

Minutes of Regular Meeting No. 1129 of the Killingworth Planning & Zoning Commission Held  
Tuesday, December 6, 2016, at the Killingworth Town Office Building, 323 Route 81,  
Killingworth, Connecticut  
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Present: T. Lentz, Chairman  
D. Gross  
S. Warren  
G. Cook  
P. McGuinness  
T. Hogarty  
R. Drew (non-seated alternate)

C. Jefferson, ZEO

1. Call to Order

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

2. Minutes of Regular Meeting No. 1128 Held November 15, 2016

**Motion by Gross, second by Cook, to approve November 15, 2016 Minutes as written.  
PASSED UNANIMOUSLY.**

3. Visitors - none.

4. Communications and Bills

(1) Email from Carla Feroni, State Hazard Mitigation Officer, Dam Safety Program to Cathie S. Jefferson, dated December 6, 2016, Re Fricks Pond Dam.

(2) Application for Lot Line Revision, 672 Route 81, also sent to Gerald Russ, Building Official, and Paul Hutcheon, Director of Health.

(3) Memo from Paul Hutcheon, Director of Health, to Planning & Zoning Commission, dated November 22, 2016, Re 672 Route 81, Lot Line Revision.

(4) Letter from Cathie S. Jefferson ZEO to Scott Leathers, 29 Kelseytown Road, dated 11/18/16, Re Boat and Trailer Storage – Second Notice.

(5) Letter from Cathie S. Jefferson ZEO to AnnDean Kmetz, 100 Hemlock Drive, dated 11/18/16, Re Trailer Storage.

(6) Letter from Cathie S. Jefferson ZEO to Frasher Lulaj, dated 11/29/16, Re LaForesta.

(7) Letter from Michael and Karen Milano to Planning & Zoning Commission, dated November 17, 2016, Re Release of Soil, Erosion and Sedimentation Control Bond in the amount of \$18,300.

(8) Planning & Zoning Commission Budget As Of 12/5/16.

(9) Letter from Cathie S. Jefferson to Michael Scaniffe, dated 12/6/16 Re Construction without Permits.

(10) Letter from Cathie S. Jefferson to Matthew Nunziato, dated 12/6/16 Re Construction without Permits.

(11) Affidavit of Publication for Notice of Decision for Amendments to Zoning and Subdivision Regulations.

5. Old Business – none.

6. Zoning Enforcement Officer's Report

C. Jefferson reported on the following -

- Permit Log for last month was distributed.
- Letter was sent to the owner of the Killingworth Village Shopping Center regarding an illegal apartment over the Pizza Shop. It doesn't meet any requirements for an accessory apartment. They can either appeal it or get it fixed.
- Boats are gone from Kelseytown Road.
- Trailer is gone from Hemlock Drive.
- LaForesta has submitted an application to the Building Department for an addition, but it hasn't been submitted to P&Z. It took over a month to find out how the two CL&P poles got put on the property. The Fire Marshal was contacted for seating capacity and the Health Department for septic capacity. They have someone working on a plan to correct all these things and come back to the Commission. The Health Department did septic testing and seating capacity was determined to be 96. It could go up in future years. Stephanie Warren noted the summer patio got enclosed. They are now talking about doing painting and crafts. ZEO Jefferson noted they still need to stay within the 96. A lot of restaurants are now doing Paint Night.

7. New Business

(a) Lot Line Change, 672 Route 81 – Deborah Rosener

Attorney John Bennet introduced himself and Deborah Rosener. He noted they had submitted an application and map for a lot line change on Fricks Pond. ZEO Jefferson had indicated some details were missing from the map. A replacement map and a report from Angus McDonald was submitted. The report covered the areas and the land to be applied to the minimum lot acreage for this project. Lot 1A was marked on the map in blue and 1B was marked in green.

Attorney Bennet noted they are proposing to take out the water and the dam from this lot. They have zero contributory value to the property and in terms of soil types to the conformity of the area of the property, they are zero. The green area comprises of soil types "B" (75%) and "E" (25%). They amount to just over 2 acres as did for the original subdivision. He also noted the calculations have not changed. McDonald Sharp reviewed the calculations and Don Carlson said the dam was not included in the calculations.

Attorney Bennet reviewed the percentage of soil attribution noting the pond and dam are zero. Lot 1B still has 2.55 acres of "B" soils and .41 acres of "E" soils for a total of 2.02 +/- acres. Don Carlson came in at 2.03 acres.

Attorney Bennet noted there will not be any building, no changes to the septic and no nonconformities created. They are taking out something that never had a use and was not useful to this lot and subdivision. It was zero value then and zero value now. The parcel has the requisite 200 x 300 rectangle. The house was built per the plan approved April 13, 2001. No changes proposed to the house. Setbacks and coverages all remain unchanged.

Attorney Bennet noted there is a reason for this unusual proposition. This property is unsaleable and unmortgageable. It is under Orders from DEEP. The principal of his client applied for that permit. She can't mortgage it, she can't sell it. No one will touch it. He is trying to help her get out of this situation so money can be generated. The Zoning Regulations say the pond and dam have zero contributory value therefore nothing is being changed. Nothing is being done that insults the zoning scheme. If we can't get this solution, the dam will not be fixed.

