

MEMBERS PRESENT: Chairman Laurie Robinson, Patrick Reading, Michael Solis, Bob Setschinsky and Patricia Hayn;
Alternate: Christopher Bourque; **Selectman's Liaison:** Stan Soby; **Staff:** Craig Grimord, Assistant Town Planner/Zoning Enforcement Officer; Gail Therian, Clerk

MEMBERS ABSENT: None

1. CALL MEETING TO ORDER.

Chairman Robinson called this meeting to order at 7:06 p.m.

2. ADDITIONS TO AGENDA None

3. PUBLIC HEARINGS -

- A. ZBA#11-001, Leonard & Karen Przekopski, Applicant/Owner, for property located at 36 Pine Road, Tax Map # 05-14, Lot #009-000, R-60 Zone, at the South West corner of the intersection of Pine Road and Pine Brook Road. Applicant is appealing the decision of the Zoning Enforcement Officer to deny Zoning Permit Application ZP#11-290 for a Certificate of Zoning Compliance for existing activities on the site. **(Public Hearing opened on 6/14/11, continued to Special Meeting on 7/12/2011)**

C. Grimord read the legal warning as it appeared in The Rivereast Bulletin on June 3 and June 10, 2011. Chairman Robinson reviewed the ground rules for the hearing. The voting members on this application: L. Robinson, P. Reading, M. Solis, B. Setschinsky, and P. Hayn. Alternate C. Bourque recused himself. The Public Hearing opened at 7:11 p.m.

C. Grimord gave a brief background and timeline of this appeal of the Zoning Enforcement Officers decision to deny Zoning Permit Application ZP #11-290 for property at 36 Pine Road.

Atty. Ron Ochsner, representing Mr. & Mrs. Przekopski, said that the Zoning Permit application filed was to seek a Certificate of Zoning Compliance based on the provisions of § 3.4 and §4A.2.8 of the Colchester Zoning Regulations. He said that Section 4A.2.8 allows Commercial and industrial uses as they were in existence as of December 12, 2003. He distributed copies from the applicant that he felt should have been included in the Board members packets. He also said that this application was also in conformance to a Court ruling that said the Colchester Planning and Zoning Commission when acting on the Special Exception application had not been requested to make a ruling on their "by right" use pursuant to §4A.2.8. He said that in 1970 the Colchester First Selectman made an agreement with Mr. Przekopski Sr. regarding the Town obtaining land for the widening of Pine Brook Road in exchange for the grandfathering of Mr. Przekopski Sr.'s sand and gravel operation. Atty. Ochsner submitted a letter from him with attachments (Exhibit Item V) and a packet of letters with cover letter in support of the application (Exhibit Item W). Discussion followed regarding "by right" use and the ability of the Town to still regulate the activity.

Atty. Beth Critton, Shipman and Goodwin, representing the Town of Colchester, said that the Zoning Board of Appeals had determined in the applicant's appeal of the former Zoning Enforcement Officers issuance of a Cease and Desist that this operation must obtain a Special Exception permit from the Planning and Zoning Commission and upheld the Zoning Enforcement Officer's Cease & Desist Order. She explained that the law is clear that the Town has the right to regulate through the Special Exception process this type of operation.

Speaking in Favor

The following people spoke in support of this application:

Alex Savitsky, 195 Cato Corner Road, Colchester
Frank Palmer, 273 Cato Corner Road, Colchester
Chris Bourque, 391 Westchester Road, Colchester
Thomas Glemkowski, 364 Chestnut Hill Road, Colchester
Mike Dykas, Salem, CT
Elizabeth Gilman, 178 Cato Corner Road,
David Wasniewski, 475 Parum Road, Colchester
Amanda Przekopski asked about other local operations and their compliance with Sand and Gravel/EMPAR operations.

Speaking in Opposition –

Craig Grimord, Zoning Enforcement Officer, explained the parameters for the ZBA to act on the Appeal. He explained the difference between a Class 1 Site Plan and Class 2 Site Plan review; the additional requirement for the Special Exception permit given this property is in the Aquifer Protection Zone; and the limits of his authority to issue a Certificate of Zoning compliance due to an existing Cease and Desist order still in effect. He explained to the Board that excavation is a separate defined use requiring a Special Exception and it is not considered either a commercial or industrial use. Discussion followed regarding these points.

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Tearice Peters, representing the Colchester Citizen organization, asked that the Board to uphold the ZEO's decision.

Tom Smith, 7 Pine Road, questioned if the EMPAR use would be allowed if the Zoning Enforcement's decision was overturned.

Atty. Beth Critton, representing the Town of Colchester, distributed copies of LexisNexis --Keeney Decision – 14 pages (Exhibit Item X) and a re-submittal of a letter from the Town Attorney, Shipman and Goodwin with the date of May 11, 2011 included. (Exhibit Item Y). She will provide the Board for the next meeting with a copy of the case: Laurel Beach Association vs. Zoning Board and a copy of the testimony of the former Zoning Enforcement Officer/Wetlands Enforcement Officer regarding the "grandfathering" of this operation. She spoke briefly about the Court decisions in the past appeals by the applicant and others; the fine imposed by the Court if Mr. Przekopski continued to operate his sand and gravel operation and the Special Exception requirement. Discussion followed. M. Solis asked Atty. Ochsner to address the Taylor vs. the Zoning Board of Appeals at the next meeting.

Motion by: P. Reading
to continue the Public Hearing to a Special Meeting on July 12, 2011 at 7:00 p.m.

Second by: M. Solis

Vote: Unanimous to close. Time: 9:23 P.M.

Motion by: B. Setschinsky
to take a five (5) minute recess

Second by: M. Solis

Vote: Unanimous to take a five (5) minute recess at 9:26 p.m.

The Board returned from the recess at 9:31 p.m. C. Bourque returned as the Alternate member.

4. Pending Applications

A. ZBA#11-001, Leonard & Karen Przekopski

No action was taken as the Public Hearing was continued to a Special Meeting on Tuesday, July 12, 2011.

5. Minutes of Previous Meeting -March 15, 2011

Motion by: P. Reading
to approve the meeting minutes of the March 15, 2011 meeting as presented.

Second by: B. Setschinsky

Vote: Abstentions: P. Hayn, M. Solis and C. Bourque All others in favor **Motion carried**

6. New Business/Applications Received:

A. Meeting Attendance-No alternate board members

Chairman Robinson reminded the Board of the importance on attending all meetings and it is their responsibility to call the Planning and Zoning Department or her if they cannot attend a meeting.

B. Recruiting of New Members and Alternates

Chairman Robinson asked the Board members to encourage friends or neighbors to submit an application to become a alternate member of this Board.

7. Old Business

8. Zoning Enforcement Officer's Report -April 2011

This report was included in the Board members packets.

9. Correspondence - None

10. Adjournment

Motion by: M. Solis
to adjourn the meeting at 9:45 p.m.

Second by: P. Reading

Vote: **Motion carried unanimously**

Gail N. Therian, Clerk