

**New Hartford Planning and Zoning Commission
TOWN OF NEW HARTFORD, CONNECTICUT
REGULAR MEETING MINUTES
Wednesday, April 27, 2016 at 7:00 PM
New Hartford Town Hall
530 Main Street, New Hartford, Connecticut**

PRESENT: Chairman Ted Stoutenberg, David Krimmel (7:08PM), Dan LaPlante, Bob Moore, Jim Steadman, Alternates Tom McLoughlin, Martin Post, Zoning Enforcement Officer Ruth Mulcahy and Attorney Mark Branse.

ABSENT: Alternate Peter Ventre.

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

The agenda was modified, moving Agenda item *A. Town of New Hartford – West Hill Overlay District – Commission Discussion with Attorney Mark Branse* ahead of *Approval of Minutes*.

1. PUBLIC HEARINGS:

None.

2. PENDING APPLICATIONS:

None.

3. NEW APPLICATIONS:

None.

4. Town of New Hartford – West Hill Overlay District – Commission Discussion with Attorney Mark Branse.

Mr. Stoutenberg noted that Attorney Branse was invited to provide guidance to the Commission as this Commission endeavors to assist in protecting the water quality at West Hill Lake. Mr. Stoutenberg reported that he has received communication since the last meeting from the West Hill Properties Association. Their soil scientist provided recommendations that include establishing a shore line protection zone for all land surrounding the lake to a distance of two hundred, fifty (250') feet from lake edge and LID incorporated in all aspects of landscaping for West Hill drainage basin, according to Mr. Stoutenberg. He also reported that he has learned that virtually every single piece of property that has lake frontage is occupied by either a year-round or seasonal dwelling: thirty-eight year-round dwellings and fifty-seven seasonal dwellings. In addition, of those fifty-seven seasonal cottages, thirty-seven of them have no wells and get their water from the lake, according to Mr. Stoutenberg.

Attorney Branse noted that in his preparation for this meeting, he read that the Inland Wetlands Commission had indicated that they do not have control over water quality. He noted that this is not true and that a wetlands commission most certainly has authority over water quality and any impact on water quality of a lake, pond or any other body of water is well within their jurisdiction. He noted that anything that is within their jurisdictional limit, including their one hundred (100') upland review area, may be evaluated for water quality and that includes phosphates, nitrates and particulates. Beyond dispute, Attorney Branse noted, the Inland Wetlands Commission has authority in this regard.

He noted that the Department of Energy and Environmental Protection (DEEP) have an option wherein a set footage may be used for an upland review area or language such as, "any activity that may impact a wetland or watercourse". Attorney Branse explained that the latter parameters may result in the upland review area being well over one hundred (100') feet. He explained that a problem may result in how the determination is made regarding at what distance an activity may impact a water body which is why most towns prefer a defined distance. Attorney Branse noted that some towns utilize different upland review areas for different bodies of water, such as with the Town of Hebron. He explained that Hebron utilizes a fifty (50') foot upland review area for wetlands but then much larger upland review areas for the major brooks in town. Attorney Branse reported that it is not unusual for towns to have much larger review areas for bigger bodies of water because the reason there even is wetlands protection is because wetlands renovate water. He explained that wetlands have the capacity to absorb and purify tremendous volumes of water, even very contaminated water noting that silt, phosphates, and even nitrates can be absorbed through wetlands. Nitrates are the most persistent of all contaminants as they are highly soluble, according to Attorney Branse. Nitrates can travel in solution through the soil tremendous distances with almost no attenuation noting that about the only thing that really does treat nitrates in the soil are wetlands soils, he explained.

Attorney Branse reiterated that the Inland Wetlands Commission does have authority over water quality and noted that they may want to use the DEEP optional language for upland review area. He explained that they do not have authority over septic systems per se as they do not administer the Health Code but they are allowed to evaluate the effects of any activity on property and the fact that a septic system complies with the public Health Code does not necessarily mean that it complies with the Wetlands Regulations. In fact, it may not, he reported, as the criteria of the Wetlands Regulation is much broader and deliberately more discretionary. Attorney Branse explained that human beings are pretty tough in that we can take about 5 parts per million (ppm) of phosphate with no negative effects but 5ppm of phosphate to a lake will cause nitrification in lakes. He noted that the Health Code is not intended to be an environmental regulation and is only intended to protect human health.