Stephanie Warren asked if this was approved, who would be responsible for the dam. Attorney Bennet noted the owner of the dam applied for the permit, went out and got prices which were very expensive. That was done 5 or 6 years ago. The question was again asked who the permit owner was. Attorney Bennet noted Ms. Rosener owns the permit. If this is separated out, it would be left in an LLC. The question was then asked how would the LLC maintain and protect the dam. The State is requiring repairs to the dam. Attorney Bennet noted right now there is no way to finance this. He also noted there are no easements of record to do anything. The strip of land to the 4 or 5 houses is owned in fee.

Attorney Bennet noted the dam has a moderate hazard rating of BB. Nothing regarding this rating had been recorded on the Land Records.

Geoff Cook asked why it couldn't be drained. Attorney Bennet noted there are a whole new set of regulations pertaining to that and it would be expensive.

Chairman Lentz noted the idea is to put the blue area (water and dam) into an LLC. He asked who the principal of the LLC was. Attorney Bennet replied it was Ms. Rosener who is the permit holder at the moment. This would allow the house lot to be sold generating money which would be used to repair the dam.

ZEO Jefferson noted there is no guarantee money from the sale of the house would go to fix the dam. Attorney Bennet noted that was not a zoning question. He also noted there is no money from the State.

Stephanie Warren confirmed then the LLC is designed to help protect Attorney Bennet's client. Bennet replied yes. This is an ugly situation all the way around.

Chairman Lentz noted he would think DEEP has faced situations like this before. ZEO Jefferson noted she was not aware of any. She further noted since this all came about she called DEEP to ask what their role in this was. Only DEEP has control over the dam. They have done 2 visits to the dam but have no answer yet. Not sure what they are doing.

ZEO Jefferson noted her concern was input is need from DEEP and probably the people that live there. David Gross noted he agreed. The dam is under Orders from DEEP, how would the lot line change effect other property owners. The Commission should ask Counsel for his advice. Chairman Lentz noted the Commission should not ask Counsel to make this decision. Gross replied no, not the decision, but for advice.

Geoff Cook noted then Attorney Bennet's client would then be free to sell the property, move and the LLC would just sit there and be dissolved. Bennet noted that would not happen.

It was noted there is no statutory law that this is the town's problem.

Chairman Lentz noted if DEEP agreed to this, he thought it would be all right. We should ask DEEP if they are okay with this, who would be responsible if the dam breaches and the owner has disappeared.

Attorney Bennet noted the green and blue on the map is owned by the LLC. The purpose is to severe the blue (water and dam). The green is over 2 acres and stays with the property. They are not proposing a subdivision. Lentz noted the green is what's left and is a conforming lot.

David Gross reiterated the Commission should get an opinion from its counsel to see whether there are other things to consider.

ZEO Jefferson noted if the Commission decides this doesn't need to go to public hearing, a

decision would need to be made in 65 days. This will be on the agenda for the next meeting.

(b) Old Coach Road Subdivision – Release of E&S Bond (\$18,300)

Letter was received from Michael Milano requesting release of the Soil, Erosion and Sedimentation Control Bond in the amount of \$18,300 for Old Coach Road Subdivision. ZEO Jefferson noted the road has been paved and the Town Engineer went out to the site today to do a final road inspection. They are entitled to get the bond back. Town Engineer Joseph Dillon indicated everything looks good and the E&S is okay. **Motion by Warren, second by Cook, to release E&S Bond for Old Coach Road Subdivision in the amount of \$18,300. PASSED UNANIMOUSLY.**

(c) Election of Officers

**Motion by Hogarty, second by Cook, to approve current slate of officers – Thomas Lentz, Chairman; David Gross, Vice Chairman; and Stephanie Warren, Secretary. PASSED UNANIMOUSLY.**

(d) Appointment of Zoning Enforcement Officer

Chairman Lentz noted Cathie Jefferson has done a wonderful job as has Judy Brown. **Motion by Gross, second by Cook, to reappoint Cathie S. Jefferson as Zoning Enforcement Officer. PASSED UNANIMOUSLY.**

8. Report of Officers and Subcommittees

Stephanie Warren gave an update on the survey. She noted the article was in the Killingworth Krier. Survey Monkey will be on-line until December 30<sup>th</sup>. 368 responses have been received on-line and 162 hard copy for a total of 530 responses. That's over 20%. Responses are still coming in. Working with Torrance Downes to find a way to get the handwritten information into the software. If that can't be done, an Excel table will be created. Haven't had time to read all the responses yet.

Stephanie Warren noted at the last RiverCOG meeting, there were 2 people there from OPM charged with creating the next chapter of the POCD by 2018. This will involve Eric Lindquist who will be in contact with Killingworth representatives. A census block map is being created for the State. The map will be broken down into different types of priorities. The State can come in and do what they like without involving the towns.

Chairman Lentz asked members to give an update at meetings on work progress for the Town Plan. Paul McGuinness noted he and Dave Gross are working on bridges and streets. The town owns 3 bridges over 20 feet which are inspected every 2 years. They are in good condition. There are ten 6 to 20 foot bridges. The last time these were inspected was 1990. They can be inspected at any time.

