



# TOWN OF WESTBROOK

## ZONING

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### MINUTES

#### **PUBLIC HEARINGS/SPECIAL MEETINGS – 14 MARCH 2011**

The Westbrook Zoning Commission met on Monday, March 14, 2010, in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road, for five public hearings and special meetings. Legal Notice of the Public Hearing was published in *The Hartford Courant* on 1 March 2011 and 8 March 2011.

The first, a joint Public Hearing with the Planning Commission, was to consider Proposed Amendments to the Zoning Regulations Section 11.70.00 through 11.74.07 and corresponding Subdivision Regulations Sections 2.2.6, 4.12.1 through 4.12.7, and addition to Definitions Section 1.5, regarding Stormwater Management.

#### **Call to Order**

Chairman Anthony Marino called the initial hearing to order at 7:04 p.m.

#### **Establishment of Quorum**

Commission members present were Chairman Tony Marino, Harry Ruppenicker Jr., Chris Ehlert, Lee Archer and Tom Belval. Also present were ZEO Nancy Rudek, Town Planner Meg Parulis, Town Engineer Wendy Coffin of Woodard & Curran, and Recording Secretary Janet L. Aiken.

Also present were the following Planning Commission members: Chairman Marilyn Ozols, Philip Bassett, Marie Farrell, Robert Furno, Carol Ketelson, Ashley Jones, William Neale and Lisbeth Waldron.

#### **Public Hearing #1**

A motion was made by Chris Ehlert, seconded by Lee Archer, to open Public Hearing #1, Stormwater Management Regulations. The motion carried unanimously.

Initial joint commission discussion centered on the need to have matching language and standards consistency in the Zoning Regulations and Subdivision Regulations of the Town.

Planner Parulis and Engineer Coffin provided background for the proposals, citing problematic flooding/run off and water quality issues per State and Federal standards in the Town. Engineer Coffin noted that examination of local records indicates anything above 20% impervious cover including existing development affects water quality. Based upon these findings, Chairman Marino suggested increasing the impervious cover percentage from 10% to 20% in Section 11.72.01(b) as a threshold requiring a stormwater management plan.

Marie Farrell indicated that a half acre lot size was problematic in Section 11.72.01(a) noting that a majority of existing beach area lots were much smaller, thereby exempting them from compliance. Chairman Ozols noted that the word "or" had been inserted ("...one half or more ...") and that the section contained other considerations. The Town Engineer explained referring to this Section that at 10% water quality degradation began with full degradation occurring at 25%; 20% was thought to be an appropriate compromise. She further explained that based upon case studies of 10 prior applications, a 20% capture rate appeared reasonable. Marilyn Ozols also stated that subsection (f) allowed for discretion of the Land Use Department. Planner Parulis exhibited a map currently under construction showing problem areas in Town. Chairman Marino stated this was a starting point and that if further regulation requirements were deemed necessary in the future, that they can be done at that time. The greatest concern and reason for considering the regulation was grade change, potential runoff and flooding, and water quality, particularly along the beach.

Carole Ketelson asked why there were differences in wording for some of the zoning regulations compared to the subdivision regulations, citing Section 11.71.03 Common Plan of Development which is not in the subdivision regs. It was explained that this section as well as 11.71.05 did not pertain to subdivisions. Town Engineer Coffin stated that if any Commission did not use a particular definition that it should not be included in the regs, an opinion shared by Attorney Branse. Lee Archer opined that a regulation can be too wordy, and that the areas of concern are actually one of quality and quantity.

Marie Farrell questioned wording differences between the two commissions regs including "lead" not specifically included in the list of pollutants in 11.70.01 (determined to be included under "heavy metals").

Reference was made to a memo received from Town Engineer Wendy Coffin of Woodard & Curran dated 2/28/10 to ZEO Nancy Rudek exhibiting the results from the 10 case studies referenced above, and a letter from Planner Meg Parulis dated 3/9/11 to the Zoning Commission from the Planning Commission finding the proposed new Section 11.70.00 to the zoning regulations consistent with the Town's Plan of Conservation and Development.

Changes discussed among those present included -

Section 11.70.01 PURPOSE, ADD to Subdivision regs last line "...recharge of aquifers and base flow of watercourses." from Zoning regs as requested by Chairman O'Dell from Inland Wetlands and Water courses Commission.

