

**New Hartford Planning and Zoning Commission  
TOWN OF NEW HARTFORD, CONNECTICUT  
REGULAR MEETING MINUTES  
Wednesday, February 8, 2017 at 7:00 PM  
New Hartford Town Hall  
530 Main Street, New Hartford, Connecticut**

**PRESENT:** Ted Stoutenberg, Dan LaPlante, Jim Steadman, David Krimmel, Bob Moore, Dan LaPlante, Alternates Peter Ventre and Marty Post; Zoning Enforcement Officer Ruth Mulcahy.

**ABSENT:** Alternate Tom McLoughlin.

Chairman Ted Stoutenberg called the meeting to order at 7:00PM. The entire proceedings were recorded digitally and are available in the Town Hall.

**1. PUBLIC HEARINGS:**

**A. Allan Borghesi – Borghesi Building/Applicant – New Hartford Market Place, LLC/Owner – Special Exception/Special Permit – Map 043, Block 047, Lots 3-4-5, 1 Main Street, Use Site for Contractors Shop and Storage.**

Ms. Mulcahy read the legal notice for the Public Hearing into the record, noting that it was published the requisite two times, January 27, 2017 and February 3, 2017 in The Hartford Courant. The proofs of notice to the abutting neighbors was provided for the file.

Allan Borghesi appeared before the Commission regarding this application. He explained that an application to construct a building on this site was approved through a site plan approval. He explained that the applicant is seeking to use a portion of that building for contractors' storage.

He referenced a drawing that included the area of the proposed building to be used for the contractors to use as storage with one area that includes screening. Mr. Borghesi opined that the screening is redundant, noting that the proposed contractor storage area is 540 feet back and is covered by a very large rise in grade. He noted that the site is not visible to any of the abutting neighbors but for the adjacent neighbor to the west. Mr. Borghesi reported that his client would be purchasing that land.

Mr. Borghesi then reviewed the Zoning Regulations and how the application meets the requirements.

Mr. Stoutenberg questioned whether the applicant's client is seeking to run his logging business out of this location, in addition to the manufacturing of the vehicles. Mr. Borghesi confirmed. Mr. Moore questioned whether outside storage is in addition to the contractor's shop. Mr. Borghesi confirmed.

Ms. Mulcahy noted that a letter has been provided regarding viewing the location of the outside storage from the Tunxis Trail.

**Donna LaPlante of 77 Stedman Road** spoke in support of the application. Noting that she is member of the Economic Development Commission, Ms. LaPlante noted that they are very pleased with the results of Mr. Borghesi's previous buildings

**Mary Ellen Behr of 42 Mohawk Drive of the Town of Canton**, noting that she had authored the letter regarding the Tunxis Trail, spoke in opposition of the application. She opined that the

property is extremely conspicuous from the conservation area which has an outstanding view of the gorge. Ms. Behr passed around her iPad containing photographs of trucks on site.

New Hartford Fire Chief Mark Worsman spoke in opposition of the application, noting his concerns with the availability of water at the site. He noted concerns with the storage of trucks at this location and the possibility of diesel spills. Chief Worsman questioned whether there will be a fuel dispensary at the location, whether the trucks will be stored within the building, and the type of controls that will be within the building. Additionally, he questioned the type of controls that will be put into place for oxygen and settlement tanks for welding and whether they would be properly secured. Chief Worsman questioned whether the building would be equipped with a 24-hour alarm system in place.

New Hartford Fire Captain Ben Marcus spoke in opposition, noting his agreement with the chief's comments. He explained that when a fire occurs in Town, it is necessary to call in water tankers from neighboring towns which results in the fire burning longer as the firefighters are forced to wait once their own supply has been consumed.

Jeff McLellan of Precision Tree Experts, LLC confirmed that there will be an alarm system at this building. Mr. McLellan noted that if the site were to have fuel dispensing, it would likely be installed within the building and would not be at this time, as part of this application.

