

DRAFT MINUTES
BROOKFIELD ZONING COMMISSION
Thursday, February 9, 2012 – 7:00 p.m.
MEETING ROOM #133 – TOWN HALL, 100 POCONO ROAD

1. Convene Meeting

Present: Chairman W. Mercer, Vice Chairman Blessey (arrived at 7:12 p.m.), Secretary F. Lollie, C. Lynch, M. Grimes, Alternate and Voting Members where indicates R. Ziembecki, J. Cordisco and J. Varda (arrived at 7:24 p.m.)

Absent: None

Also Present: Zoning Enforcement Officer A. Dew

Commissioner Grimes administered the oath of office to Alternate Commissioner Cordisco. The Town Clerk's Office will be advised.

- a. **Review Minutes of Previous Meetings: 1/26/12 – Commissioner Grimes moved to approve the Minutes of the January 26, 2012 meeting. Commissioner Lollie seconded the motion. The following corrections were noted: on Page 2, to correct the spelling of “54 Ironworks Hill Road”; on Page 3, Item 6.b., last sentence, first paragraph, to change “377 square feet” to “377 feet”; on Page 7, second paragraph, fifth line, to change, “uniformed” to “uniform”; on Page 7, fourth paragraph, to add the words “of the audience” after the word, “members”. Motion carried, 3-0-2, with Commissioners Lynch and Ziembecki abstaining.**

2. Land Use Enforcement

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

Zoning Enforcement Officer A. Dew reported on the following:

Requests for Voluntary Compliance

213 Candlewood Lake Road, #201101044 – Mr. O'Hara has cleaned up everything except for four or five boats on the right wall of the building. ZEO Dew also spoke with the Fire Marshal about whether or not the remaining boats are a fire issue, and he advised that it is not because the fire vehicles do not get that close to the building. However, that space is an access way on the approved site plan. ZEO Dew advised Mr. O'Hara that the boats will have to be moved within thirty days.

349 Candlewood Lake Road, #201200026 – This complaint involved a boat and a car in the front yard, and they have been removed from the property. ZEO Dew will clear this item from the Enforcement Report.

143 Federal Road, #201200040 – ZEO Dew will write a letter to Panera and advise the business that a permit is needed for the sign.

41 Woodview Drive, #201200100 – This complaint relates to a dumpster that has been on the property for a long time. The material in the dumpster is garage-type material, not

household/food garbage. ZEO Dew sent a Request for Voluntary Compliance. The property owner is allowed to have a dumpster on the site for fourteen days; longer if there is a building permit. There is no open building permit for this site.

Cease and Desist Orders

7 Cross Road, #201200016 – This complaint relates to piles of debris that resembled building material. The Building Department has issued a Cease and Desist. ZEO Dew has a contact telephone for the property owner, who does not live in the house. He has advised her that he would clean up the site this weekend.

632-640 Federal Road, #201200036 - There are two grease traps on the right side of the building, that have nothing over them except for a yellow stripe. The holes are three or four feet deep, and there are also pot holes on the site. A Cease and Desist was sent January 13, 2012.

Commissioner Grimes moved, after careful review of the file, to issue a Citation to 632-640 Federal Road, #201200036, for violation of Section 242-501K(1). Commissioner Lollie seconded the motion, and it carried unanimously.

360 Federal Road, #201200078 – The chain link fence and silt fence were in disrepair, and entering the roadway. They have since been fixed. ZEO Dew will continue to inspect this active site, and the matter will be removed from the Report.

10 Whisconier Road, #201200023 – This complaint relates to a shed without a permit. A Cease and Desist has been sent, and the property owner has picked up a variance application.

Miscellaneous

Chairman Mercer noted that **The Craft Center** has two signs, and requested that ZEO Dew advise it that may only have one.

55 Candlewood Shores Road – ZEO Dew received a letter from a Candlewood Shores resident regarding trash and dog droppings in the front of the yard, alleging that the site is unsafe for children.

The Candlewood Shores Tax District Manager was copied on the letter. ZEO Dew advised the Shores' representative that she would address the trash issue.

