

## **TOWN OF OXFORD**

### **PLANNING & ZONING COMMISSION**

S.B. Church Memorial Town Hall  
486 Oxford Road, Oxford, Connecticut 06478-1298  
Phone: (203) 828-6512 · Email: [pandz@oxford-ct.gov](mailto:pandz@oxford-ct.gov)  
[www.Oxford-CT.gov](http://www.Oxford-CT.gov)



#### **Regular Meeting Minutes**

**Tuesday, December 5, 2017**

**7:30 PM**

**Oxford Town Hall  
Main Meeting Room**

#### **CALL TO ORDER**

**Chairman Jeff Luff** called the meeting to order at 7:32 PM.

#### **PLEDGE OF ALLEGIANCE**

#### **ROLL CALL**

<b>Commissioners/Alternates/Staff</b>	
John Kerwin	Present
Mackenzie Macchio	Absent
Pete Zbras	Present
Pat Cocchiarella	Present
Jeff Luff	Present
Arnie Jensen	Present
Tanya Carver	Present
Dan Wall	Present
Harold Cosgrove	Present
Jessica Pennell	Present
Steve Macary	Present

#### **SEATING OF ALTERNATES**

No alternates were seated.

**AMENDMENTS TO THE AGENDA**

**MOTION BY Commission Secretary Pat Cocchiarella** to amend the agenda to add a letter from Mark Oczkowski under correspondence.

**Second by Vice Chairman Arnie Jensen.**

**All (7) Ayes.**

Motion passed 7-0.

**EXECUTIVE SESSION**

*Item: Litigation - Re: Garden Homes Management Corp. Et Al v. Oxford Planning & Zoning Commission*

**MOTION BY Commission Secretary Pat Cocchiarella** to enter into Executive Session at 7:34 PM to discuss ongoing litigation with Garden Homes Management Corporation v. Oxford Planning & Zoning Commission.

**Second by Commissioner Tanya Carver.**

**All (7) Ayes.**

Motion passed 7-0.

**Chairman Jeff Luff** invited all Commission members present, Steve Macary, ZEO, Jessica Pennell and Peter Olson, Land Use Counsel into executive session.

**MOTION BY Commission Secretary Pat Cocchiarella** to exit Executive Session at 8:35 PM. **Second by Commissioner Pete Zbras.**

**All (7) Ayes.**

Motion passed 7-0.

**Chairman Jeff Luff** stated for the record that no action was taken during executive session.

**CORRESPONDENCE**

**Commission Secretary Pat Cocchiarella** read the following items into the record:

- a. Letter dated 11/22/2017 from George Temple to Jim Galligan, P.E.  
RE: Re-appointment as Land Use Engineer.
- b. Letter dated 12/5/2017 from Mark Oczkowski, Earthworks Excavating  
RE: Pheasant Run Road Acceptance and Bond Reduction.

**MOTION BY Commission Secretary Pat Cocchiarella** to forward this request to Jim Galligan, P&Z Engineer for review.

**Second by Vice Chairman Arnie Jensen.**

**All (6) Ayes.**

Motion passed 6-0.

**AUDIENCE OF CITIZENS** (Items not on the agenda)

No comments were made during this portion of the meeting.

**NEW BUSINESS**

**1. Z-17-134 [IND] – 21-23 Nichols Road, Owner: T&C Partners, LLC Applicant: T&C Partners, LLC & TPB Contractors, LLC (Application for a Change of Use)**

- a. Application Z-17-134 (Fees paid).
- b. Statement of Use dated 11/20/17.
- c. Site Plan

