



TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION
MONDAY – OCTOBER 21, 2019

Regular Meeting
7:00 PM
Town Meeting Room, Second Floor
Killingly Town Hall
172 Main St., Killingly

MINUTES

RECEIVED
TOWN CLERK, KILLINGLY, CT
2019 OCT 28 AM 10:40
Elizabeth M. Wilson

I. **CALL TO ORDER** – Chair, Keith Thurlow, called the meeting to order at 7:06 pm.

ROLL CALL – Brian Card, Virge Lorents, Milburn Stone, Keith Thurlow.
Sheila Roddy was absent with notice. Matthew Wendorf was absent.

Staff Present – Ann-Marie Aubrey, Director of Planning and Development.

Also, Present - Attorney Joseph Szerejko, Murtha Cullina.
Lynn LaBerge, Town Council Liaison, arrived at 7:25 p.m.

II. **SEATING OF ALTERNATES** – None.

III. **AGENDA ADDENDUM** – None.

IV. **CITIZENS' COMMENTS ON ITEMS NOT SUBJECT TO PUBLIC HEARING** (Individual presentations not to exceed 3 minutes; limited to an aggregate of 21 minutes unless otherwise indicated by a majority vote of the Commission)

Paul Archer, Archer Surveying, asked if the public would be allowed to speak during discussion regarding **File #19-1228**; Anthony J. & Josephine A. Pulcinella Family Revocable Living Trust; commission to determine if an illegal subdivision of lots has taken place; 333 Breakneck Hill Road; GIS MAP 65; Lot 7; Rural Development Zone.

V. **COMMISSION/STAFF RESPONSES TO CITIZENS' COMMENTS**

In answer to Mr. Archer's question, Attorney Joseph Szerejko and Ann-Marie Aubrey explained that a motion would need to be made to allow the public to speak.

VI. **PUBLIC HEARINGS – (review / discussion / action)**
NONE

VII. **UNFINISHED BUSINESS – (review / discussion / action)**

A. Un-Subdivision Application

1) **Un-Subdivision Application #19-1225**; Bell CT Property, LLC; Stephen Bell, Member; current owner of real estate currently known as 317 Valley Road; wants to un-subdivide the property for tax purposes; 55 Lot subdivision; 317 (333) Valley Road, LD and RD Zones – **CONT. FROM 09/16/2019**

There was no one present to represent the Applicant. Ann-Marie Aubrey explained that the Stephen Bell had responded to her letter (dated September 20, 2019) and had provided the Operating Agreement which shows that Stephen Bell is a Member/Manager and has the authority to sign the application to request the un-subdivision (copies included in packets to Commission Members). Stephen Bell's father, Richard Bell, had called the Planning & Development Office and had requested the un-subdivision and wanted Stephen to sign because he is located closer.

Motion was made by Brian Card to approve **Un-Subdivision Application #19-1225**; Bell CT Property, LLC; Stephen Bell, Member; current owner of real estate currently known as 317 Valley Road; wants to un-subdivide the property for tax purposes; 55 Lot subdivision; 317 (333) Valley Road, LD and RD Zones – **CONT. FROM 09/16/2019**. Second by Milburn Stone. D
Discussion: Mr. Card asked about the Assessor's Map and if the Applicant would need to file anything to show that the property is back to a single lot. Ms. Aubrey explained that she would need to notify the Assessor because the Assessor's Map would need to be changed and she said that the Commission could request that a mylar be filed.

Motion was made by Brian Card to amend his motion to approve **Un-Subdivision Application #19-1225**; Bell CT Property, LLC; Stephen Bell, Member; current owner of real estate currently known as 317 Valley Road; wants to un-subdivide the property for tax purposes; 55 Lot subdivision; 317 (333) Valley Road, LD and RD Zones – **CONT. FROM 09/16/2019** to add the following conditions:

- Mylar be filed on the land records showing that it is back to a single lot.
- If it is necessary to make changes to the deed, that a new deed be filed.