Mr. Steadman questioned the screening included. Ms. Mulcahy explained that the site plan had required a planting plan. Mr. Steadman questioned Ms. Behre about the location from which she stood and could see the site. Ms. Behre explained that it was from the Tunxis Trail, noting that a blue marker depicts the trail after going up Satan's Kingdom Road, across the way, which is eye level with this parcel.

Mr. Moore questioned whether there is a plan to install a fire cistern at this parcel. Mr. Borghesi indicated that neither he nor his client have considered this at all.

Mr. Borghesi referred back to the testimony from the previous approval, noting that the site cannot be seen due to the presence of evergreens.

Commissioners reviewed the photographs on Ms. Behre's iPad. It was noted that the photographs were of land clearing equipment at the site. Attorney Mark Branse, counsel for the Commission, requested that Ms. Behre email a hard copy of these pictures, noting that anything the Commission sees should be in the public record.

**MOTION:** Mr. Steadman, Mr. Krimmel second, to close the public hearing in the matter of Allan Borghesi – Borghesi Building/Applicant – New Hartford Market Place, LLC/Owner – Special Exception/Special Permit – Map 043, Block 047, Lots 3-4-5, 1 Main Street, Use Site for Contractors Shop and Storage; unanimously approved.

Pursuant to the Chairman's request, Agenda item *Other Business: A. Discussion with Attorney Mark Branse of Possible Changes to Subdivision and Zoning Regulations in Accordance with the Plan of Conservation and Development* was taken in advance of *Pending Business: Allan Borghesi – Borghesi Building/Applicant – New Hartford Market Place, LLC/Owner – Special Exception/Special Permit – Map 043, Block 047, Lots 3-4-5, 1 Main Street, Use Site for Contractors Shop and Storage*.

## **2. OTHER BUSINESS:**

### **A. Discussion with Attorney Mark Branse of Possible Changes to Subdivision and Zoning Regulations in Accordance with the Plan of Conservation and Development.**

Mr. Stoutenberg reported that First Selectman Dan Jerram requested that the Commission consider Sewer Avoidance Zones. Attorney Branse explained that he had helped prepare an ordinance for the Town of Westbrook, and that it is a model for other towns so therefore may be reviewed and used. Attorney Branse explained that the purpose of it was to monitor and enforce things that are already required under the public health code to keep existing septic systems working better. Septic systems, when they operate correctly, are much better than sewers, according to Attorney Branse. Attorney Branse detailed the numerous economic and environmental benefits with septic systems including: septic systems recharge the ground water, they do a higher level of purification than sewers do, they are decentralized, there are no moving parts with septic systems, there is no electricity with septic systems.

Attorney Branse explained that Westbrook's ordinance set up a system allowing that town to monitor whether people were pumping out their septic systems every five years, which has been in the public health code for a very long time. He noted that it is a legal requirement that people pump their systems at least once every five years but the problem lays with tracking compliance. Attorney Branse then explained the measures taken by Westbrook to track and enforce the compliance.

The recent events concerning ESAs (Exclusive Service Areas) for water distribution in New Hartford were then briefly discussed. Attorney Branse opined that there is a definite benefit to the Town to claim the entirety of the town as their own ESA in that they can always assign it to someone else to manage but the ability to control where and when water is provided and at what cost is a benefit to any town. Mr. Post questioned whether there is any liability to a town to make that declaration. Attorney Branse indicated there is not, and that it is just a right to control who provides the water in a town's district.

Ms. Mulcahy noted that there are presently two maps seeking boundary line adjustments. Attorney Branse then presented guidance on Boundary Line Adjustments. He gave a very thorough explanation regarding the factors that should be considered and reviewed with these to determine whether the lot line adjustment rises to the level of a subdivision event. Attorney Branse noted that consideration must be given to any particular situation to determine whether it is a "first cut", a re-subdivision, or a subdivision. The two cases he covered are *Goodridge v. Zoning Board of Appeals of the Borough of Newtown* and *Balf Co. v. Planning and Zoning Commission of the Town of Manchester*.