**Attorney Dominick Thomas**, 315 Main Street, Derby spoke on behalf of the applicant, T&C Partners, LLC. He stated that approximately 5 years ago, prior to purchasing the property, the applicant met with a real estate attorney, zoning staff and wetlands staff. He noted that at that time, the applicant was told that the property is in an industrial zone and previously approved for a special exception for a contractor's yard, therefore no permits were needed. The previous contractor was Metcalf Paving. He explained that he became involved in this because a complaint was filed in approximately September 2017 by a neighboring property owner. The complaint was for crushing, and excessive truck noise. He noted that after discussion with the applicant, they decided to file an application. He stated that the property is in an industrial zone and research revealed that there are similar uses on the surrounding properties. He stated that the applicant is requesting the use of a crusher on the property as an accessory use to primary use, a contractor's yard. He explained that his client crushes 3 times a year, in the spring, summer and fall. He noted that the applicant does not own a crusher, he rents one for a week each time. He stated that the hours of operation would conform to those in the zoning regulations under Article 14, Section 14.6 (8:00 AM to 4:00 PM). He stated that the regular business hours are flexible. He reiterated that the purpose of the approval is for a use permit with the accessory use of the crusher 3 times a year and his client is willing to agree to any conditions, such as notifying the ZEO when the crushing will occur. He also noted that he had originally had the hours of crushing as 8:00 AM to 5:00 PM, Monday through Friday, he has since revised those hours to conform to the Zoning Regulations. He stated that he believes this use permit can be approved with appropriate conditions.

**Attorney Dominick Thomas** handed out a series of aerial photos of the property to Commissioners and staff.

**Commissioner Harold Cosgrove** questioned how far away the neighboring properties are located.

**Attorney Thomas** stated that there are very few homes in the area and there is a house at the end of Nichols Road. He went on further to say that the homes in the area are used as businesses as well. He also pointed out that the property borders the Stihl property.

**Vice Chairman Arnie Jensen** questioned the size of the property.

**Attorney Thomas** stated that it is 8 acres, 21 & 23 abut each other and the applicant owns the house next door. He stated that 21 is the main property with the industrial building, 13 Nichols Road is the house and 23 is an additional area of land.

**Commissioner Pete Zbras** questioned the proximity of the nearest residence.

**Attorney Thomas** stated that he is not exactly sure, it is located at the intersection of Nichols Road and Hawley Lane.

**Vice Chairman Arnie Jensen** questioned if a special exception was previously approved for the property to be used as a contractor's yard.

**Attorney Thomas** stated that it was approved for a contractor's yard in 1995, when it was Metcalf Paving, but it was not approved for the crusher.

**Commissioner Harold Cosgrove** questioned if the crusher is the only thing they are asking for.

**Attorney Thomas** stated that he doesn't know what happened 5 years ago when his clients met with zoning, but he thinks that this kind of permit should have been done then. He stated that they are asking for the use permit to be approved with the crushing as an accessory use, 3 times a year and the approval of the Statement of Use.

**Commissioner Harold Cosgrove** questioned where the applicant will get the rocks.

**Attorney Thomas** stated that the rocks will be from the site work jobs done by the applicant.

**Chairman Jeff Luff** asked if the applicant would have any problems coming in for a temporary use permit each time he needs to crush.

**Attorney Thomas** asked if the Chairman means that the applicant comes in and reports to the ZEO when he will be crushing.

**Chairman Jeff Luff** stated that he meant that the applicant would apply for a permit and let the ZEO know the crushing will occur.

**Attorney Thomas** stated that the only problem with that is the timing. He commented that he thinks it can be handled by a condition that when the applicant rents and is going to crush for the week, that he come in and report to the ZEO and it can be handled administratively by the ZEO.

**Commissioner Tanya Carver** questioned if the prior owner had a crushing permit.

**Attorney Thomas** stated, no, the prior owner did not have a permit to crush.

**Commissioner Tanya Carver** then questioned if the current owner came in for a permit for a contractor's yard.

**Attorney Thomas** stated that his client did actually come to apply and was told that he did not have to apply for a permit.

**Commissioner Tanya Carver** stated that in regards to crushing, based on Section 14.6, the applicant should come in for a special exception.

