

**CITY OF TORRINGTON
ZONING BOARD OF APPEALS
MINUTES
April 12, 2010**

Present: David Moraghan, Chairman
Kathleen Perrotti, Vice Chairwoman
James Marinelli, Member
Genevieve Gangi, Member
Mark Trivella, Alternate
Jenn Healey, Alternate

Also Present: Mike O'Neil, Zoning Enforcement Officer

Absent: Ken Edwards, Alternate

1. **Call to Order:** Chairman David Moraghan called the meeting to order at 7:00 p.m. in the Sullivan Senior Center, Main Room, 88 East Albert Street, Torrington, CT

2. **Attendance:**

Chairman David Moraghan announced present and seated this evening are Board Members David Moraghan, Kathleen Perrotti, James Marinelli, Genevieve Gangi, and Mark Trivella. New member Jenn Healey is seated as an alternate this evening.

3. **Minutes:**

- a. 8/10/09

MOTION by Mr. Trivella to accept the 8/10/99 minutes, seconded by Ms. Gangi, motion carried.

4. **Hearings:**

Chairman Moraghan read the legal notice which was published in the Republican American.

- a. Appeal
Appellant: Attorney Gregory T. Nolan for Robert and Joseph Capuano
Location: 191 Winthrop Street
Proposal: Appeal from Zoning Enforcement Officer Mike O'Neil's decision in Cease and Desist Order dated February 5, 2010.

Attorney Renzullo and Attorney Nolan were present representing Joseph Capuano.

Mike O'Neil, Zoning Enforcement Officer, appeared and presented Exhibits supporting his decision.

- . The size of the proposed garage on the Zoning Permit (Exhibit 1) was large and the Zoning Officer wanted to be clear from the beginning that this is a residential neighborhood and businesses were not allowed.
- . Exhibit 2 is an invoice dated 5/19/2001 from Capuano Machine, 193 Winthrop Street, Torrington, CT.
- . Exhibit 3 is a Request for Voluntary Compliance dated 11/5/2002. There were unregistered motor vehicles on the property.
- . Exhibit 4 is a Cease and Desist Order dated 9/15/2004 citing machine shop or equipment repair shop in violation of the Table of Uses and unregistered motor vehicles. Unregistered motor vehicles are considered junk according to the Zoning Regulations.
- . Exhibit 5 is a letter from Zoning Officer Kim Barbieri to Mr. Capuano about the violations in the file, unregistered vehicles, large excavating equipment, all unregistered and further stating the garage was for personal use.
- . Exhibit 6 is a written complain from Craig (last name illegible) complaining that Mr. Capuano is working on his vehicles at that address.
- . Exhibit 7 is a letter dated 3/29/2007 enclosing the copy of the Cease and Desist Order and stating we will issue citations.
- . Exhibit 8 is Mike O'Neil's logsheet/worksheet that he uses for site visits and other things that occur with violations. In February 2009 it was compliant, I made a site visit and he was allowed into the machine shop area and repair shop area. At that time it appeared no activity was taking place in violation with the Zoning Regulations.
- . Exhibit 9 is a police report. This involved a Mr. Manese who Mr. O'Neil had previous problems with selling cars on East Main Street. Mr. Manese became involved with Bill's Service Station on East Main Street. Mr. Manese and Mr. Roux had a falling out and this police report is a result of that. Page 2 shows where Mr. Capuano admits to working on Mr. Manese's vehicles.
- . Exhibit 10a and 10b are Mr. Capuano's invoices to Mr. Manese, supplied to me by Mr. Roux of Bill's Service Station of vehicles that Mr. Manese had Mr. Capuano work on. These are repair bills.
- . Exhibit 11 is the final Cease and Desist Order citing operating a business in a residential zone, also citing Location Approval, 6.21, that does not have Location Approval to operate this business at Winthrop Street.
- . Exhibit 12 is our complete set of Zoning Regulations. In the Board Member's packets was included Section 12a Table of Uses, 8.00 Automobile Establishments shows that it is only allowed in the Local Business, General Business and

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Industrial Zones.

- . Exhibit 12b is Section 6.21 Location Approval which is required to repair automobiles.
- . Exhibit 13 a letter from Mr. William Roux stating that he gave me those Capuano invoices, and that work was done for Mr. Manese by Mr. Capuano for vehicles that were being sold through the license of Bill's Service Station.

Discussion followed between Mr. Marinelli and Mr. O'Neil regarding the status of current and past violations on site.

Attorney Nolan showed Exhibit 10a to Mr. Capuano and asked if he recognized the handwritten. Mr. Capuano stated he has never seen that invoice before and did not create it. Mr. Capuano stated he did not receive a fee for repairing vehicles at his property during 2009 or 2010. Mr. Capuano listed the current vehicles he personally owns (#538).

Mr. Moraghan referred to State Statutes regarding "business" and asked Mr. Nolan what support he had for that. Mr. Nolan responded "business" is not defined in the Zoning Regulations. In the court system, the definition of business requires is that the petitioner is engaged in a continued or regular activity and for the purpose of earning a profit. In this case, there is no evidence of a continued or regular activity. Mr. Capuano has testified that he has not been paid for working on cars in the years 2009 or 2010.

Mr. Moraghan and Mr. Nolan discussed the interpretation/definition of "business".

The Board, Mr. O'Neil, Mr. Capuano, and Mr. Nolan reviewed and discussion various exhibits and invoices. (#1020)

Mr. Nolan reiterated that there is no evidence for the years 2009 and 2010 that his client took any profit or compensation for repairing vehicles at his property. Operating a hobby repair for his own vehicles is a permitted use. Mr. Renzullo stated there is no evidence Mr. Capuano works on cars constantly. He has a full time job elsewhere and these are hobby cars.

In response to a question from Mr. Marinelli, Mr. O'Neil stated Mr. Capuano can work on his personal vehicles, and that's why the zoning permit was worded in such a way that it is for personal use only. Car repair for money is not an accessory use, and there are State Statutes that cover car repair for money and that requires Location Approval, and that is not an allowed accessory use in a residential zone to do repairs for automobiles.

Mr. Marinelli inquired why the years 2009 and 2010 keep being referenced. Mr. Nolan responded that goes back to the definition of business, it has to be continuing and on-going.

The police report exhibit was discussed by Mr. O'Neil and Mr. Nolan.

Ms. Perrotti inquired of Mr. Capuano if he has even taken any money from anyone for car repairs on his property, and Mr. Capuano responded no.

Discussion followed.

Mr. Moraghan and Mr. Nolan discussed that Mr. Nolan will submit a brief, and this hearing will be continued.

Mr. O'Neil explained the procedures for continuing the public hearing. Mr. Moraghan confirmed with Mr. Nolan that no further evidence will be submitted, just a legal brief would be submitted.

Mr. Moraghan announced the public hearing will be kept open, a brief will be submitted regarding a repair business.

5. Adjournment:

MOTION by Ms. Gangi to adjourn, seconded by Mr. Trivella, unanimously carried.

Lona Kirk, Secretary
Land Use Office