Vice Chairman Blessey arrived at 7:12 p.m.

Citations

54 Ironworks Hill Road, #201100755 – The property owners apparently have left town. ZEO Dew advised that a horse trailer was there for two days, but has since disappeared. The property appears to have been abandoned, although the property taxes have been paid and several liens have been paid off.

Town Counsel Action

20 Station Road, #200101116 – ZEO Dew advised that some of building has been demolished.

533 Federal Road, #200900708 – There has been no new activity.

45 Riverford Road, #200900708 – The site makes it difficult to see if there has been activity on the site.

1 High Ridge Road, #201000315 – There is pending litigation with the Inland Wetlands Commission. ZEO Dew advised that the property owner did appear at the last IWC meeting.

9 Stoney Farm Lane, #201100095 – ZEO Dew is waiting to hear from Attorney Olsen regarding the pending litigation.

Miscellaneous (continued)

Commissioner Grimes advised ZEO Dew that at the corner of Elbow Hill and South Mountain Roads, there is a large boulder on the side of the road. ZEO Dew will advise the Department of Public Works.

3. Review Correspondence

a. Minutes of other Boards and Commissions: Inland Wetlands Commission
1/23/12;

Zoning
Zoning Board of Appeals; Planning Commission 1/27/12 special site walk;

Sub-Committee

b. Connecticut Federation of Planning & Zoning Agencies: CFPZA Annual Conference

– March 15, 2012

c. Memo from Ralph Tedesco, Director Public Works, to Zoning Commission dated 2/3/12

Re: Costco

There was brief discussion regarding Item 3.c. regarding stabilization of this site. Chairman Mercer spoke with Mr. Tedesco and advised him that the Commission believes the site will be stabilized.

Additionally, with regard to a “paper road” on the north side of the site, the Town has researched the issue, and the Town Attorney does not believe it is a Zoning Commission issue or a Town issue. The Town Attorney believes that the applicant should be addressing this problem. *Attorney T. Cody, Robinson and Cole, was present on behalf of Costco, and advised that the issue is being resolved.*

Commissioner Grimes moved to go to Agenda Item 5.a. Chairman Mercer seconded the motion, and it carried unanimously.

5. Old Business:

a. 540 Federal Road #201101017: Design Review for a Municipal water storage tank,

water main, electrical & driveway (dec. date 2/11/12)

1. Letter from Steven Sullivan, CCA, LLC to Zoning Commission dated 1/30/12
Re:

Water Storage Tank #201101017: Request for 65 day extension

2. Letter from Richard Papenfuss, Water Source, to Zoning Commission dated 2/1/12

Re: 540 Federal Rd “Incentive Housing Development” 5 Lot Subdivision for 125

Unit Affordable Housing, Application #201101017

- 540 Federal Rd – Dry Hydrant Detail
3. Letter from Steven Sullivan, CCA to William Mercer, Chairman Zoning Commission dated 1/31/12 Re: Water Storage Tank Oak Meadows – 540 Federal Rd

Receipt of a letter from Mr. Sullivan dated January 30, 2012, requesting a 65-day extension was noted, as was a letter dated February 9, 2012, requesting the tabling of this matter to the next regularly scheduled meeting on February 23, 2012.

Vice Chairman Blessey moved to approve a sixty-five day extension for #201101017, 540 Federal Road, Design Review for a Municipal water storage tank, water main. Secretary Lollie seconded the motion, and it carried unanimously.

Point of order by Commissioner Grimes: with the arrival of Vice Chairman Blessey, Alternate Commissioner Ziembecki is no longer a Voting Member.

Commissioner Grimes moved to go to Agenda Item 6.a. Vice Chairman Blessey seconded the motion, and it carried unanimously.