Attorney Branse then noted that water quality can be addressed through Zoning, noting that a few years ago, FAR (Floor Area Ratio) was adopted to try to limit the amount of pervious surface in areas that are upgraded, primarily in the West Hill area. He noted that pervious surface is a major factor in contaminants reaching the water, explaining that the more water that you put back into the ground and force it to travel through the ground before entering a lake, the better. He noted that nitrates will not be filtered out, as only a wetland can filter that out. Attorney Branse explained that most of the contaminants that reach water does so by adhering to soil particles.

One of the things that was considered in New Hartford a couple of years ago was the increase in FAR, for the Zoning Board of Appeals to grant, based in part, on the storm water management system as part of the applicants' proposal. He noted that to the extent that a higher level of storm water treatment is part of the overall proposal, something that is more than is normally required, the Zoning Board of Appeals can consider this in granting more coverage. Attorney Branse explained that methods exist for purifying the water and have for many years.

Another action that is extremely valuable for lake protection is vegetative buffers, according to Attorney Branse. He explained that along a lake, the worst thing is to have impervious surface like pavement or gravel with the next worst thing being grass or lawn. The more vegetation that

is present in that strip immediately adjoining open water, the better, because the roots and the leaves take up those contaminants and trap them, according to Attorney Branse.

Attorney Branse distributed a draft of an Overlay Zone that he had prepared for the town of Marlborough a few years back clarifying that it has never been adopted. It regulated a number of different lake impact items including docks (length, number of, access to), width of pathways to the water, areas that could be cleared, proximity to lake for clearing, landscaping requirements, prohibitions on buildings within a certain proximity, etc. Mr. Post questioned why Marlborough did not adopt this Overlay Zone. Attorney Branse explained he was not sure but believed that their Commission received a lot of resistance. He noted that the Planner there had taken pieces from different regulations around Connecticut, Maine and Vermont and then had sent it to him for the legal review. Attorney Branse noted that he has reviewed this document in terms of its legality and he is satisfied that it is legal.

Attorney Branse emphasized that zoning only apply prospectively and that anything that is already there is grandfathered or legal non-conforming. He explained that another option is an ordinance. Unlike zoning, ordinances take effect upon passage and apply to everything, existing or not. An ordinance can actually make you take out something that is already there.

A sample ordinance was also distributed to commissioners. Addressed in this sample was docks, floating platforms, motorized vehicles, vehicle speed, and hours of operation. State statutes allow ordinances to regulate the use of lakes, according to Attorney Branse.

He explained that an ordinance can address things like curtain drains, noting that it is easy for someone with an existing curtain drain to reduce its impact on a body of water with little expense. Another item within the sample ordinance included a vegetative buffer, which regulates what can be cleared along a shoreline and includes penalties for violations.

Attorney Branse explained that beyond addressing the quality of water through wetlands, regulations, and ordinances, putting in money is an additional means. The costs associated with better drainage through the town's capital improvement plan is something for consideration. He explained the use of and benefit of swirl separators, detention ponds or settling ponds, and level spreaders.

Mr. Stoutenberg questioned whether the Commission could mandate that septic systems be located seventy-five (75') feet from the lake the same way they do with wells. Attorney Branse confirmed that they could. He noted that this is something that could be phased, such as an element to a regulation that a building that is smaller than 500 square feet must be fifty (50') feet away, etc. He noted that a possible drawback from doing this is in a case of a failed system, it might prevent a repair which would be better for the water quality noting that variances have been tougher to obtain legally over the last couple of years. He noted that to deal with this, the Commission could create a provision that a septic system within seventy-five (75') feet of the lake would require a special permit, with the criteria being that there is no other location where it can go and that it be designed to remove all phosphate by the lake shore. Mr. Stoutenberg questioned whether gutters and footing drains flowing to rain gardens could be required. Attorney Branse confirmed that they could through an ordinance. Mr. Stoutenberg questioned whether an ordinance prohibiting pervious driveways could be adopted. Attorney Branse confirmed.

Mr. Stoutenberg questioned whether the Commission could limit fertilizer within the watershed. Attorney Branse noted that this would be tougher. He noted that this may be able to be

accomplished through an ordinance but was unsure about doing it through zoning. He explained that Zoning regulates the use of the land or physical things. Application of fertilizer is an activity that people do on the property and is something ongoing, according to Attorney Branse.