**Attorney Thomas** reiterated that it could be done administratively by the ZEO.

**Steven S. Macary, ZEO** stated that 14.6 does not apply to the applicant, he is not doing any site improvement.

He stated that the applicant is asking for a use permit for a contractor's yard.

**Commissioner Tanya Carver** stated that rock crushing is not part of a contractor's yard.

**Steven S. Macary, ZEO** stated that it is part of the contracting business.

**Commissioner Tanya Carver** stated that it is not defined.

**Steven S. Macary, ZEO** stated that it is defined under Section 2, and that is how he interprets the definition.

**Attorney Thomas** stated that it is an accessory use to the contractor's yard.

**Steven S. Macary, ZEO** stated that it's the same thing as Burns Construction.

**Attorney Steven Kulas, 12 Bank Street, Seymour** was present to represent the plaintiffs regarding this application. He began by stating that he can answer Commissioner Harold Cosgrove and Commissioner Pete Zbras questions about the nearby homes. He stated that there are 3 people that have asked him to appear tonight and object to this application because they hear the crushing and the trucks coming in all hours of the night. He stated that they agree with Commissioner Carver regarding Section 14.6 of the Zoning Regulations. He pointed out to the Commission that there is a list of prohibited uses which include sand, gravel and processing plants and stone crushing operations, he referred the Commission to page 18, Schedule C, of the Zoning Regulations.

**Steven S. Macary, ZEO** stated that if you go to page 13, under industrial uses, it states that a contractor's yard is a permitted use, the same as Burns, Metcalf and H.I. Stone. He stated that the only reason the applicant is here is for a one time crushing permit and the hours.

**Attorney Kulas** stated that he is here to address the Zoning Commission as to the position of his client. He commented that it is clear and plain, it's unambiguous. He noted that it says stone crushing operations are prohibited, the Commission has provided an exception in 14.6 for site improvements. He noted that Attorney Thomas has already said that is not what the applicants are applying to do, they are not building a building; they are crushing stone. He commented that he looked into the background of Application No. Z-95-173, page 278 of the minute book, a meeting was held on 11/16/95 which was Metcalf's special exception for a contractor's yard. He stated that just a contractor's yard was approved and the approval contained 16 conditions, he went through and read the conditions. He commented that all those conditions were for the contractor's yard and were imposed on the previous owner. He stated that the only crushing permit was a temporary 5 day permit that was given to Metcalf and he referred to the 1/6/00 minutes, page 476, at which point the temporary permit was canceled, and denied because temporary crushers can only be used in conjunction with excavation. He stated that board, at the time, did not believe that you could use a crusher, temporary or otherwise unless there was excavation being done on the property, Metcalf lost its permit. He noted that he is also concerned because there were so many conditions imposed that this Commission may treat this as a brand new application, and they would lose all those conditions that were imposed on the previous owner. He stated, at the very least, they should still be put in place. He is also concerned about the hours, as he understands that the application that on file, the application talks about 6 days, not calendar days, six 8 hour days being divided up. He commented that he doesn't know what is economically feasible to run a stone crusher, but if its 1 hour 6x8 is 48, that means that they could run it 48 days, that is the way the application reads, that the day can be divided up. He stated that there is potential for more than 6 days of use and that is very concerning to his client. He explained that one of the reasons his client opposes this application is because there appears to be a demolition company registered at the address and they are afraid that the granting of a special exception for a contractor's yard may open the door for other uses of the property and may cause other complaints to be filed to this board. He requested that during the pending application process, his clients request that no further crushing occur until the application is either granted or denied.

**Commission Secretary Pat Cocchiarella** questioned if any of the plaintiffs live in a residential zone.

**Attorney Kulas** stated that they are not.

**Commission Secretary Pat Cocchiarella** stated that where they are is an industrial zone, so they have pre-existing non-conforming uses.