Second by Milburn Stone.

Roll Call Vote on the Amendment: Brian Card – yes; Virge Lorents – yes; Milburn Stone – yes; Keith Thurlow – yes. Motion carried unanimously (4-0-0).

Roll Call Vote on the Main Motion as Amended: Virge Lorents – yes; Milburn Stone – yes; Brian Card – yes; Keith Thurlow – yes. Motion, as amended, carried unanimously (4-0-0).

B. Special Permit

1) **Special Permit Application #19-1226**; Michael S. Teed; (Beth Thompson, Landowner); request special permit to change one non-conforming use to another non-conforming use under Section 520.7 "Change" of the Town of Killingly Zoning Regulations; (production brewery combined with a retail space for the consumption and sale of beer); 1001 Hartford Pike; GIS Map 117; Lot 29; Low Density Zone. **Review; and if it is determined that the application is complete the Commission must decide to either 1) have a pre-application meeting; or 2) conduct a site walk; or 3) schedule a public hearing on the application. The next available date for a public hearing is November 18, 2019.**

The Applicant, Michael Teed, was present.

Ann-Marie Aubrey explained that the comment from the last meeting was that there was supposed to be an easement granted to this property. The easement was not in place and that was a problem. Included in packets to Commission Members: Map showing the proposed sewer easement, the proposed description. Copies of a letter from the neighbor were also distributed to Commission Members.

Virge Lorents asked about the sale of alcohol. Ms. Aubrey explained that the sale of alcohol is licensed by the State and that the ZEO and the Fire Marshal would also need to sign-off on it. Ms. Lorents voiced concern regarding line of sight to the east.

Motion was made by Virge Lorents to schedule a site walk for **Special Permit Application #19-1226**; Michael S. Teed; (Beth Thompson, Landowner); request special permit to change one non-conforming use to another non-conforming use under Section 520.7 "Change" of the Town of Killingly Zoning Regulations; (production brewery combined with a retail space for the consumption and sale of beer); 1001 Hartford Pike; GIS Map 117; Lot 29; Low Density Zone. There was no second to the Motion. Motion failed.

Ms. Lorents suggested that Commission Members at least ride out there to see the situation. Mr. Thurlow stated that it would be reviewed.

Motion was made by Brian Card to schedule a public hearing for **Special Permit Application #19-1226**; Michael S. Teed; (Beth Thompson, Landowner); request special permit to change one non-conforming use to another non-conforming use under Section 520.7 "Change" of the Town of Killingly Zoning Regulations; (production brewery combined with a retail space for the consumption and sale of beer); 1001 Hartford Pike; GIS Map 117; Lot 29; Low Density Zone for November 18, 2019, Town Meeting Room, Second Floor, Killingly Town Hall, 172 Main Street, at 7:00 p.m. Second by Milburn Stone. Motion carried unanimously (4-0-0).

C. Gravel Permit Extension

1) **Gravel Permit Extension Application #19-1227**; Ernest Joly & Sons, Inc; for a three (3) year permit extension/renewal for sand and gravel excavation, including gravel crushing operation; contains approximately 175 acres of land; 32 Beatrice Avenue; GIS MAP 262; Lot 15. (Prior files #16-1155; #04-860, etc.) (**Review/Discussion/Action**)

Ann-Marie Aubrey explained that the Zoning Enforcement Officer/Inland Wetlands Officer and the Planning Assistant/Natural Resources Officer did a site walk (their Staff report was included in packets to Commission Members). Staff recommends that the extension (three years) be granted for the sand and gravel operation, that any activity at the property be done in accordance with all State and Local Regulations (Town of Killingly Zoning Regulations and Inland Wetland and Watercourses Regulations). Ms. Aubrey reminded the Commission that this is an ongoing business that has been operating since before Regulations were in effect, so they have no set 30-year timeframe.