In *Goodridge*, the important factors that were considered in the Connecticut Appellate Court declaring that it was not a subdivision event was that it was a small area, no money changed hands, and that it was not for purposes of development.

In *Balf*, a situation where a restaurant wanted to purchase more land in order to expand its building, the Connecticut Appellate Court determined that a subdivision event had occurred because of the size of the area of land transferred, the exchange of money, and that it was for the purposes of development.

Attorney Branse noted that he had provided to Ms. Mulcahy language that could be incorporated into the Zoning Regulations to establish that if a change is made to the lot lines in a subdivision, then approval must be sought from the Planning and Zoning Commission. He noted that this could be done in one meeting without requiring a public hearing and that a

charge need not be levied. Attorney Branse noted that the benefit to the Town is that it allows all to be sure that the lot line revision does not create a zoning violation, and also to be sure that the revision does not create a non-viable lot.

Ms. Mulcahy noted that one of the maps before the Commission was a subdivision from the 1970s, wherein the couple want to protect their land from development and is attempting to buy the back of another lot on Beeney Road. She noted that she has reviewed the other lots and explained that the owner has gone to Farmington Valley Health District. Ms. Mulcahy explained that with any boundary line adjustment, a sign-off is required from the health district. Attorney Branse pointed out the necessary language by the surveyor indicating, "To Be Merged with Adjacent Lot" so it is obvious that it is not creating a new parcel. Attorney Branse noted that a Boundary Line Agreement, rather than a deed, should be filed on the Land Records.

Mr. Post observed that the survey ought to have included the location of the house. Attorney Branse agreed.

Ms. Mulcahy then presented a subdivision located on Shady Brook Road Extension wherein an approved five-lot subdivision map was approved and filed but then the developer filed a revised five-lot map where the back boundary of one of the lots was modified but had not come back before the Commission. Subsequent to that second map, a third map was filed reflecting only four lots, wherein two lots were merged in order to get a tax reduction, according to Ms. Mulcahy. Another map, a fourth version, has since been filed, which now included five lots, with the fifth lot reduced to two acres and it is now undetermined as to whether that fifth lot is a viable lot, Ms. Mulcahy explained.

In response to a question from Ms. LaPlante who currently serves as Town Clerk, Attorney Branse noted that Connecticut General Statutes Section 8-25 says that no subdivision plan shall be filed with a town clerk unless endorsed by the Commission. He explained that these should not be accepted for record at all unless they include a signature of the Chairman.

Ms. LaPlante explained that because these lots are part of a private drive on Shady Brook Extension, the lots are supposed to be double the zone. With one of the lots reduced from four acres to two acres, it is in violation, according to Attorney Branse. He noted that the only valid map is the original map although the owner may return to the Commission, seek subdivision modification approval, and if all the lots are viable and meeting zoning compliance, approval can be granted. Attorney Branse advised Ms. Mulcahy that she may file a Cease and Desist Order on the Land Records in this matter.

The Subdivision Regulations were reviewed as they relate to fire cisterns. It was noted that Appendix D needs to be modified. Attorney Branse explained a recent case involving the Andover Planning and Zoning Commission where the options they had were cistern, dry hydrant, or individual house sprinklers. He noted that the judge had declared that a developer could choose any of those options whereas the Plaintiff had argued that this provision allowed the Commission to amend the Fire Code without authorization. The judge rejected that argument and declared that subdivision regulations are allowed to provide for the health, safety, and welfare to make sure lots are safe from fire, according to Attorney Branse.

In response to how many lots is an appropriate number of lots for requiring a cistern, Attorney Branse indicated that the Town has to show that the benefit to the developer is roughly in balance with a request being made of them.

Attorney Branse also noted that the current Zoning Regulations can be revised to protect against the concept of “incrementalism”, in that developers must label the land as “not a building lot” or merge it into an existing lot.

The Commission recessed at 8:26PM and reconvened at 8:38PM.