6. New Business:

a. 398 Federal Road - Proposed Zone Change #201200088: Current Zone is IRC 80 /

40 and Proposed Change is Incentive Housing Overlay Zone (dec. date 4/14/12)

1. Attachment A “Existing Zone Map” prepared by CCA, LLC dated 1/29/12 – sheet 1 of 3
2. Attachment B “Proposed Incentive Housing District Zone Change By Barnbeck, LLC” dated 1/29/12 – sheet 2 of 3
3. Attachment C “Proposed Incentive Housing District Zone Change By Town of

Brookfield Zoning Commission” dated 1/29/12 – sheet 3 of 3

Commissioner Grimes moved to set a Public Hearing for March 8, 2012, for #201200088: 398 Federal Road for a Zone Change Request: Current Zone is IRC 80 / 40 and Proposed Change is Incentive Housing Overlay Zone. Vice Chairman Blessey seconded the motion, and it carried unanimously.

Commissioner Grimes moved to amend the Agenda to add as Item 8.a., Informal Discussion: Mobile Vending. Vice Chairman Blessey seconded the motion, and it carried unanimously.

8. Informal Discussion:

a. Mobile Vending – During the following discussion:

Alternate Commissioner J. Varda arrived at 7:24 p.m.

Chairman Mercer noted that there have been several requests from individuals who wish to sell food items in parking lots. There is a Town ordinance that prohibits selling on a public street, and does not apply to individuals going into parking lot. Vice Chairman Blessey discussed recent change in a similar ordinance in Danbury, where it is allowed in some zones, and not in others.

It was noted that it could affect required parking space numbers. The Commission will look into how other municipalities have handled the issue, in terms of licensing, State Health Department requirements, and rental agreements with property owners. There was discussion regarding whether site plan applications would be necessary.

4. Continued Public Hearing 7:30 p.m.

a. Proposed Regulation Change #201200015: Section 242-308F – Liquor Outlets
(ph

close date 3/1/12)

Commissioner Lynch and Vice Chairman Blessey recused themselves from this matter and left the room at 7:31 p.m.

Chairman Mercer polled the Commission members about the extent of their attendance and review of meeting minutes and tapes. He noted HhE hE that the following members would be voting for this item: Mercer, Varda, Lollie, Grimes and Cordisco.

There were no members of the audience present to speak in favor of the application.

Attorney T. Deakin, was present to speak in opposition, on behalf of his clients, L. Venezio, Brookfield Country Wine and Spirits, and J. Thingenthal, Village Liquor Shoppe. Citing Connecticut General Statutes Section 8-3b, which gives the Zoning Commission power to amend regulations, Attorney Deakin stated that the proposed regulation change is not consistent with the Plan of Conservation and Development (POCD) as required for a regulation change because: 1) it will allow for greater concentration of liquor stores in the lower Federal Road corridor, which will lead to more traffic and impact the quality of life in Brookfield; 2) the migration of the liquor stores to the lower Federal Road corridor will cause an inconvenience to the townspeople because of the traffic, which will lead them to drive to other local towns for liquor; 3) it will impact the Town Center District (TCD), the development of which is an important aspect of POCD and its many diverse uses, thereby impacting the business and economic climate of the TCD; 4) a greater concentration of liquor stores in the lower Federal Road corridor, will result in “fishing” (a practice where underage drinkers congregate in parking lots to try to find adults to buy them liquor), which Attorney Deakin feels is more likely to occur in large shopping center parking lots.

Attorney Deakin disagreed with the rationale provided in the “Statement of Justification” attached to the application. He submitted C.G.S. Sec. 30-44 for the record, which he stated recognizes the power of local zoning commissions, through ordinances, to regulate the sale of alcohol and exercise police power over issues such as traffic congestion and safety and health and welfare of its town residents. He contended that if the regulation change passes, Costco will get one of the six alcohol permits. He noted the possibility of BJ’s Wholesale Club, not yet constructed, following suit, which would result in four or five liquor stores in the southern Federal Road corridor. Additionally, Attorney Deakin indicated that C.G.S. 30-46 already considers the appropriateness of the location of liquor stores.

With regard to the applicant’s contention that the separation distance between stores is vague and unclear, Attorney Deakin noted that the applicant does not attempt to amend the regulation with a more clear measurement. He cited other municipalities that have separation distances based on radius.