Section 11.71.05 DISTURBED AREA, ADD to Subdivision Definitions.

Section 11.71.07 FILTRATION MEASURE, ADD to zoning regs, last line "...organic material, or soil for pollutant removal." from Subdivision regs.

Section 11.73.03, ADD last sentence "The Commission . . .and wetlands." to Section 2.2.6(2) Subdivision regs.

Section 11.74.02 DELETE last sentence "{T}he standard for . . . in good condition."

Clarification was sought for Section 11.71.10 LOW IMPACT DEVELOPMENT and the wording "as close to its source as possible" as well as Section 11.74.03 Groundwater Recharge Volume, "to the extent possible" in the **bolded** second to last sentence.

A review of Section 11.74.00 STORMWATER MANAGEMENT PLAN REQUIREMENTS was done. Planner Parulis explained the importance of Section 11.74.02 when it came to wooded sites or pre-development versus filed sites or post-development, noting for example, if a 'field' had once been farmed, the soil's permeability would be different from that which was not previously farmed.

Speaking from the audience, Thomas Elliott AIA spoke against the Stormwater Management Regulations as proposed, submitting into the record a prepared statement (attached hereto) citing hardship to residents undertaking small projects on small lots, the possibility of residents circumventing the permits process and the subsequent enforcement nightmare, and the cost of retaining an engineer possibly exceeding the cost of the actual project contemplated. He also submitted revision suggestions regarding establishment of a threshold for single family properties and a two-tiered percentage of impervious coverage.

Carole Ketelson allowed how Mr. Elliott made some good points for consideration. Chairman Ozols noted that any consideration should be taken on a case by case basis since there are differing circumstances, and that under Section 11.72.01(c) the 10% impervious cover had already been increased to 20% earlier in the hearing as noted by Chairman Marino. William Neale noted runoff problems affected neighboring properties in high density areas with small lots. Tom Elliott readdressed stating that in many cases existing impervious cover stands at 40% but could be reduced to 28% during renovation through use of gravel/shell driveways versus paved noting reduction is more important than a static percentage. Chris Ehlert thanked Mr. Elliott for his comments noting however nonconformity is nonconformity. Town Engineer Coffin stated it was important to have documentation noted with square footage/numbers. The ZEO allowed how any regulation should be fair but not onerous. Robert Furno noted that 10% might be good for the subdivision regs but that perhaps for zoning, a percentage by zone would be more applicable. Planner Parulis stated at present only building coverage percentages and not lot coverage were in the zoning regs, allowing perhaps a change in wording to Section 11.72.01( c ) to “... 20% or coverage percent for the zone.”

Chairman Marino suggested leaving the public hearing open for further discussion and amendment proposals. A motion was made by Chris Ehlert, seconded by Lee Archer, to hold the Stormwater Management public hearing on Section 11.70.00 through 11.74.07 open to the Commission's next meeting of March 22, 2011 to be held in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road, at 7 p.m. The motion carried unanimously.

Correspondently, with regard to the Planning Commission and Subdivision Regulations Sections 2.2.6, 4.12.1 through 4.12.7, and addition to Definitions Section 1.5 amendment proposals regarding Stormwater Management, a motion was made by William Neale, seconded by Philip Bassett, to close the public hearing. The motion carried unanimously. This public hearing closed at 8:16 p.m.

At this point, the Planning Commission recessed to the North Conference Room to continue its posted agenda.

### **Public Hearing #2**

A motion was made by Tom Belval, seconded by Tony Marino, to open Public Hearing #2, Flood Plain Regulations Sections 5.00.00 through 5.09.04. The motion carried unanimously. The hearing opened at 8:18 p.m.

ZEO Rudek explained these proposals were to bring the zoning regs into conformance with DEP's model recommendation which followed FEMA's regs that came in August 2008. CRERPA had no comment after review. The Planning Commission's letter of 3/8/11 as well as DEP's Inland Water Resources Division letter of 2/8/11 from State NEIP Coordinator Diane Ifkovic, and DEP's Office of Long Island Sound letter of 3/14/11 from Senior Coastal Planner Mary-Beth Hart were read into the record.