**Commissioner Harold Cosgrove** asked that Attorney Kulas point out where the residences are located.

**Attorney Kulas** asked his clients to draw an arrow and initial it on the aerial photo. His clients, Steven Onofrio of 125 Hawley Road, Joseph Licnikas of 103 Hawley Road and Robert Werden of 110 Hawley Road drew arrows to identify their properties and initialed the map. He noted that all his clients' initialed page 2 of the 9 pages included in the document.

**Attorney Thomas** stated that google earth shows across the street, it shows a home at the time. He stated that some of the existing conditions were put in place when there were many more homes there. He stated that when a zone is changed, there is usually a list of permitted uses, in the industrial zone residences are not permitted, that is why they are considered pre-existing, non-conforming. He commented that technically, under recent cases, on one in the industrial zone should be allowed to put a porch on their home if it adds to the footprint. He noted that the three properties, the closest one is New England Septic, when you look at all the uses the only use they would fit under would be a contractor's yard. He stated that paragraph 2 states that sand and gravel processing plants and stone crushing operations, in order to reasonably interpret you regulations and what the Commission has done, stone crushing operations would obviously be a quarry. He noted that if you read it the way Attorney Kulas wants the Commission to read it, when someone is doing some work around their house and they rent a small crusher, it would be a prohibited use. He stated that there is an ambiguity in the regulations because they define contractor's yard and in fact what the Commission has done over the course of the years is permit contractor yards to process material whether or not you label it or call it manufacturing. He went on to say that his point of presenting the application is permit reasonable conditions to protect the area. He briefly described the distance between the subject property and the surrounding properties. He stated that looking at the pictures, the Commission can see that Nichols Road dead ends at a very heavily wooded area, and those properties are substantially far away. He stated that his client hasn't done anything to any buffers, and there are trees planted, so he doesn't see how the positions that Attorney Kulas brought up are relevant to this. He commented that he doesn't think there is a total ban on stone crushing operations and the Commission hasn't operated that way because it would create an absurd interpretation of the regulations. He stated that he thinks that since contractor's yards are defined in the regulations and since contractor's involve processing material to go out and do their work, the hope is that the Commission would understand these reasonable conditions. He stated that he wants to clarify one point, which is that his client would not be running a crusher for 48 days for one hour a day. He reiterated that the best way to solve the issue is to have the permit approved and have his client coordinate and report to the ZEO when he is going to crush.

**Vice Chairman Arnie Jensen** stated that the Commission should review the exhibits that have been presented and research the history of the property. He stated that they could take it up at the next meeting.

**Chairman Jeff Luff** stated for the record that he agrees with Commissioner Tanya Carver's statement that every application stands on its own.

**MOTION BY Commission Secretary Pat Cocchiarella** to table this application.

**Second by Commissioner Pete Zbras.**

**All (7) Ayes.**

Motion passed 7-0.

**OLD BUSINESS – NONE**

**BONDS/BONDS RELEASES - NONE**

**ZONING ENFORCEMENT**

- Report of the ZEO on complaints, violations and any other items deemed necessary for discussion/action by the Commission.

**Steven S. Macary, ZEO** stated that for use permits, normally the procedure is that he approves them in the office and brings them to the Commission for ratification. He stated that the Commission can't really vote on them because if someone votes "no", then they don't get their permit. He stated that is how the permits are done, it is in the regulations, that they are approved in the office and then the ratified by the Commission. He stated that this case is different.

**Commissioner Tanya Carver** stated that this is different because the applicant should really come before the Commission for a special exception.

**Steven S. Macary, ZEO** stated that the Commission can't make the applicant come for a special exception every time.

**Commissioner Tanya Carver** stated that the applicant has to follow the procedure and have a public hearing, not just fill out a Statement of Use.

**Steven S. Macary, ZEO** explained the application further and noted tension between some property owners.

Discussion ensued regarding certain permit procedures.

