

April 22, 2021

VIA EMAIL ONLY (rfisher@cramer-anderson.com)

Robert L. Fisher, Jr. Esq.
Cramer & Anderson LLP
6 Bee Brook Road
P.O. Box 321
Washington Depot, CT 06794-0321103Re: 182 East Shore Road

Dear Rob:

This is in response to your letter dated April 6, 2021.

As I hope you know, I have great respect for you, and I understand and appreciate your client's stated goals, which are laudable. Nevertheless, I cannot recommend that the Zoning Commission or the Zoning Enforcement Officer issue any sort of declaration that 182 East Shore Road is a "building lot." Please be aware that my position is long-standing and generic: I have always advised the zoning commissions and zoning enforcement officers I represent that they should not any declarations about the general legal status of any particular property. Rather, I believe zoning commissions and their enforcement agents should normally confine themselves to rendering decisions on specific development or regulatory applications or proposals.

I owe it to both you and the Commission to explain my position. There are several reasons. First, state law does not even suggest, let alone state, that zoning commissions should issue such decisions, which are in the nature of declaratory rulings. Many years ago, Connecticut's Supreme Court held that a planning commission had no authority to decide "whether any particular property is a subdivision." While that may seem surprising (it did to me when I first read it), the Court held that a planning commission's only function "is to approve, or modify and approve, or disapprove, the plan of a claimed subdivision in accordance with the provisions of the General Statutes and the regulations adopted thereunder." *Peninsula Corp. v. Planning & Zoning Commission*, 149 Conn. 627, 630 (1962). Following that decision, Conn. Gen. Stat. § 8-26 was amended to include the following provision: "The commission shall have the authority to determine whether the existing division of any land constitutes a subdivision or resubdivision under the provisions of this chapter" However, there is no similar statutory provision for a

zoning commission to issue declaratory rulings on whether a parcel of land is a “building lot.” Essentially, the zoning regulations themselves specify what is and is not a permissible use, and the determination must be made on a use-by-use basis.

Second, even if such decisions were statutorily authorized, Washington’s Zoning Regulations have no established process for making them. As is true in most (if not all) Connecticut municipalities, the zoning regulations only establish a process to decide upon applications for approval of specific uses and structures and for specific proposals to amend the regulations. Having an established decision-making procedure is essential for the Commission to satisfy its duties both to individual landowners and the public at large. The public is entitled to know how the Commission will discharge its duties and the zoning regulations are the means by which the public is advised of that process.

Third, issuing a declaratory ruling on whether a parcel qualifies as a “building lot” may have unforeseen impacts on the owners of adjacent parcels. Even if the decision were erroneous, a landowner who obtained such a ruling and had changed his or her position in reliance on it could claim a municipal estoppel, preventing the Commission from correcting the error. That would be a particular concern in a case such as this, where the meaning of the term “building lot” is ambiguous, since a landowner could claim that it authorized a variety of different uses. Saying that a tract of land is a “building lot” does not answer the question of whether any particular use is feasible, but it may leave the landowner or others to draw the wrong conclusion. On the other hand, any abutting owners who claimed to be harmed by the landowner’s actions could have a claim against the Commission.

Fourth, the courts have routinely held that property owners do not have the right to insist that zoning or other land-use regulations be maintained “as is.” To put it another way, property owners do not have the right to insist that they be allowed to develop their land under the regulations that existed when they acquired it. Rather, commissions must be free to amend their regulations when the passage of time and new circumstances warrant a change. State law protects only existing, actual uses (as opposed to uses that are merely contemplated), uses that have received formal approvals or permits, and applications that have been filed. A determination that a lot is a “building lot” would suggest a form of permanence that could easily be misleading.

Fifth, the question of how a parcel may properly be used under the applicable zoning regulations is ultimately a question of law. Consequently, if a legal opinion needs to be rendered for the benefit of a landowner (e.g., to maximize any tax benefits), the risk of error should be on the landowner’s own legal counsel and not on the Commission.

Of course, if the landowner wishes to have the Commission rule on a specific use or building proposal, the Commission can certainly do that. In this case, though, after having reviewed your letter and materials and listened to the audio recording of the Commission’s discussion of this topic, I was still left with a variety of questions about the status of the parcel. For example, can the Washington parcel truly be deemed to be a separate “lot” even though the survey shows that it has a septic system reserve area for

Robert L. Fisher, Jr., Esq.
April 22, 2021
Page 3

the parcel in Warren? Generally, accessory uses are not allowed on adjacent "lots." Also, how has the cabin in Washington actually been used? As a single-family home or as a rental cabin for transient occupancy? The answer to that question could affect not only how the Washington parcel should be viewed but also any grandfathering rights. Was the cabin approved, and has it been used, as a separate single-family home or as a transient rental facility linked to the former inn?

For all the reasons above, I cannot recommend that the Commission or the zoning enforcement officer make any decision or issue any letter about whether 182 East Shore Road is a "building lot."

Very truly yours,



Michael A. Zizka

cc: Washington Zoning Commission
Nick Tsacoyannis, Zoning Enforcement Officer