### **3. PENDING BUSINESS:**

**A. Allan Borghesi – Borghesi Building/Applicant – New Hartford Market Place, LLC/Owner – Special Exception/Special Permit – Map 043, Block 047, Lots 3-4-5, 1 Main Street, Use Site for Contractors Shop and Storage.**

**MOTION:** Mr. Stoutenberg, Mr. Krimmel second, made the following motion:

*WHEREAS*, the Town of New Hartford Planning and Zoning Commission received a Site Plan/Special Exception application for an additional use of a contractor business in an approved 8,320 square foot manufacturing building located at 1 Main Street, New Hartford, CT in an I Industrial District which includes an application, a Site Plan SP1 & SP2 dated 11/15/16 with a final revision date of 01/13/17 prepared by Borghesi Building & Engineering Co. Inc. 2155 East Main Street, Torrington, CT 06790; and

*WHEREAS*, the Planning and Zoning Commission heard the application on February 8, 2017:

*IT IS THEREFORE RESOLVED* that the New Hartford Planning and Zoning Commission approves the Site Plan/Special Exception application for an additional use of a contractor business in an approved 8,320 sq. ft. manufacturing building located at 1 Main Street, New Hartford, CT in an I Industrial District with the following conditions:

1. All exterior lights, including any sign lighting, shall be full cut lighting in compliance with Article 6 Section 6.4.
2. A copy of the CT Department of Transportation driveway permit shall be submitted before a zoning permit is issued.
3. No outdoor storage of any materials, equipment or unregistered vehicles, beyond the area shown on the map, is approved with this motion.
4. Upon completion, all drainage facilities shall be inspected and approved by the Town Engineer.
5. A Knox box shall be installed in accordance with the Zoning Regulations.
6. There shall be no onsite diesel dispensary; Motion passed with Mr. Stoutenberg, Mr. Krimmel, Mr. LaPlante, and Mr. Steadman voting aye while Mr. Moore was opposed.

Prior to the vote on the preceding motion, Mr. Moore reiterated his concerns with fire protection at this location, noting the comments that were shared by Chief Worsman.

### **4. OTHER BUSINESS TO COME BEFORE THE COMMISSION:**

**B. Vote Tally on Capital Expenditure Person. Included in Minutes, but was not part of Public Meeting.**

Mr. Stoutenberg explained that the vote deciding who would choose on the Capital Expenditure Committee was done by secret ballot, the results indicating who each commissioner voted for should have been read aloud in a public forum. It was noted that even though the results were contained in the January 11, 2017 Minutes, they should have been stated aloud at the time the vote occurred. It was noted that Mr. LaPlante received votes from Mr. Stoutenberg, Mr. Krimmel, and Mr. LaPlante to serve on that Committee while Mr. Moore received votes from Mr. Steadman and Mr. Moore.

**5. NEW APPLICATIONS:**

None.

**6. APPROVAL OF MINUTES: January 11, 2017**

The January 11, 2017 Minutes were tabled to the next meeting.

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

It was noted that Attorney Branse would draft a revision to the Subdivision Regulations. Additionally, Ms. Mulcahy noted that she has requested that Attorney Branse call Mr. Jerram relative to the sewer avoidance area.

Mr. Krimmel questioned the status of the grant received for a study on an Incentive Housing Zone. Ms. Mulcahy explained that she has applied to receive the money but is reluctant to continue contracting for any additional work until she has the funds in hand.

**8. CORRESPONDENCE:**

Ms. Mulcahy reported that the Connecticut Federation of Planning and Zoning Commissions will meet at the Aqua Turf on March 23, 2017 to discuss the Freedom of Information Act.

New Hartford Fire Deputy Chief Richard Marcus briefly addressed the Commission.

**MOTION:** Mr. Steadman, Mr. Krimmel second, **to adjourn at 8:58PM; unanimously approved.**

**Respectfully submitted,**

**Pamela A. Colombie  
Recording Secretary**