Attorney Branse spoke about docks, explaining that every dock means that there has to be a way to build it and a way to reach it. Therefore, every dock is a corridor through the vegetation to the water, directly to the water and is nearly always perpendicular to the water. He noted that water flows directly to the lake. Attorney Branse explained that every time a pylon is driven, the water body is stirred up which is why some towns allow only floating docks. Attorney Branse explained that another feature in the sample regulation is not allowing the pathway to the water, dock, or beach to be perpendicular to the water.

In response to an inquiry from Mr. Krimmel regarding whether sealed septic systems or composting systems could be required so that no waste water enters the ground, Attorney Branse advised that it would likely not be possible because something that the Health Code allows cannot be outlawed.

Attorney Branse noted that sewers are not a solution for lake health either. He noted that sewers, but not water, were being installed around Hamston Lake in Hebron. A study was done and it was determined that if every one of those lots had a year-round house with sewers and a well, the Hamston Lake would go dry. He noted that a properly designed septic system recharges the water table as long as it is far enough from the water's edge and is maintained. He then explained how he worked on a sewer avoidance ordinance in Westport that required that people pump out their septic tanks once every five years per the public health code. He noted that it had a recording requirement through a web based software so that the septic sludge hauler, right from his truck, could report the address pumped, the number of gallons of septage, and the inspection report on the baffle.

Mr. Steadman questioned whether there was any way the town could impose a moratorium on development up at the lake until the issues have been worked out. Attorney Branse confirmed that the town could so long as it was a reasonable length of time, such as six months. He noted that it also has to be reasonable scope. A third requirement for a moratorium is that it has to be adopted as a zoning regulation, with a public hearing. A negative consequence of moratoriums is a rush or flurry of applications to suddenly beat the moratorium, he explained.

5. APPROVAL OF MINUTES: April 13, 2016

MOTION: Mr. Steadman, Mr. McLoughlin second, **to approve the April 13, 2016 Minutes; Motion passed with Mr. Stoutenberg, Mr. Moore, Mr. Steadman, Mr. McLoughlin, and Mr. Post voting aye while Mr. LaPlante abstained.**

6. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

A. Francis B. & Louise M. Cooley – Subdivision, East Cotton Hill Road – 90 Day Extension on Subdivision Modification Approval.

Ms. Mulcahy explained that the applicants have ninety days, by statute, to file maps and documents and then are able to seek an extension. This application had been approved with the stipulation that the open space parcel be accepted and in order for that to happen, it needs to occur at a town meeting. She explained that the next town meeting is not until May 19, 2016 whereas the expiration for the applicants' first ninety days is May 3, 2016.

MOTION: Mr. Moore, Mr. Steadman second, **to grant a ninety-day extension in the matter of Francis B. & Louise M. Cooley – Subdivision, East Cotton Hill Road – 90 Day Extension**

on Subdivision Modification Approval; Motion passed with Mr. Stoutenberg, Mr. Moore, Mr. Steadman, and Mr. McLoughlin voting aye while Mr. LaPlante abstained. unanimously approved.

B. Application for Zoning Permit for New Hartford Village Fire Dept. for Car Show at 37 Greenwoods Road on October 2, 2016.

New Hartford Deputy Fire Chief John Wabrek appeared before the Commission on this application, noting that this is an annual event held on the Hurley property on first Sunday of every October from 10AM-3PM.

Motion passed with Mr. Stoutenberg, Mr. Moore, Mr. Steadman, and Mr. McLoughlin voting aye while Mr. LaPlante abstained.

7. ZONING ENFORCEMENT OFFICER'S REPORT:

Ms. Mulcahy reported that the Parrot Delaney Tavern, who is operating a restaurant through a Special Exception, is seeking to install a small platform to connect the two buildings for outdoor seating. She noted that she will issue a simple zoning permit.

Ms. Mulcahy has met with Mr. Stoutenberg and Mr. Moore as well as First Selectman Dan Jerram and his assistant Christine Hayward regarding the Incentive Housing Grant. She reported that the First Selectman has authorized her to contract with Marty Connor and Todd Parsons to get started right away.

Ms. Mulcahy noted that Mr. Allan Borghesi had requested to be on the May 11, 2016 agenda.

8. CORRESPONDENCE:

None.

MOTION: Mr. Steadman, Mr. Moore second, **to adjourn at 8:29PM; Motion passed with Mr. Stoutenberg, Mr. Moore, Mr. Steadman, and Mr. McLoughlin voting aye while Mr. LaPlante abstained.**

Respectfully submitted,

**Pamela A. Colombie
Recording Secretary**