Lastly, with regard to the applicant’s argument that its proposed amendment simplifies zoning in line with the goals of the POCD, Attorney Deakin notes that the POCD does not suggest the elimination of regulations to simplify zones, but rather, lists several other strategies on page 66 of that document to accomplish that task.

Attorney Deakin went on to state that the sale of liquor is not the same as other retail areas. He notes it is regulated by the State through various statutes, including those that recognize the local zoning powers. He concluded by stating that the proposed amendment would increase traffic in lower Federal Road corridor, impact the viability of TCD, and impact quality of life of Brookfield, and is, therefore, not consistent with POCD.

Chairman Mercer inquired regarding the separation distance for liquor stores in the City of Danbury and Town of Farmington. Attorney Deakin indicated that in Danbury, it is 2,000 feet from the main entrance of the building; and in Farmington, it is 1,500 feet. There was discussion regarding the differentiation of licenses between package stores, restaurants/bars, and grocery store beer sale permits.

There was additional discussion regarding Section 242-504C, which allows for more than one liquor store in a major shopping center on more than 25 square acres. It states that Section 242-308F shall not apply.

Commissioner Grimes suggested that regardless of the outcome of this application, the regulation needs to be clarified, and this had been discussed after a prior application.

L. Venezia, Brookfield Country Wine & Spirits, was present, and spoke in opposition to the application. With regard to the two liquor stores in one plaza regulation, he suggested that this regulation was not “well thought out”. Mr. Venezia also submitted a statement signed by him and his wife, in opposition for the record. He cited that the proposed change will lead to stores such as Costco and BJ’s purchasing permits to sell liquor, and will eliminate the four remaining package stores which are “crucial” to the economic well-being and property values of shopping centers that they sit in. Mr. Venezia referenced a letter from a liquor control agent dated

February 8, 2012, regarding the responsibility given to local municipalities regarding the sale of liquor. He also summarized a 2010 report regarding density of alcohol outlet establishments and the effects on crime statistics. He further argued that the current regulation helps maintain a competitive business market while keeping in the separation requirements. Lastly, he submitted a petition signed by 500 residents that was part of his opposition to a prior application.

P. Parray, 21 Laurel Drive, Brookfield, CT, was present. He also spoke in opposition to the application. He cited other municipalities that have a greater density of liquor stores based on population. Mr. Parray further stated that he does not want the 2,000 square foot regulation removed, as it would allow further concentration of liquor stores, increase traffic, and make the town less attractive to its residents.

Attorney T. Cody, Robinson & Cole, 280 Trumbull St., Hartford, CT, was present on behalf of the applicant, Costco Wholesale Store. He submitted a letter February 9, 2012, to Chairman Mercer and the Commission. In response to an inquiry at the last hearing, the letter outlined his research regarding distance requirements between liquor stores in all other municipalities in the State. He noted that 62% of the towns have no separating distance requirements. Additionally, of the municipalities with separating requirements between liquor stores, most of them have a distance of 1500 feet or less. Attorney Cody advised that only four besides Brookfield require a distance of 2000 feet or more. He further noted that of those that do have the separation requirements, a majority of those towns measure from front door to front door, not from property line to property line. Attorney Cody also cited a Superior Court case involving the City of Torrington's Planning and Zoning Commission, which repealed a separation requirement regulation. The repeal was challenged on the grounds that it involved one business, and was not consistent with Torrington's POCD. The Court upheld the Commission's repeal of the regulation on the basis that it (the Commission) was acting in its legislative capacity. The Court agreed that the regulation was antiquated, and serving an anti-competitive purpose. It also pointed out that zoning regulations are not intended to regulate competition. Attorney Cody stated that this recent case would support the defensibility of a text amendment change to the regulation.

With regard to the opposition's argument related to traffic, Attorney Cody indicated that the regulation does not relate to traffic, as traffic is a consideration through the site plan/design review process. He noted that the separation requirement does not affect the State statute that governs the number of liquor stores. He further argued that a package store does not function differently than other retail uses, such as a hardware store, retail store, or pharmacy.