The yellow highlighted copy of the proposed regs was reviewed by ZEO Rudek. There was no public comment from those attending the hearing.

Chris Ehlert questioned the dollar amounts in Section 5.08.00 concerning insurance coverage. Also questioned was the removal of Section 5.20.00 PENALTIES FOR VIOLATION. ZEO Rudek explained the section was removed per recommendation of Attorney Branse, indicating that language already exists in State Statute, opting to leave it there.

A motion was made by Harry Ruppenicker Jr, seconded by Tom Ehlert, to close the public hearing on Flood Plain Regulations Sections 5.00.00 through 5.09.04. The motion carried unanimously. The hearing closed at 8:28 p.m.

### **Special Meeting/Action -**

A motion was made by Chris Ehlert, seconded by Harry Ruppenicker Jr., to approve Flood Plain Regulations Sections 5.00.00 through 5.09.04 as proposed in yellow highlighted copy noted "Amended thru 8-28-08, Revisions to Flood Zone Designations, as recommended by DEP Jan. 2011 - Feb 8, 2011" to be effective 4/11/11.

Clarification of Section 5.08.00 will be discussed at the next regular meeting.

### **Public Hearing #3**

A motion was made by Tom Belval, seconded by Lee Archer, to open Public Hearing #3, Accessory Apartments Section 8.01.11 (new). The motion carried unanimously. The hearing opened at 8:32 p.m.

Chairman Marino reviewed the Town's need for a formal regulation concerning accessory apartments, and read the proposed regulation text, revised as to Planning and WPCC's comments, into the record in its entirety.

Commission discussion was had on Section 8.01.02(f) and the requirement to have a fully code-compliant sewage disposal system versus just proving one could be installed. Tom Belval indicated he thought the intent was to have "in-law" apartments. Lee Archer questioned the "3 people" limit proposed. It was explained the limit was proposed by Planning and that it would give the ZEO a basis to investigate if a complaint was received. Harry Ruppenicker Jr. Suggested striking the 3 person limit due to its un-enforceability. Lee Archer noted that septic requirements was based on number of bedrooms and not number of bathrooms or number of people.

A letter dated 3/8/11 from Planner Meg Parulis from the Planning Commission was read into the record.

Parking spots and locations were reviewed. After discussion, it was agreed to remove the language (Section 8.01.03(g)).

Harry Ruppenicker Jr. suggested the need for one (1) electric meter servicing the property to eliminate a "duplex" or "two-family" situation which the proposed regulation was not recommending. The exterior entrance issue was also discussed (Section 8.01.03(e)). During discussions it was noted that the word "family" or "family member(s)" were not included in the text as it was considered discriminatory. The need for an accessory apartment to be harmonious with an existing structure was also discussed.

By section, the following was determined -

Section 8.01.02(a) - ADD as proposed (lot size requirement);

Section 8.01.02(d) - removal of the 3 person language;

Section 8.01.02(e) - ADD as proposed (non-variance by ZBA);

Section 8.01.02(f) - ADD as proposed (subsurface sewage system requirement) as requested in a letter dated 2/24/11 from WPCC Chair Marilyn Ozols;

Section 8.01.02(g) new ADD - no separate electric meter to be installed/property to be served by existing meter.

Lee Archer questioned the single meter issue, parking restrictions and general enforceability issues. After further discussion, it was the Commission's consensus to eliminate Section 8.01.02(g) at this time.

Public comment came from Tom Elliott AIA who opposed the regulation, reading from and submitting a written statement (attached hereto), stating un-enforceability, the 'muddled' situation of a property held in Trust or in the names of children, and the removal of a property owner's right to appeal to ZBA. He also questioned the need for the zoning regs to contain design standards.

Also speaking from the audience was Nancy Moore of 116 South Main Street who commented on parking and if the use could be continued of the home owner sold the property. She also inquired as to existing accessory apartments and affect implementation of the new regs would have on them. She also inquired as to any affect on life use of a property and Trust issues.

Also speaking from the audience was Jeff Fulcher of 144 Boston Post Road. Having a disabled parent, he said that there should be separate electric meters as it would affect government subsidies (ie. fuel assistance) of energy bills by putting the account into the receiver's name. It would also eliminate the primary property holder from having possible exorbitant energy bills and having to extricate out what was used by the accessory apartment. It was suggested by the Commission that energy costs could be included in any rent amounts received. Chris Ehlert offered to look into the criteria of the various types of assistance available.