There was discussion and Ms. Aubrey explained that the Applicant has agreed to work with Staff and will provide proper plans for E&S. Staff will mark the edges of the wetlands with discs. Ms. Aubrey explained that the DEEP has been contacted regarding the filling of the wetlands that has occurred and she said that there was no immediate concern. If there is an issue with the DEEP, it will be handled in a manner acceptable to the DEEP. Mr. Card asked about a site plan/development plan and Ms. Aubrey explained that there are some odds-and-ends maps in place and that they are trying to get the Applicant to create one. Ms. Lorents referring to a previous site walk, asked about steep slopes. Ms. Aubrey explained that she believes that the steep slopes were unique to that previous site and that the State-wide and local GIS mapping does not appear to show steep slopes on this site in question. The Staff Members who went on the inspection did not report that it was not conducive to the way it was supposed to be. Mr. Thurlow asked if the filling of the wetlands was recent. Ms. Aubrey explained that it appears to have happened over a period of time.

Motion was made by Brian Card to grant **Gravel Permit Extension Application #19-1227**; Ernest Joly & Sons, Inc; for a three (3) year permit extension/renewal for sand and gravel excavation, including gravel crushing operation; contains approximately 175 acres of land; 32 Beatrice Avenue; GIS MAP 262; Lot 15. (Prior files #16-1155; #04-860, etc.) Activities to be done according to State and local regulations and recommendations by the Town Staff regarding E&S. Second by Virge Lorents. Motion carried unanimously (4-0-0).

VIII. NEW BUSINESS (review/discussion/action)

A. Determination if Subdivision Occurred

1) **File #19-1228**; Anthony J. & Josephine A. Pulcinella Family Revocable Living Trust; commission to determine if an illegal subdivision of lots has taken place; 333 Breakneck Hill Road; GIS MAP 65; Lot 7; Rural Development Zone.

Ann-Marie Aubrey stated that the Town Attorney was present for this Agenda Item.

Ms. Aubrey referred to Map #3 of the four maps that had been provided to Commission Members. She explained that proposed Lot 3-1 is currently under a purchase and sales agreement. While doing a title search, the title company stated that there was a concern that there was no approval on the map. At first, it was thought that it was a first split, free split situation, however, going through all of the documentation there was no formal transfer of real estate under the proposed lot realignment. No deed was ever recorded and a map alone does not create the realignment of lots. Where there four lots created from one? Three lots were recorded with deeds (Lot 3-1, Lot 7 and Lot 7-1 which reference the same parcel/tract). And then, there is the remainder of the original parcel/tract. Ms. Aubrey stated that this is the simplest way to look at the situation in the best light for Mr. Pulcinella. She explained that there are several issues that could still be looked at regarding merger. If all of the lots did merge, because proposed Lot #3 is non-conforming because it did not have any frontage. A lot is not equal to a parcel which is not equal to a tract. A concern beyond the free split is whether a subdivision was created. The only people, under State Statue, who can determine if it was a subdivision or not, or if it was improperly done, are the Members of the PZC. There are other issues that are more involved.

Town Attorney, Joseph Szerejko of Murtha Cullina explained that there is a question as to whether there were two buildable lots as the Applicant claims. He referred to Map #1 (2004 Compilation Plan). Attorney Szerejko noted that the first parcel had no frontage and he referred to Section 520.3 – Nonconforming Lots. It may not have been entitled to the first free split. Attorney Szerejko explained that with the 2002 deed conveyance, if the two parcels (first and fourth) were merged into one, the 2004 Compilation Plan does not show it.

Attorney Szerejko explained that although Mr. Pulcinella has been paying taxes on the lots separately, and while it can be considered, it is not dispositive as to whether there has been a subdivision (the Assessor, by law, cannot determine whether lots are compliant with zoning regulations). Another consideration would be how the owners treated the property if there was an intent to merge indicated through their actions.

