

**PLANNING AND ZONING COMMISSION  
REGULAR MEETING – MINUTES  
JANUARY 9, 2013 – 7:00 PM  
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

**PRESENT:** Chairman James Steadman, David Krimmel, Daniel LaPlante, Gil Pratt, Ted Stoutenberg; Alternates Robert Moore, Martin Post, and Peter Ventre; First Selectman Dan Jerram; Commission's Legal Counsel Mark Branse, Esq. and Joanna Walden, Esq.; Land Use staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

**ABSENT:** None.

Chairman James Steadman called the meeting to order at 7:02PM. All regular members were present and seated for the evening. The proceedings were recorded digitally and copies are available in the Land Use Office.

**1. PUBLIC HEARINGS:**

Mr. Steadman read into the record the legal notice for both scheduled public hearings.

**A. Michelle Sutton-Slattry for Kerry Slattry, 22 West Hill Road – Special Exception for Home Occupation (Yoga and Meditation Classes) as per Section 3.6E of the Zoning Regulations.**

Ms. Sutton-Slattry addressed the Commission regarding this matter and submitted proof of notice to abutting neighbors. She explained that the previous owner of the property, Ron Dufour, operated his surveying business out of an office located above the garage. Ms. Sutton-Slattry stated that she wished to use the same space to conduct yoga and meditation classes two to three times per week. She stated that she envisioned between 6 and 10 students for 1-1/2 hour long classes. She stated that she had ample parking area in front of the garage and along the driveway.

The Commission reviewed maps and plans of the property submitted by Ms. Sutton-Slattry. Ms. Sutton-Slattry demonstrated to the Commission on the map exactly where the proposed parking was located. The Commission then reviewed pictures of the site provided by Ms. Sutton-Slattry. Ms. Malanca questioned whether Ms. Sutton-Slattry intended to continue living in the home, and she responded affirmatively. Ms. Malanca then asked how large the house and the proposed classroom area were; Ms. Sutton-Slattry stated that the house was 6,131 square feet and the classroom area was 769 square feet. Ms. Malanca then asked if there would be any other employees onsite, and Ms. Sutton-Slattry stated that she would be the only teacher. She also noted that the classroom area had its own entrance and restroom facilities.

Hearing no other questions from the Commission, Mr. Steadman opened the floor to public comment.

Keith D'Angelo, New Hartford resident, addressed the Commission. He stated that he had visited this property many times when it was owned by Ron Dufour and was familiar with the area the applicant proposed to use as a classroom. He stated that he was supportive of Ms. Sutton-Slattry's application. First Selectman Dan Jerram also expressed support for the application.

Mr. Stoutenberg then questioned whether there was adequate parking for back-to-back classes, noting that 10 students would be leaving while 10 students were entering. Ms. Sutton-Slattry explained that she did not propose to have multiple classes per day. Commission's attorney Mark Branse then asked what schedule Ms. Sutton-Slattry proposed for her business; she responded that she planned to hold a class early Monday evening as well as one class on Friday and Sunday mornings. She noted that she worked at another yoga studio offsite, and she did not intend to hold a full schedule of classes at her home. Mr. Steadman explained that the Commission would render a decision based on the number of classes proposed by Ms. Sutton-Slattry. If the Commission gave their approval for a certain number of classes and Ms. Sutton-Slattry then later wished to increase the number of classes, this would require additional approval from the Commission. He then asked whether Ms. Sutton-Slattry planned to install a sign on her premises. She responded that she had not yet considered whether she wished to do this. Ms. Malanca explained that a 2-foot by 2-foot sign was permitted under the Zoning Regulations. Mr. Branse questioned whether the previous owner had had a business sign; Mr. Stoutenberg responded negatively.

Hearing no further comments from the Commission or from the public:

**MOTION** Mr. Stoutenberg, second Mr. Pratt, to close the public hearing in the matter of **Michelle Sutton-Slaterry for Kerry Slaterry, 22 West Hill Road – Special Exception for Home Occupation (Yoga and Meditation Classes) as per Section 3.6E of the Zoning Regulations;** unanimously approved.

**B. David and Luz Donovan, West Hill Road (Assessor's Map 031-042-2-1) – 1-Lot Subdivision to Convert Approved Agricultural Lot to Building Lot.**

Ken Hrica, PE, addressed the Commission on behalf of the applicant. Mr. Hrica submitted proof of notice to abutting neighbors and distributed smaller copies of the maps and plans to each of the Commission members. Ms. Malanca informed the Commission that both the Town's planning consultant and the Town's engineering consultant had submitted updated reports, which she distributed to members of the Commission.

