

Minutes of Regular Meeting No. 1130 of the Killingworth Planning & Zoning Commission Held Tuesday, December 20, 2016, at the Killingworth Town Office Building, 323 Route 81, Killingworth, Connecticut
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Present: T. Lentz, Chairman C. Jefferson, ZEO
D. Gross
S. Warren
G. Cook
P. McGuinness
J. Gay (seated for T. Hogarty)
A. Martin (non-seated alternate)
R. Drew (non-seated alternate)

1. Call to Order

Chairman Lentz called the meeting to order at 7:00 PM.

2. Minutes of Regular Meeting No. 1129 Held December 6, 2016

Motion by Gross, second by Warren, to approve December 6, 2016 Minutes as written. PASSED UNANIMOUSLY.

3. Visitors – none.

4. Communications and Bills

(1) Inland Wetlands & Watercourses Commission Minutes from December 13, 2016.

(2) Email from Carla Feroni to Cathie Jefferson dated December 13, 2016 Re Fricks Pond Dam.

(3) Email from Mark Branse to Thomas Lentz and Cathie Jefferson dated December 12, 2016 Re Fricks Pond.

(4) Email from Michael Harkin to Cathie Jefferson and Paul Hutcheon dated December 18, 2016 Re LaForesta.

(5) Letter from Joseph Dillon, Nathan Jacobson & Associates, to Planning & Zoning Commission dated December 19, 2016 Re Old Coach Road, Road Acceptance.

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(6) Invoice from Branse & Willis, LLC dated December 2, 2016 for legal services in the amount of \$333.00.

5. Old Business

(a) Lot Line Change, 672 Route 81 – Fricks Pond LLC

Chairman Lentz read the email from Carla Feroni DEEP, State Hazard Mitigation Officer, dated December 13, 2016, into the record.

Chairman Lentz read the email from Attorney Mark Branse, dated December 12, 2016, into the record. He noted the Town has no liability for this. There was also the question if a Land Trust would accept this parcel as Open Space and the response was no Land Trust would do so due to the cost of the dam repair. He also noted the most important issue was zoning. The Commission can't approve an illegal lot if the proposed lot does not conform to zoning.

Attorney Bennet noted he spoke to both Attorney Branse and Carla Feroni. He also noted he didn't believe there is any requirement to convey this to any particular Land Trust, etc.

Attorney Bennet noted he disagreed with Attorney Branse to the extent that every parcel of land has to conform to Zoning Regulations or it doesn't exist. Bennet noted he knows of at least two parcels. He further noted this parcel isn't proposed to be used for anything. There is nothing in the regulations that says you can't have a parcel that doesn't conform to Zoning Regulations. Attorney Branse and he differed on this and he (Bennet) challenged anyone to point that out. If the parcel is going to be used for certain things, then yes, but not using it for anything it doesn't need to conform.

Attorney Bennet noted the application stands and he hoped the Commission would consider it favorably. The realities are what he explained at the last meeting.

Motion by Gross, second by Cook, to approve #319, 672 Route 81, Fricks Pond LLC for Lot Line Change. Discussion followed.

Chairman Lentz noted this was an application for lot line change under Section

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485-60 of the Subdivision Regulations. The applicant wishes to split off a piece of a lot that was part of a subdivision. The portion of the lot with the house would still be a conforming lot. He noted the other portion to be split off does not meet the requirements of a lot with respect to frontage, lot area, soil types, etc. The second piece contains a lake and a dam which is deteriorating. The Department of Energy and Environmental Protection is requiring repair of the dam. Chairman Lentz further noted it is proposed to put the new parcel into open space or a conservation easement. If so, it does not comply with Section 485-52 Dedication of Open Space of the Killingworth Subdivision Regulations. If the open space is to be given in fee to a conservation or Land Trust entity, there should be evidence from the entity they are willing to accept the parcel. There is no evidence from any entity they are willing to accept this parcel as open space or a conservation easement. Lentz noted the most important issue regarding the proposed split is the second parcel does not meet the Zoning requirements for a lot. It would stand alone as a nonconforming parcel. For that reason, the lot line change should be denied. The Planning & Zoning Commission cannot approve a nonconforming lot. To do so would set a precedent for any property owner to shed or dispose of pieces of land that are undesirable or have liabilities.

Chairman Lentz noted those were his thoughts on the application. This is a difficult situation. He felt bad for the applicant and wished there was some other solution. Stephanie Warren felt this solidified the reasons why this can't be approved.

There was discussion about if it doesn't say it in the regulations, then it can't be done. ZEO Jefferson noted the regulations say what can be done. She further indicated Attorney Bennet noted one can't point to anywhere in the regulations where it can't be done. She stated the regulations are written about what one can do and not about what one can't do.