Ms. Lorents asked about deeds that were not filed. Attorney Szerejko explained that for the 28 acres that were purportedly transferred by virtue of a lot-line realignment there is no recorded deed on the Land Records. Therefore, there is a question as to whether there was a merger and whether the purportedly two different parcels were, in fact, buildable lots when they were purportedly further broken down. Ms. Aubrey noted that all three deeds (included in packets to Commission Members) refer to being part of the same property (Volume 828, Page 172). Ms. Aubrey referred to Map #2 which shows the 28 acres and the fourth parcel (Lot #7) which would be the remaining portion and she said that a map had been recorded that said that there was going to be a lot-line realignment, but a deed was never recorded. Attorney Szerejko added that this could be taken into account with respect to whether there was intent to treat it as one lot or to merge the lots. Ms. Aubrey stated that it could be taken that all three lots came from the fourth parcel and the remaining out of the 28 acres is another lot out of the fourth parcel (one parcel turned into four).

There was discussion regarding free split and lot-line adjustment and what was recorded. In 2007, Map #2 was recorded, but no deed was filed so the lot-line alignment did not take place. In 2017, the three deeds were recorded, but no maps were recorded.

Motion was made by Milburn Stone to open the floor to allow the public to speak regarding File #19-1228; Anthony J. & Josephine A. Pulcinella Family Revocable Living Trust; commission to determine if an illegal subdivision of lots has taken place; 333 Breakneck Hill Road; GIS MAP 65; Lot 7; Rural Development Zone. Second by Brian Card. Motion carried unanimously (4-0-0).

Paul Archer, Archer Surveying, stated that everything that Ms. Aubrey had said was correct and he gave a brief history. He said that in 2010 he had sat down with three previous Staff Members (Linda Walden, Bruce Chimento, and Roger Gandolf) to discuss this situation. He said that Mr. Chimento had required that the pins be put in for the frontage so that the driveway cut could be done. He explained that he always discusses these things with Staff before filing maps. He agreed that the boundary line modification map had been recorded, but the deed had not been recorded. He said that, on paper, it looks like four lots came out of one lot. He explained that doing a boundary line modification does not take away that parcel's ability to be free split. If you have two tracts (Tract #3 and Tract #7), you get two free splits and end up with four lots.

Ms. Lorents asked what language in the Regulations allows for multiple free splits. Attorney Szerejko explained about buildable lots (referred to Section 450.1) needing to meet requirements. Lots, parcels and tracts are not the same (not interchangeable). You have a free split when you have a buildable lot. The question is, "Were there two buildable lots?"

Mr. Archer stated that the intent was that the boundary-line modification created the ability for those two lots to be buildable. One of the lots had no frontage and the other lot had all the frontage. He indicated where the boundary-line modification had been made making the two lots more conforming as it would give them more frontage and each still would be entitled to a free split. He said that you do not need frontage on a Town road, only a 50-foot access strip.

Ms. Aubrey noted that there are two issues: #1 - Ownership; and #2 - How it is treated. She noted that all of the deeds (4th parcel, 1st parcel, 2nd parcel and 3rd parcel) refer to the Solomon Tract or Parcel (all one tract) even on a later deed when they created a Trust. Mr. Archer explained that he does not know that there was ever an intent for it to all be combined into one piece because he thinks that when it was sold to Mr. Pulcinella, it would've probably said, one parcel of land consisting of four tracts of land. Ms. Aubrey noted that all three of the Quit Claim Deeds say, "being a part of the same property."