Mr. Hrica explained that in 2007, Eddie Barden had divided his lot to create a 10-acre lot on West Hill Road for agricultural purposes; this lot had been used as a pumpkin patch. He explained that Mr. Barden had then transferred the 10-acre parcel to his father-in-law, David Donovan. Mr. Hrica stated that Mr. Donovan now wished to change the designation of this lot from agricultural to building lot so that he could construct a house on the site. He stated that soil testing had been done, and the Farmington Valley Health District had approved the subdivision as well as the specific septic system for the proposed 3-bedroom house. Mr. Hrica stated that the application was currently before the Inland Wetlands Commission, but it had been designated a nonsignificant activity. Mr. Hrica then briefly reviewed the comments received from both the Town's planning consultant and the Town's engineering consultant. He noted that drainage calculations had been requested for the culvert under the driveway at the wetlands crossing; he explained that he had submitted these calculations, which had demonstrated the pipe was adequately sized. Mr. Hrica stated that he had not yet received a report from the Town Fire Chief; however, all other outstanding issues had been addressed.

Ms. Malanca questioned what the applicant proposed with regard to open space. Mr. Hrica stated that, per Connecticut General Statutes, the open space provisions did not apply to subdivisions with 5 or fewer parcels which were being transferred to a direct relative. Mr. Branse noted that according to both the Connecticut General Statutes and the Town Subdivision Regulations, this exemption did not apply to in-laws. He questioned in whose name the property had been listed prior to the transfer; Mr. Hrica stated it had been owned by Edward M. Barden. Mr. Branse questioned whether there was land on the property suitable for open space, and Ms. Malanca stated that a fee-in-lieu of open space was likely more suitable in this application. Mr. Hrica stated that the applicant was requesting the Commission to waive the open space requirement. He noted that the applicant was proposing their house at the front of the property and had no plans to develop the back of the lot.

Mr. Stoutenberg noted that the solar shadow appeared to shade a portion of the abutting neighbor's property. Mr. Hrica explained that the applicant was required by State law and the Town's Subdivision Regulations to show this information on the plan; however, the applicant was not proposing to implement the passive solar plan. He stated that the plan house site on the property did not lend itself to passive solar, and Mr. Donovan understood and accepted this. Ms. Malanca stated that both she and Martin Connor, the Town's planning consultant, concurred with the house site chosen as the most suitable location on the property. She noted the presence of wetlands to the back of the property as well as steep slopes. Mr. Steadman questioned whether the applicant had been able to demonstrate 1 acre of contiguous buildable area, and Ms. Malanca responded affirmatively.

Mr. Steadman then opened the floor to public comment. First Selectman Dan Jerram addressed the Commission in favor of this application.

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Mr. Steadman then asked Ms. Malanca about the most recent reports from the Planning Consultant and the Engineering Consultant. Ms. Malanca stated that Roger Hurlbut, PE of Lenard Engineering had stated that all of his concerns had been satisfactorily addressed. She also said that in his letter dated January 8, 2013, Martin Connor, AICP, had recommended approval of the application pending final approval from the Inland Wetlands Commission. Ms. Malanca explained that the Commission should continue the public hearing for this application until they received the final report of the Inland Wetlands Commission. Mr. Steadman questioned whether the Open Space Commission had submitted comments regarding this application; Ms. Malanca explained that the application had been submitted to the Open Space Commission; however, to date they had not submitted comments.

**MOTION** Mr. Stoutenberg, second Mr. Pratt, to continue the public hearing in the matter of **David and Luz Donovan, West Hill Road (Assessor's Map 031-042-2-1) – 1-Lot Subdivision to Convert Approved Agricultural Lot to Building Lot** to the February 13, 2013 regular meeting; unanimously approved.

## 2. PENDING APPLICATIONS:

### A. **Michelle Sutton-Slattry for Kerry Slattry, 22 West Hill Road – Special Exception for Home Occupation (Yoga and Meditation Classes) as per Section 3.6E of the Zoning Regulations.**

**MOTION** Mr. Pratt, second Mr. Stoutenberg, to approve the application in the matter of **Michelle Sutton-Slattry for Kerry Slattry, 22 West Hill Road – Special Exception for Home Occupation (Yoga and Meditation Classes) as per Section 3.6E of the Zoning Regulations** as per all oral and written testimony.