**Commission Secretary Pat Cocchiarella** questioned how long the applicant has been at the property.

**Steven S. Macary, ZEO** stated that he has been there for five years.

**Commission Secretary Pat Cocchiarella** questioned why this has become an issue now.

**Steven S. Macary, ZEO** stated that there were complaints from neighbors.

**Steven S. Macary, ZEO** stated that he is still getting complaints regarding 154 Chestnut Tree Hill Road.

**Chairman Jeff Luff** stated that the Commission has exhausted all their resources for this item and there is nothing further they can do.

**Steven S. Macary, ZEO** stated that regarding 5 Pine Street, someone may be filing some type of complaint, an FOI request has been submitted.

**Chairman Jeff Luff** reiterated that when a complaint comes in, staff fulfills the request and receives payment. He also stated that staff will only respond to one request at a time for the same person.

**Steven S. Macary, ZEO** questioned his protocol when someone does not want to sign a complaint.

**Chairman Jeff Luff** stated that if they don't want to sign a complaint form then it cannot be accepted or investigated.

### **APPROVAL OF MINUTES**

1. **MOTION BY Vice Chairman Arnie Jensen** moved to approve the 10/10/2017 POCD Workshop minutes as presented.  
**Second by Commissioner Tanya Carver.**  
**Ayes (5), Abstentions (2) – Commissioner Dan Wall and Commissioner Harold Cosgrove.**  
Motion passed 5-2.
2. **MOTION BY Vice Chairman Arnie Jensen** to approve the 10/18/2017 POCD Workshop minutes as presented.  
**Second by Commissioner Tanya Carver.**  
**Ayes (6), Abstention (1) – Commissioner Dan Wall.**  
Motion passed 6-0.
3. **MOTION BY Vice Chairman Arnie Jensen** to approve the 11/21/2017 Organizational Meeting Minutes as presented.  
**Second by Commissioner Pete Zbras.**  
**All (7) Ayes.**  
Motion passed 7-0.
4. **MOTION BY Vice Chairman Arnie Jensen** to approve the 11/21/2017 Regular Meeting Minutes as presented.  
**Second by Commissioner Pete Zbras.**  
**All (7) Ayes.**  
Motion passed 7-0.

### **INVOICES**

**Chairman Jeff Luff** stated that he recently received a letter from Brian Miller questioning why this invoice hasn't been paid. He commented that he and Tanya would be meeting with Brian to discuss the Invoice and progress of the POCD.

1. Turner Miller Group Invoice – POCD (Tabled on 10/17/2017)

The invoice remained tabled.

### **OTHER BUSINESS**

1. Update on Corrections/Modifications of the POCD.

**Chairman Jeff Luff** explained that Jessica has approximately ten pages left until the corrections to the POCD are done. He stated that she was transforming the layout and requested that she hold off on the format and just do the edits discussed by the Commission during their workshops.

**Vice Chairman Arnie Jensen** asked if the copy with the edits would be distributed to the Commission.

**Jessica Pennell** stated that she would send it out to all the Commissioners once it is complete.



2. Photos for ID Badges.

**Chairman Jeff Luff** asked that the Commissioners take time after the meeting to get their picture taken for the ID Badges.

3. Any other business the Commission deems necessary for discussion.

Commissioners discussed the Christmas party and scheduled the tentative date.

### **ADJOURNMENT**

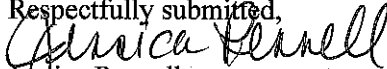
**MOTION BY Commissioner Tanya Carver** to adjourn the meeting at 8:57 PM.

**Second by Commissioner Pete Zbras.**

**All (7) Ayes.**

Motion passed 7-0.

Respectfully submitted,



Jessica Pennell

Administrative Secretary

Planning & Zoning Commission

18 JAN 25 PM 2:20  
TOWN OF OXFORD, CT  
*Angela H. West*  
TOWN CLERK