Geoff Cook noted if someone had 3 acres and wanted to donate 1 acre to the Land Trust, that would have to come before the Commission to make a decision. Chairman Lentz noted if that land abutted the Land Trust property and it is still a conforming piece of land, that is a true lot line change. The Commission would also require a letter from the Land Trust accepting it. Cook asked Attorney

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Bennet if he had spoken with the Land Trust. Attorney Bennet noted he agreed with Attorney Branse on that point.

David Gross noted there is a pond and house that has value. There is a dam that is a problem so the dam is split off. He further noted the assets from the sale of the house may not go towards repair of the dam. It was also noted DEEP has made it clear it is the responsibility of the property owner to do something with this.

David Gross indicated Attorney Branse has said the Town has no liability. He felt this is an ongoing problem and the Commission is going to continue to be a part of it. He was uncomfortable with that.

Geoff Cook asked if there were any other situations that have established precedent that we are aware of. Chairman Lentz replied that he hadn't found any. Geoff Cook asked Attorney Bennet if he had seen anything similar to this. Bennet replied he knew of a couple of similar situations where they just walked away from a million dollar property, but didn't know of anything directly.

Stephanie Warren asked Attorney Bennet if he was implying the property owner would simply just walk away from this. Attorney Bennet replied no.

In favor of the motion – none. Opposed to the motion – Lentz, Gross, Cook, Warren, McGuinness. Abstained – Gay. MOTION DENIED.

ZEO Jefferson noted one way to do this is to put the property up for sale with the guarantee of “X” dollars to be put aside to fix the dam.

6. Zoning Enforcement Officer's Report

C. Jefferson noted nothing new to report, still dealing with letters sent out last month regarding violations.

7. New Business

(a) Old Coach Road, Road Acceptance

Chairman Lentz referenced the letter from Joseph Dillon, Town Engineer dated

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December 19, 2016. ZEO Jefferson noted she spoke to First Selectwoman Iino indicating that all easements go to Town Attorney Dave Tyzc. Once they get the mylar, then the Board of Selectmen can hold a Town Meeting. **Motion by Warren, second by Gay, to accept Old Coach Road as a town road subject to submission of all legal documents including deeds and easements and a mylar of the approved as-built drawings. PASSED UNANIMOUSLY.**

(b) Re-appoint Stephanie Warren and Alec Martin to Regional Planning Commission

Motion by Gay, second by McGuinness, to reappoint Stephanie Warren and Alec Martin to the Lower Connecticut River Valley Regional Planning Commission. PASSED UNANIMOUSLY.

8. Report of Officers and Subcommittees

Stephanie Warren reported on the following from the RiverCOG RPC meeting held last night -

- She previously reported the U.S. Dept. of Transportation Chairman was looking to enlarge regional districts with Massachusetts & New York. Apparently the regulation went through, but there is a waiver on it that it is not to be initiated until 2022 plus 2 years during which time the approval will probably be repealed.
- She noted the Dept. of Public Health is proposing county health departments instead of town health departments which would mean each town would contribute 1½% of the town's budget to the Dept. of Public Health to create these departments. It is felt the majority of the 169 towns will not go for this.
- She noted a lot of data being collected regarding demographics, economics, etc. is being counted on county basis rather than regional basis. They are looking for the Federal Government to have data collected based on regional COGS rather than counties.
- She noted the surveys are still coming in. There is a total of 564 (or 20%).

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Torrance Downes is trying to get the hard copy data processed into the survey monkey data. Survey Monkey will run until January. If the data can't be integrated, a separate spreadsheet will be created. This should all be done by mid-February or so.

Chairman Lentz the new regulations are being printed up. The Commission does not meet again until January 17, 2017.

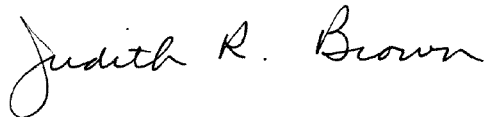
There was a brief discussion regarding Bull Bag. ZEO Jefferson noted the bags are there to stop trucks from using that area for turning around.

There was a brief discussion regarding LaForesta seating and exterior lighting.

9. Adjournment

There being no further business, the meeting adjourned at 7:35 PM.

Respectfully submitted,



Judith R. Brown, Recording Secretary

cc: Town Clerk Conservation Commission
Board of Selectmen Inland Wetlands & Watercourses Com.
Commission Members Public Works
C. Jefferson Mark Branse, Esq., Comm. Attorney
Joseph Dillon, Town Engineer