Mr. Branse informed the Commission that if they did not specify in the wording of their motion exactly how many classes they were approving, then the applicant would be permitted to have whatever number of classes she so chose. He recommended the Commission modify their motion. Mr. Stoutenberg then expressed concern as to whether there was adequate parking for 10 cars onsite; however, he stated he was more concerned with traffic issues arising from back-to-back classes. Mr. Krimmel stated that he believed one class per day, as the applicant originally requested, was reasonable. The Commission then discussed whether parking onsite was adequate for 10 cars.

**MOTION** Mr. Krimmel, second Mr. Stoutenberg, to amend the original motion on the floor to include the following conditions:

1. No more than one class per day is permitted.
2. No more than 10 cars may be parked in the driveway; no on-street parking is permitted.

Mr. Pratt expressed his support for this amendment. The amendment to the motion on the floor was unanimously approved.

The Commission then voted on the amended motion to approve the application in the matter of **Michelle Sutton-Slattry for Kerry Slattry, 22 West Hill Road – Special Exception for Home Occupation (Yoga and Meditation Classes) as per Section 3.6E of the Zoning Regulations** as per all oral and written testimony with the following conditions:

1. No more than one class per day is permitted.
2. No more than 10 cars may be parked in the driveway; no on-street parking is permitted.

The amended motion was unanimously approved.

### B. **David and Luz Donovan, West Hill Road (Assessor's Map 031-042-2-1) – 1-Lot Subdivision to Convert Approved Agricultural Lot to Building Lot.**

The Commission agreed to continue this matter to the February 13, 2013 regular meeting.

**3. NEW APPLICATIONS:**

No business was discussed.

**4. APPROVAL OF MINUTES:**

**A. December 12, 2012 regular meeting.**

**MOTION** Mr. Stoutenberg, second Mr. Pratt, to approve the minutes of the December 12, 2012 regular meeting as written; unanimously approved.

**5. ZONING ENFORCEMENT OFFICER'S REPORT:**

The Commission agreed to table discussion of the Zoning Enforcement Officer's Report until the end of the meeting.

**6. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:**

**A. Quercibella Restaurant, applicant; Prestige Buildings, LLC, owner: Request per Section 8.1K of the Zoning Regulations to Waive Special Exception Requirement for Change from High-Turnover Restaurant to Low-Turnover Restaurant.**

Ms. Malanca explained to the Commission that the use for the property in question was currently designated as high turnover restaurant. However, the applicants wished to serve beer and wine, which was only possible in a low-turnover restaurant. She stated that the property was located in the commercial zone and either use would require a special exception, as would a change of use; however, in her opinion the applicants met the requirements for Section 8.1K, in which the Commission could chose to waive the special exception requirement for a use that would otherwise require one, provided certain conditions were met.

Keith D'Angelo, contractor for the applicants, addressed the Commission to explain that the property under consideration had previously been an ice cream shop and was now being converted to a different type of restaurant. He explained that the building code requirements were the same for both types of restaurants, so the applicants did not realize the potential issue until they applied for their liquor license. Mr. D'Angelo explained that the seating capacity of the previous restaurant was 50 people; the applicants were proposing seating for 25 patrons. The applicants, Carl Rynecki and Maria Brighenti-Gregoire, then addressed the Commission. They explained that their restaurant would serve flatbread pizzas. They stated that food would be served on china and not on disposable products. They expected that the average sitting time for customers would be approximately 45 minutes to 1 hour. They also noted that they had more than adequate parking available.

Mr. Stoutenberg noted that condition two for a waiver as per Section 8.1K stated the new use should require no greater parking than the current use. He asked the applicants whether this presented a problem. Ms. Malanca explained that they would need 11 parking spaces plus one handicapped-accessible space; they had 2 handicapped-accessible spaces, 2 takeout spaces, and 16 regular parking spaces. Mr. Stoutenberg then noted that condition three stated that the new use shall entail no exterior changes to the building or site, except as the Commission may require. Ms. Brighenti-Gregoire and Mr. Rynecki explained that they had installed new shingles and windows. Ms. Malanca noted that they had also enclosed 6 feet of an existing deck; she showed the picture to the Commission.

Ms. Malanca stated that she had received an email dated January 8, 2012 from Thomas Santoro, Esq., the property owner's legal counsel, which stated that the property owners had no objections to the change in use. First Selectman Dan Jerram then submitted a letter dated January 9, 2013 in favor of the applicant's request for a waiver. Mr. Branse reminded the Commission that they had included the waiver provision in order to give applicants the opportunity to avoid the long special exception process when the new use was essentially comparable to the existing use.