Anthony Pulcinella explained that when he purchased this land, he purchased six parcels from Solomon and a couple from Dr. Deluca (continuous 239 acres). He explained that Mr. Solomon's parcel consisted (by deed) of eight lots. He explained that a compilation plan had been filed and that he does not know why the surveyor did not include the other two lots. Mr. Pulcinella explained that when he took the first split (approx. 4 acres off Lot #3), he did not know that he was supposed to convey the remaining 20+ acres to the lot behind (he thought it would be done automatically when the maps were recorded). He said that he is going to file a deed conveying the remaining acreage to Lot #3 in the back. He said that he

hadn't filed deeds for the three front lots because a previous Town Clerk (now retired) had advised him to hold off on filing then until he is ready to sell because he would have to pay taxes on them, so he held off until he was ready to market the lots. He stated that the attorney who prepared the legal description made an error and Mr. Pulcinella stated that he is ready to record three corrective quit claim deeds. He will also file a final compilation plan. He said that all lots conform to the Statutes

There was discussion between Keith Thurlow, Brian Card and Mr. Pulcinella regarding free splits, boundary line adjustments. Ms. Aubrey stated that there is enough frontage for Lot #3.1, Lot #7 and Lot #7.1. However, the remaining frontage going back to the now larger portion comes in under 250. Mr. Archer stated that it would be considered a rear lot. Ms. Aubrey stated that if it is to be a rear lot, a deed will be needed that includes the first, second and third parcels because they will all be one lot, at this point, it and will need to be recorded correctly.

Mr. Thurlow asked for Attorney Szerejko's advice concerning whether free splits can be done once corrective deeds are filed. Attorney Szerejko stated that there is still a question as to whether there was a merger and that there does need to be conformance regarding frontage. He questions whether the first parcel on Map #1 meets the frontage requirements.

Brian Card noted a discrepancy regarding addresses (301 and 309 Breakneck Hill Road). He asked, "Where were those lots in 2002?" There was discussion regarding whether there is a line between the Fourth Parcel First Tract and Second Tract. He questioned whether it had frontage and if it could have been merged with the back. He said that the Deed mentions two tracts on the first parcel, but Map #1 only shows one tract. Ms. Aubrey reminded that tract, parcel and lot cannot be used interchangeably. Attorney Szerejko pointed out that the deed does not necessarily take care of all issues, such as issues with whether it is a buildable lot per the Regulations (Section 450.1 states that a buildable lot must meet setbacks, frontage, minimum area requirements).

There was discussion and Ms. Aubrey stated that the deeds on record now (for three lots) all refer that they came out of the same Fourth Parcel First Tract and are now three (created in October 2017). The proposed lot realignment was in 2010. Attorney Szerejko read the Statutory definition of subdivision into the record and explained what the PZC can consider.

Brian Card commented that, in his opinion, it is an illegal subdivision at this point. However, if the subdivision goes away, and they go back based on the original, they can do a lot line adjustment, create Lots 7 and 7.1 and then create Lots 3 and 3.1. He asked how they would rectify it. Ms. Aubrey stated that they need to file a subdivision application for the lots. There was discussion regarding correcting/re-filing the deeds.

Attorney Szerejko advised against giving legal advice about rectifying deeds and he said that a subdivision application would be permitted, and it would be an easy way to resolve the issues. He reminded the Commission that its task is to determine whether a legal or illegal subdivision has occurred or whether it was a two, free split.

Mr. Thurlow stated that his opinion is that, by virtue of reading the deeds, the three new lots were created from one lot, making it an illegal subdivision.

Paul Archer suggested that you get rid of the three deeds and combine them back into one lot, re-do the boundary line modification, meet with Staff to verify merger vs. no merger, if not a merger put boundary line modification on file creating two lots (both entitled to a first-time split).

Mr. Pulcinella stated that this all came about because he was unaware that the deed needed to be filed. He said that deeds are easy to create and put on file. He asked that the Commission allow him to file corrective deeds with the proper reference language. Mr. Thurlow stated that the Commission can only act on what is before it and Attorney Szerejko again suggested that Mr. Pulcinella could file for a subdivision application. He does not want to file a subdivision application because he feels that he has a right to free splits.

