan reviewed the proposed use by Petro, Inc., which will not include any storage of home heating oil on the site. It will include washing and light maintenance of company trucks, in an indoor, self-contained area. *B. Dance, Petro Oil, was also present.* Mr. Sullivan continued that Petro plans on occupying a portion of the existing building for office space, and 6,000 square feet in the addition.

Commissioner Lollie inquired regarding the system that will recycle the water from the contained washing, and Mr. Dance explained it in detail. He indicated that it will be pumped out twice a year. Vice Chairman Blessey inquired if the oil coming off the truck during the washing is flammable, and the applicants indicated it would be too diluted from the washing to be flammable.

Vice Chairman Blessey reviewed Section 242-502D(2) of the zoning regulations, entitled, "Prohibited Uses in Aquifer Protection District", and the exception of substances utilized for retail uses. He indicated that the Commission has an opinion from Town Counsel that this use is retail and is excepted.

Chairman Mercer inquired if there would be any circumstance that would cause a full truck to be parked on the site, and Mr. Dance indicated it would not be the norm. He further stated that there would be eight trucks on the site. Mr. Boullianne also advised that the trucks will be in a gated, restricted area. There was discussion regarding the presence of oil separators and a catch basin drain for rainwater, and oil/water separators already proposed in various areas on the site. Chairman Mercer also asked about the level of difficulty involved in accessing the property to intentionally drain the truck. Mr. Dance explained that the truck would have to have a hose hooked up to it, and it would be very difficult for a layperson to do that.

Vice Chairman Blessey inquired if it was possible to put a depressed area in the ground, with a canopy, over the parked trucks to eliminate rainwater as an issue. Mr. Dance advised there is a similar structure in the company's Canton location.

*Commissioner Grimes arrived at 7:33 p.m.*

There was additional discussion regarding the exception under Section 242-502D(2)(n) in the

regulations.

The Commission inquired if there were containment systems at the company's other locations, and Mr. Dance indicated that there are none in the New Milford, North Haven or Norwalk locations. The Canton facility does, but it is not under where the trucks are parked.

The Commissioners expressed their concern regarding the location in the aquifer. Secretary Lynch pointed out that a spill is not likely; and that the storage would be short term. Chairman Mercer inquired regarding the capacity of an existing storage tank, and Mr. Boullianne advised that he believes it is 15,000 gallons and is used by his business partner for his general contracting business. Vice Chairman Blessey reviewed the other tenants and their uses in the area, some of which are pre-existing and non-conforming for the aquifer protection district. With regard to the above-referenced tank, it was noted that it was purchased in the late 1980's.

Secretary Lynch indicated he was satisfied with the proposed containment system.

**Secretary Lynch moved, after careful consideration of application #201100877, to approve the Certificate of Zoning Compliance, as submitted, with the stipulation that the above ground diesel tank in the back be removed. Vice Chairman Blessey seconded the motion.**

There was discussion regarding whether or not a Certificate of Zoning Compliance could be issued prior to a building being constructed. Commissioner Grimes stated he believed it could not be issued. Mr. Boullianne indicated that he could not construct the building without the approval. ZEO Dew indicated it is necessary to have the Certificate of Zoning Compliance prior to issuance of a Certificate of Occupancy per state statute.

**Secretary Lynch withdrew his motion, and Vice Chairman Blessey withdrew his second**. The Commission continued this matter until the December 1, 2011 meeting, in order to get the opinion of Town Counsel on the issuance of the Certificate of Zoning Compliance, pre-construction. Mr. Sullivan indicated he would also research the matter for the applicant.

## **5. New Business:**

### **a. 84, 106, 112, 128 & 140 Federal Road (BJ's Wholesale Club) #201100920:**

#### **Site Plan**

**Modification** to include – Off-site roadway improvements and addition of roll-up door

to the building. Request for bond reduction. (*dec date 1/14/12*)

1. Transmittal letter from Susan Hays to Katherine Daniel dated 11/2/11 Re: BJ's

Warehouse Development – Site Plan Modification

2. Letter from Steven W. Russo, Esq. To Katherine Daniel dated 11/2/11 Re:

Samuels & Associates Development LLC

3. Maps Submitted for BJ's Wholesale Club - Site Plan Modification

- “Sediment And Erosion Control Plan – Phase II” prepared by RJ

- O’Connell & Assoc. Inc. dated 2/8/11 revised 11/2/11 – drawing C-1B
  - “Grading And Drainage Plan” prepared by RJ O’Connell & Assoc. Inc. dated 2/8/11 revised 11/2/11 – drawing C-2
  - “Parking And Traffic Control Plan” prepared by RJ O’Connell & Assoc. Inc. dated 2/8/11 revised 11/2/11 – drawing C-4
  - “Conceptual Offsite Roadway Improvements” prepared by VHB, Inc. dated May 2011 revised 8/9/11 – drawing 0S-01
  - “Conceptual Offsite Roadway Improvements” prepared by VHB, Inc. dated May 2011 revised 8/9/11 – drawing 0S-02
4. Performance Bond Estimate, prepared by R.J. O’Connell & Associates, Inc. dated 11/2/11

*Secretary Lynch recused himself and left the room at 7:49 p.m.*

*Attorney S. Hays, Updike, Kelly & Spellacy, 100 Pearl St., Hartford, was present. She stated she wished to address three items with the Commission: 1) a minor modification to elevation of building, to add a roll up door by the tire facility, which will be the same color as building; 2) requirements of the State Transportation Commission certificate, including additional road work (a) at intersection of White Turkey and Federal Road, to make left turn lane on White Turkey longer; (b) in front of the site, to elongate the median from the south heading north to past the entrance to the gas station; and (c) to add a right turn lane into the main entrance; and 3) a request to decrease the bond in light of the Commission’s recent regulation change, per the above-listed estimate of B. McCarthy.*

Commissioner Weisman inquired regarding the status of the project. Attorney Hays advised that the water company just got first round of approvals, and there have been environmental issues at the site that have to be addressed. Her client hopes to close in February and start construction immediately.