**MOTION** Mr. Stoutenberg, second Mr. Steadman, as per Section 8.1K of the Town of New Hartford Zoning Regulations, to grant a waiver to Quercibella Restaurant, applicant, Prestige Buildings, LLC, owner for the property at 280D Main Street of the special exception requirements of Section 4.2 of the Town of New Hartford Zoning Regulations; unanimously approved.

**B. Discussion with Commission's Attorney Regarding Incentive Housing Districts.**

Mr. Branse distributed to all Commission members a handout detailing the differences between Incentive Housing Zones under Chapter 124b of the Connecticut General Statutes and Affordable Housing under Section 8-30g of the Connecticut General Statutes. He noted that in affordable housing applications, the developer was not obligated to follow the Town's zoning regulations. However, using the Incentive Housing Zone process, a Commission could designate the areas it thought suitable for more moderately priced housing as well as set zoning and design requirements for housing in that area. Once the incentive housing zone regulations were adopted and approved by the Connecticut Office of Policy and Management, a developer would only need site plan approval for their project. He explained that this gave Planning and Zoning Commissions greater ability to ensure any lower income housing that was constructed fit with the Town's POCD, and it also gave developers the knowledge that, if their proposed developments adhered to the requirements of the Incentive Housing Zone, they would be approved. Mr. Branse also explained that if a Town adopted and applied Incentive Housing Zone regulations to an area of their Town, that area so designated would be ineligible for affordable housing applications under Section 8-30g.

He explained that under the Affordable Housing regulations, there were no minimum or maximum densities; developers chose what they wished to build. Under Incentive Housing regulations, there was a minimum density required; however, it was calculated based on developable land, which allowed Commissions considerable flexibility. Developable land did not include areas in the 100-year and 500-year flood plains or areas with steep slopes or shallow depth to bedrock. Mr. Branse stated that the minimum density requirements could be waived if the Town or a nonprofit housing trust sponsored the housing; however, in this case 100% of the housing constructed must be affordable.

Mr. Moore asked whether the Incentive Housing Zone (IHZ) was applied as an overlay zone, and Mr. Branse responded affirmatively. Mr. Moore questioned whether these zones also had to meet the requirements of the original underlying zone, and Mr. Branse stated that they did not have to if the Commission did not desire this. Mr. Branse stated that no more than 10% of a town can be designated Incentive Housing Zone. He explained that Commissions were permitted to establish design guidelines for housing in the IHZ. Commissions could also require open space for applications in IHZs as long as this did not unreasonably impair the affordability of the homes proposed. Mr. Steadman questioned whether open space was excluded from buildable land, and Mr. Branse responded affirmatively. Mr. Branse also noted that mixed use was expressly allowed in IHZs.

Mr. Branse explained that grants were available for all necessary studies to establish IHZ regulations; in addition, once the regulations were adopted, the Town was eligible for \$2000 per unit the IHZ theoretically created. Once the housing was constructed and occupied, the Town would be eligible for \$2000 per multifamily housing unit and \$5000 per single family home. Ms. Malanca questioned whether these funds were paid to the Town or to the developer. Mr. Branse explained that the regulations did not specify this. Mr. Branse cautioned that funds were paid only as available from the State. Mr. Moore then asked whether establishment of an IHZ under this State program made it difficult for the Commission to amend the regulations at a later date. Mr. Branse explained that if the IHZ regulations were created under this program, the initial regulations and any amendments thereafter would require approval by the Connecticut Office of Policy and Management (OPM). Mr. Krimmel asked whether a Commission could draft IHZ regulations without participating in the State program requiring OPM review. Mr. Branse stated that the Commission could do this; however, since the plan was not approved by OPM, the Town would still be open to affordable housing applications under Section 8-30g.

Ms. Malanca asked about the differences in procedures for affordable housing applications and IHZ applications. Mr. Branse explained that a public hearing could be held on affordable housing applications; however, there were very narrow reasons for a Commission to deny an affordable housing application put forward under Section 8-30g. With Incentive Housing Zone regulations, a public hearing was held prior to adopting the regulations; however, once the regulations are adopted, all applications require only site plan approval. Mr. Moore questioned whether Commissions could establish height restrictions for houses in the IHZ, and Mr. Branse replied affirmatively. Mr. Pratt asked whether housing constructed in an IHZ counted toward the Town's goal for 10% of all housing designated as affordable housing. Mr. Branse stated that it would count as long as the housing was deed-restricted.