Motion was made by Brian Card that, after reviewing the documents presented, a determination has been made that **File #19-1228**; Anthony J. & Josephine A. Pulcinella Family Revocable Living Trust; an unapproved subdivision of lots has taken place; 333 Breakneck Hill Road; GIS MAP 65; Lot 7; Rural Development Zone. Second by Virge Lorents.

Roll Call Vote: Milburn Stone – yes; Brian Card – yes; Virge Lorents – yes; Keith Thurlow – yes. Motion carried unanimously (4-0-0).

IX. FINAL REVIEW OF POCD – (review / discussion / action)

- 1) Determine if need another special meeting – next available date Monday, October 28, 2019.

Brian Card stated that he had no further comments regarding the POCD.

A typographical error was noted. Ms. Aubrey will make the correction.

Ms. Aubrey stated that all but two of the Map are done and the Charts will be completed by October 23rd.

A Special Meeting was scheduled for Monday, October 28, 2019, at 4:30 p.m. Place to be determined.

- 2) Vote to pass the POCD along to the Killingly Town Council and NECCOG for their review and comments;

Vote to take place at the October 28, 2019 Special Meeting.

- 3) If vote to pass the POCD along is approved; then should vote to schedule a hearing for the acceptance of the POCD – this hearing date must be at least 65 days away – suggested hearing date Tuesday, February 18, 2019.

Vote to take place at the October 28, 2019 Special Meeting.

X. ADOPTION OF MINUTES – (review/discussion/action)

- 1) Special Meeting / Workshop of Monday, September 16, 2019 – RE: Workshop, Parking Regulations

Motion was made by Virge Lorents to approve the Minutes of the Special Meeting / Workshop of Monday, September 16, 2019 – RE: Workshop, Parking Regulations. Second by Brian Card. Motion carried unanimously (4-0-0).

- 2) Regular Meeting of Monday, September 16, 2019 – RE: Regularly Scheduled Meeting.

Motion was made by Virge Lorents to approve the Minutes of the Regular Meeting of Monday, September 16, 2019. Second by Milburn Stone. Motion carried unanimously (4-0-0).

- 3) Special Meeting / Workshop of Monday, September 23, 2019 – CANCELLED – NO MINUTES

- 4) Special Meeting / Workshop of Monday, September 30, 2019 – RE: POCD

Motion was made by Brian Card to approve the Minutes of the Special Meeting / Workshop of Monday, September 30, 2019 – RE: POCD. Second by Virge Lorents. Motion carried unanimously (4-0-0).

- 5) Special Meeting / Workshop of Monday, October 7, 2019 – RE: POCD

Motion was made by Brian Card to approve the Minutes of the Special Meeting / Workshop of Monday, October 7, 2019 – RE: POCD. Second by Virge Lorents. Motion carried unanimously (4-0-0).

XI. OTHER / MISCELLANEOUS – (review/discussion/action)

- 1) Adoption of the Meeting Schedule for 2020

Motion was made by Virge Lorents to approve the Meeting Schedule for 2020. Second by Milburn Stone. Motion carried unanimously (4-0-0).

XII. CORRESPONDENCE – (review/discussion/action)

A. Zoning Enforcement Officer's & Zoning Board of Appeal's Report(s)

Enclosed

B. Inland Wetlands and Watercourses Agent's Report

Enclosed

C. Building Office Report

Enclosed

XIII. ECONOMIC DEVELOPMENT DIRECTOR REPORT – No Representation.

XIV. TOWN COUNCIL LIAISON REPORT

Lynn LaBerge reported:

- At a public hearing, Town Council voted to approve the changes to the procurement code.
- Town Council approved the Economic Development Commission to take \$2,300 out of their Trust Fund for further asbestos review at 140 Main Street.

XV. ADJOURNMENT

Motion was made by Brian Card to adjourn at 8:37 p.m. Second by Virge Lorents. Motion carried unanimously (4-0-0).

Respectfully submitted,

J.S. Perreault
Recording Clerk