**Vice Chairman Blessey moved to approve the approve the application for a site plan/design review modification, #201100920, for the offsite roadway improvements specified by the State, for the addition of a roll up door in the front of the building, and to change the bond requirement amount to 615,000.00 . Commissioner Grimes seconded the motion, and it carried unanimously.**

**b. 901 Federal Road (Newbury Village) #201100925: Site Plan Modification for Addition**

of a Deck and Patio area (*dec date 1/14/12*)

1. Map titled “Landscape Improvements At Detention Pond” prepared by CCA, LLC

dated 8/29/11 revised 8/31/11 – sheet L8

*D. Stone was present. He pointed out the location of a retention basin at the rear of the site.*

*Secretary Lynch returned to the meeting at 7:57 p.m.*

Mr. Stone indicated that the retention basin is also the source of water for the irrigation system at the site. There is a building that overlooks this, and the applicant wishes to make the area more attractive. The Inland Wetlands Commission has approved a plan to build a deck, with a small patio adjacent, overlooking the pond, and landscaping around the pond. Mr. Stone also noted a kayak ramp, with public access.

**After review of the file, Commissioner Grimes moved to approve #201100925: Site Plan Modification for Addition of a Deck and Patio area at 901 Federal Road, Newbury Village. Vice Chairman Blessey seconded the motion, and it carried unanimously.**

**6. Tabled Items:           None.**

**7. Informal Discussion:**

**a. Town of Brookfield Website:** Discussion on having a link to Zoning that would include:

Zoning History, Bio's of Commissioners, FAQ's, Minutes, and Forms & Documents

There was discussion regarding the Zoning link on the existing Town website. Commissioner Grimes indicated that he is satisfied with the current website and that he does not want to expend staff resources on an upgrade. ZEO Dew discussed having a link to zoning forms and documents, but the importance of having applicants submit those forms in person, to Land Use Office staff, was noted, for purposes of completeness and correctness. Vice Chairman Blessey and Chairman Mercer stated that they were not satisfied with the current navigation opportunities on the website. ZEO Dew will look into anything that can be done to make the website navigation more simple.

**b. 640 Federal Road:** Renovation of building to include multi-family on 2<sup>nd</sup> floor and

Commercial on 1<sup>st</sup> floor

1. "Proposed Site Plan" prepared by Nehring & Associates dated 11/2/11 – sheet

SK-1

2. "Proposed First Floor Plan" dated 11/3/11 – sheet SK-2

3. "Proposed Second Floor Plan" dated 11/3/11 – sheet SK-3

*C. Nehring, Architect, was present.* He discussed what was currently in the building, and indicated that his clients have not been successful in renting the office space portion. They would like to remove the commercial space on the second floor and convert it to residential apartments. The Commissioners reviewed the above-listed documents including the site plan, existing floor plan and proposed first and second floor plan. Upon inquiry from Vice Chairman Blessey, Mr. Nehring stated that he is not aware if the second floor apartments are "legal", but they have been present for many years. There was discussion regarding the allowance of multi-family dwellings in the zone, and whether that use includes stand alone multi-family properties or mixed uses in buildings. Vice Chairman Blessey indicated that if the existing apartments are an intensification of an approved use, then it could be approved.

Chairman Mercer noted other issues: an apparent inconsistency with the regulations' use table, IRC80/40, and the allowance of multi-family on an 80,000 square foot lot, but subject to the restrictions in Section 242-501G. Section 242-404D requires a minimum land area of five acres in zones that other than residential. Chairman Mercer indicated Town Counsel would have to be consulted. He further noted that there are provisions that 35% of the project must be conserved land area; and that there has to be an active recreation area

Chairman Mercer pointed out that in Section 242-404D(4), the maximum number of units is six for a one or two-story structure. Mr. Nehring pointed out that eight units are being proposed for his client's building. Chairman Mercer also noted that there may be an issue with the access drives on the site, whether they are local access or "main road". There was brief discussion regarding the difficulty of the site and the history of the uses of the building.

The Commission advised it would ask Town Counsel regarding the allowance of the proposed use at the site and advise Mr. Nehring of the outcome.

There was brief discussion regarding hotel and cabin regulations.

Mr. Nehring also noted that the Towns of Darien and Westport have regulation books that are easy to follow.

8. **Comments of Commissioners:** Commissioner Weisman thanked the newer members of the Commission for bringing a "fresh breath of life" to the Commission. The other Commission members also congratulated Commissioners Grimes and Lollie on their election victories as regular members of the Commission.

9. **Adjourn:** Vice Chairman Blessey moved to adjourn the meeting at 8:30 p.m. Secretary Lynch seconded the motion, and it carried unanimously.

**\*\*Next Regular Meeting Scheduled for December 1, 2011\*\***