Karl Nilsen, representative for John Castellani, addressed the Commission. He explained that the Town of Brookfield had created Incentive Housing Zones without participating in the OPM grant program. Ms. Malanca asked what the Commission should do next to get started on these regulations. Mr. Branse suggested applying for a planning grant, and if approved, he recommended hiring consultants such as a planner and attorney to assist in identifying appropriate areas for IHZs as well as drafting regulations. Ms. Malanca questioned whether Mr. Branse thought was worthwhile to apply for the grant or do the work without the grant. He suggested applying for the grant for the initial work; the Commission could later decide whether or not to submit their plan to OPM.

Ms. Malanca questioned whether the Commission was permitted to establish different IHZs with different regulations for different parcels throughout the Town. Mr. Branse stated that establishing different subzones within the IHZ regulations was permissible. Mr. Pratt questioned whether the Commission had to plan and draft regulations for all the different subzones all at one time, or if they could simply establish regulations for one subzone at a time. He also expressed concern that creating IHZs was forcing landowners to develop their land as affordable housing. Mr. Branse stated that property owners could choose whether to develop their land under the IHZ regulations or under the requirements of the existing underlying zone; if anything, this was increasing a property owner's options. Mr. Pratt questioned how neighbors of a potential IHZ could address their concerns if applications were subject to site plan approval only and therefore did not require a public hearing. Mr. Branse stated that there would be a public hearing prior to the placement of the Incentive Housing Zone designation on any area of the Town; abutting neighbors of the proposed zone would be notified. Mr. Krimmel asked whether it was possible to restrict the number of bedrooms in housing constructed in IHZs. Mr. Branse stated that he did not believe this was possible under the OPM program; however, he believed this was possible if the Town opted to draft IHZ regulations without the State program. He also recommended involving the Commission's chosen planner determining the density of school-age children in Town as well as whether there was sufficient demand for 1- to 2-bedroom rental homes.

**C. Continued Discussion Regarding Review Process for 2015 Plan of Conservation and Development.**

Mr. Stoutenberg noted that there did not appear to be any significant changes needed to the Plan of Conservation and Development (POCD). He questioned whether the Commission was required to use a planning firm to assist in updating the POCD. Mr. Branse explained that the Commission was simply required to "examine" the POCD. He noted that a planner was useful to have involved in the process in order to ensure census data and projections remain correct. Mr. Jerram pointed out that the Board of Selectmen would need to know whether or not the Commission wanted to retain planning services for the POCD update in order to ensure accurate budgeting for the upcoming fiscal year. He stated that the BOS would begin the budget process for Fiscal Year 2013-2014 in March. Mr. Branse stated that involving a larger planning firm was a good idea for comprehensive rewrites of POCDs; however, for smaller updates, he felt it was acceptable to work only with a smaller planning consultant. The Commission briefly discussed creating a POCD subcommittee; however, they ultimately agreed to address this topic in more detail at the January 23, 2013 regular meeting in order to finalize whether or not they wished to hire a planning firm for the POCD update. Mr. Krimmel urged all members to review the current POCD prior to the January 23<sup>rd</sup> meeting.

**D. Election of Officers.**

The Commission agreed to table this matter to the January 23, 2013 regular meeting.

**7. CORRESPONDENCE:**

**A. Connecticut Bar Association Seminar, March 16, 2013: CT Land Use Law for Municipal Land Use Agencies, Boards, and Commissions. Land Use Attorney to Highlight Some Important Issues which will be Discussed at the Seminar.**

Mr. Branse distributed informational packets to the Commission pertaining to conflict of interest and predetermination. He also highlighted recent cases such as Dodson's Boat Yard v. Town of Stonington regarding the need to specify exact conditions and cite exact plans both in the approval motion and on the variance or special exception permit that is filed in the Town Clerk's office. Mr. Branse then reiterated that alternate commission members, while permitted to participate in public hearings, are not permitted to participate in deliberations once the public hearing closes if they have not been seated. He noted that full members absent from the public hearing could listen to the tape of the public hearing and then participate in deliberations if the deliberations had not started while the member in question was absent.

**MOTION** Mr. Stoutenberg, second Mr. Pratt, to adjourn at 9:24PM; unanimously approved.

**Respectfully submitted,  
Stacey M. Sefcik**