Attorney Cody also cited Attorney Marcus' letter to the Commission, indicating that there is no legal impediment to delete the regulation. With regard to Attorney Deakin's discussion regarding C.G.S. Sec. 30-44, he pointed out that it does not require or prefer that zoning commissions have separation requirements via their regulations, but only allows them to if they wish. Attorney Cody advised that if the separation requirement stays, he suggested that the measurement portion be clarified and specified for door-to-door, for a distance of 1,000 to 1,500 feet to be more in line with a majority of municipalities that have the separation requirements.

Attorney Cody concluded that the separating distance requirement of the regulation does not serve a zoning purpose. He reiterated that a zoning commission has no role between competing businesses, Town Counsel has advised that there is no legal impediment to repealing the regulation, and that 62% of towns in Connecticut do not have a separation distance. He urged approval of the proposed regulation change, or at the least, an amendment to provide greater clarity.

Commissioner Ziembecki inquired what the other four towns were with the 2,000 foot or more separation requirement, and Attorney Cody advised that they are: Columbia, Vernon, Prospect, and Danbury. Commissioner Ziembecki also asked how the repeal would benefit his client's business.

Attorney Cody stated it has been proposed because the current separating distance requirement acts as a restraint of trade for any liquor store, not just Costco. Commissioner Ziembecki also inquired regarding distance requirements of regulations generally, and Chairman Mercer and Commissioner Grimes explained that it depends on zones, setbacks and other factors. He also asked which liquor store property Costco is "too close" to, and Attorney Cody advised that he does not have "a specific problem".

Commissioner Cordisco inquired what the difference was between locating two package stores and two auto dealerships on opposing corners. Attorney Cody advised that the current restriction acts as "artificial, non-business related restriction on where businesses can locate".

Commissioner Grimes moved to close the Public Hearing re: Proposed Regulation Change #201200015: Section 242-308F – Liquor Outlets. Secretary Lollie seconded the motion, and it carried unanimously.

Chairman Mercer indicated he wanted time to go through the information submitted tonight and urged the Commission members to spend some time looking at this information. Commissioner Grimes stated that while he was not opposed to that, he would like to have some discussion now.

Commissioner Ziembecki pointed out that there are six liquor stores currently operating under the current regulation. He inquired if there was something that the Commission could do to clarify the regulation, and protect the existing business and property owners.

Commissioner Varda noted the uniqueness of the Federal Road corridor in that almost all of Town's commercial activity is on one street, which borders Danbury. He also pointed out the conflict between Sections 242-308F and the Major Shopping Center regulation of Section 242-504C.

Commissioner Grimes agreed that while many of the towns in the State have chosen not to regulate, he estimated that most of them are smaller than Brookfield. He disagreed with the applicant's argument that the regulation has "outlived its usefulness". He indicated he cannot find a compelling reason to delete the regulation.

Chairman Mercer pointed out that two of the liquor stores in town (those located in the Four Corners area) are separated by 1200 feet, and he is unsure if that distance is causing a traffic or health and safety issue. He also noted the inconsistency between the two existing regulations. He asked Commissioner Grimes what the compelling reason was to keep the regulation. Commissioner Grimes reiterated that he cannot find a reason to delete it, as he feels it is not arbitrary or unfair. Chairman Mercer asked him how he felt the current regulation has benefited the town, and Commissioner Grimes advised it has not caused any problems.

Chairman Mercer agreed that no members of the public were present to speak about the application except for liquor store owners.

Commissioner Cordisco stated he is in favor of the current regulation because it promotes diversification.