It was suggested to leave the public hearing open to address lingering issues. A motion was made by Lee Archer, seconded by Harry Ruppenicker Jr., to hold the Accessory Apartments public hearing open on Section 8.00.00 to the Commission's next meeting of March 22, 2011 to be held in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road, at 7 p.m. The motion carried unanimously.

#### **Public Hearing #4**

A motion was made by Lee Archer, seconded by Harry Ruppenicker Jr., to open Public Hearing #4, Exterior Lighting Requirements Section 8.22.00 through 8.22.06 (new). The motion carried unanimously. The hearing opened at 9:25 p.m.

Distributed to those present was an updated revised proposal incorporating Attorney Branse's review and the Planning Commission's draft suggestions. Included in the draft were several notes by ZEO Rudek as to placement within the proposed regs. It was decided by the Commission to strike (remove) the table of limits of initial illumination from Section 8.22.05. Town Engineer Coffin stated light trespass levels on neighboring properties needed to be minimized if not eliminated and to have maximum levels in the regs would "allow" an applicant to maximize an application. Temporary lights versus permanent light installation was discussed. Possible difficulties in enforcement were reviewed, particularly between commercial and residential properties' usage, and seemingly "pick & choose" investigative measures. Security floodlights were brought up by Harry Ruppenicker Jr.

From the audience, Nancy Moore stated she had no objection to holiday lights and that her husband had 'permanent' lights on a small evergreen on their property. Also speaking from the audience was Jeff Fulcher who indicated that in the case of security floodlights, the bigger and brighter the better to discourage theft and property damage.

A motion was made by Tony Marino, seconded by Tom Belval, to hold the Exterior Lighting Requirements Section 8.22.00 public hearing open to the Commission's next meeting of March 22, 2011 to be held in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road, at 7 p.m. The motion carried unanimously.

Brief further comment by Chris Ehlert regarding a possible conflict between Sections 8.22.03(3) and (6) was made. It was further noted that the Title to Section 8.22.05 should also be removed.

### **Public Hearing #5**

A motion was made by Lee Archer, seconded by Tom Belval, to open Public Hearing #5, Amendments to Aquifer Protection Regulations (varied). The motion carried unanimously. The hearing opened at 9:51 p.m.

Comments from Environmental Analyst Kim Czapia of the CT DEP Bureau of Water Protection and Land Reuse Aquifer Protection Area Program dated 2/24/11 to Mary-beth Hart, have been incorporated in the draft. Attorney Branse had reviewed the proposal also and ZEO Rudek indicated the proposal is true to the State model. The proposed language and amendments follow and conform to the DEP model, and per Town ordinance, the Zoning Commission is the governmental agent.

From the audience Jeff Fulcher noted that time lines for compliance should be included with forced compliance as he is presently at odds with DEP over the ongoing gas station contamination adjacent to his property.

Chairman Marino said that the proposal was before the Commission for a technical vote.

A motion was made by Lee Archer, seconded by Harry Ruppenicker Jr., to close the public hearing. The motion carried unanimously. The public hearing closed at 10:03 p.m.

### **Special Meeting/Action -**

As the Commission was required to bring current language into conformance, a motion was made by Harry Ruppenicker Jr., seconded by Tom Belval, to adopt the recommended DEP language, to be effective 4/11/11. The motion carried unanimously.

A motion was made by Tom Belval, seconded by Harry Ruppenicker Jr., to adjourn. The motion carried unanimously.

The meeting adjourned at 10:04 p.m.

(Reference is hereby made to additional minutes independently taken during the joint public hearing by the Planning Commission.)

(Reference is also made to two attachments of public comments).

Respectfully Submitted,

*Janet L. Aiken*

Janet L. Aiken, Recording Secretary  
For Westbrook Zoning Commission

(THREE (3) micro cassette tapes was recorded for the 3/14/11 Public Hearings/Special Meetings).

*Janet L. Aiken*  
Janet L. Aiken, Recording Secretary

3/16/11  
Date Submitted