Commissioner Grimes moved to deny Application #201200015: Proposed Regulation Change, Section 242-308F – Liquor Outlets. Commissioner Cordisco seconded the motion. Motion carried, 4-1, with Commissioners Grimes, Varda and Cordisco, and Secretary Lollie voting in favor, and Chairman Mercer being opposed. Commissioner Varda indicated that while the Zoning Commission is charged with overseeing health, welfare and safety issues, he does not see liquor stores affecting that. He pointed out that the Police Department is charged with overseeing the underage drinking issue that was cited as a reason for opposition of the change. Commissioner Varda agreed that the small liquor store business is made more difficult by State law, with expanding hours and the possibility of Sunday openings. He is unsure of how much the Commission should be regulating trade for small business, but he does agree with Commissioner Grimes that unless there is a compelling reason to change the regulation, it should not happen. Chairman Mercer indicated he is opposed to the change, largely because he feels the Commission should have given more consideration to the materials that were received tonight.

b. Proposed Regulation Change #201200014: Section 242-602B(2)(h)(1) – Maximum Free Standing Lighting Fixture Mounting Height (*dec date 3/31/12*)

Commissioner Grimes moved to approve the Proposed Regulation Change #201200014: Section 242-602B(2)(h)(1) – Maximum Free Standing Lighting Fixture Mounting Height. Secretary Lollie seconded the motion. Commissioner Grimes pointed out that the applicant’s engineer’s points were “well made”. Commissioner Varda noted that he has noticed many more properties that meet the requirement but are in residential areas. Commissioner Grimes noted the technology and energy efficiencies now available. Commissioner Varda recommended that the Commission be aware of the “carry over” of light pollution in residential areas. Chairman Mercer pointed out that there are restrictions in the application related to light spillage. Secretary Lollie discussed his recent inspection of the current light poles, and inquired how the height was calculated. Mr. Montesano (on behalf of the applicant) advised that the measurement begins at the top of the asphalt and include the concrete, and goes up to the bottom of the fixture. The

Commission agreed that the proposal to have fewer poles and energy efficiency are more attractive. Motion carried unanimously.

c. 227-235 Federal Rd #201200060: Design Review – Public Hearing scheduled for 2/23/12

1. Letter from Richard Papenfuss, Water Source, to Zoning Commission dated 2/1/12

Re: 227-235 Federal Road, Application #201200060

Vice Chairman Blessey and Commissioner Lynch returned to the room at 9:00 p.m.

7. Tabled Items: None.

8. Informal Discussion: (continued)_

a. **Mobile Vending** – Chairman Mercer reiterated that the Land Use Office is in need of direction as to how to handle requests for mobile vending. Vice Chairman Blessey indicated that the regulation subcommittee is willing to look into reviewing the issue. It was noted that parking space requirements have to be a consideration. There was discussion regarding mobile vending operations setting up at a construction site and how that would be regulated. It was noted that property owners have to sign site plan applications, and this would require the vendor getting the permission of the property owner. The Commission will investigate how other towns handle mobile vending permits.

9. Comments of Commissioners:

There was discussion regarding the need for better communication between the applicant at 540 Federal Road and the Water Source Committee. The Building Department's role and the requirements of the Planning Commission to have a fire pond prior to a permit being issued were also noted. Problems with timing and clarity of Water Source Committee review were discussed. Chairman Mercer pointed out that the WSC should have brought up the issue during the public hearing process. Vice Chairman Blessey will contact D. Martone and arrange a time to meet with the WSC and attempt to resolve the issues.

Chairman Mercer inquired that if the regulation subcommittee reviewed Section 242-308F, if the Commission would be in favor of a door-to-door measurement, and adjusting the distance requirement so that all of the existing stores were in compliance with the regulation.

Additionally, the Major Shopping Center regulation will be revisited. Commissioner Varda noted that a regulation would have to specify which door the measurement is taken from. Vice Chairman Blessey inquired if the Commission would have to wait a certain amount of time before considering a change, in light of the recent application. It was noted that both sides of the discussion with the current regulation agreed that that the regulation needed to be clarified.

Commissioner Grimes suggested that the Major Shopping Center regulation be reviewed first.

10. Adjourn: Vice Chairman Blessey moved to adjourn the meeting at 9:29 p.m. Chairman Mercer seconded the motion, and it carried unanimously.

****Next Regular Meeting Scheduled for February 23, 2012****

