

March 26, 2007

MEMBERS PRESENT: Mr. Averill, Mrs. Friedman, Mr. Owen

MEMBERS ABSENT: Mr. Abella, Mr. Fitzherbert

ALTERNATE PRESENT: Mr. Wyant

ALTERNATE ABSENT: Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Rosiello, Mrs. Frank, Mr. Tagley, Mr. Hart Mr. Papsin, Mrs. Avery, Mrs. Hardee, Mr. Caroe Mr. Sears, Mrs. Payne, Mr. Bennett, Residents, Press

PUBLIC HEARINGS

Revision of the Washington Zoning Regulations: Section 12.15: Outdoor Residential Lighting and Related Revisions

Mr. Owen reconvened the public hearing at 7:32 p.m. and seated Members Averill, Friedman, and Owen and Alternate Wyant for Mr. Abella. He noted the revised version of the proposed regulations had been posted last month n the Town website for public review.

Mr. Owen explained the proposal to regulate outdoor lighting in the residential districts. First he read the intent of the regulation, explained that outdoor lighting would be required to be shielded and aimed so that the light source could not be seen from beyond the property served, and noted a chart was included to illustrate the preferred types of outdoor lighting fixtures. He explained several of the proposed provisions; that night time activities shall be illuminated only when they are underway, that illumination of landscaping shall be prohibited (except for the lighting of the American flag), no lighting may be aimed at the sky or directed off the property, security lighting shall be directed downward and toward the structure to be protected, exterior lighting shall not be installed higher than 15 ft. above the ground or more than 30 ft. from the object being illuminated, and that temporary traditional holiday lighting would be permitted without a permit. He noted there were also non binding guidelines and recommendations that were included such as use of lamps of the lowest effective wattage, use of sensor activated fixtures, keeping outdoor lighting to a minimum, and turning off unnecessary exterior lighting. In addition, he stated requirements were proposed that outdoor sports courts in all districts shall be unilluminated, that the location and description of all exterior lighting fixtures shall be included on sketch plans and site plans, and Section 16.3.4 would be added to regulate the illumination of signs. The reasons he gave for the proposed regulations included to prevent lighting from becoming a nuisance to neighbors, to protect the view of the night sky, to preserve rural character, to protect our natural resources, and to increase the effectiveness of security lighting.

Mrs. Friedman noted the proposed regulations would not impact existing outdoor lighting and that the Commission might recommend to the Board of Selectmen that it write an ordinance that would govern both existing and proposed outdoor lighting throughout Town.

Mr. Owen noted the Commission had received several complaints about existing outdoor lighting.

There were no comments or questions from the commissioners.

Mrs. Frank thought the proposed regulations were a good idea, supported the adoption of a Town ordinance, asked that this subject be featured in the Town newsletter to remind residents to correct excesses, and asked that the Town Hall comply with the new regulations to set an example. Mr. Owen agreed the existing lighting at the Town Hall is a good example of bad lighting and explained several effective ways it could be changed to provide more effective illumination, while still meeting the building code requirements. He, too, hoped the Town Hall would become a leader and that also the schools, who are major contributors to night time lighting in Town, would take a leadership role to reduce light pollution.

Mr. Rosiello, a landscape designer, thought the Commission should address poorly designed and poorly aimed landscaping lighting rather than totally prohibiting it. He suggested neighbors should talk to their neighbors about nuisance lighting before complaining to the Zoning Commission and said proper outdoor lighting can help residents enjoy their properties and gardens at night. He noted Dark Skies International has acceptable light fixtures for outdoor sports courts and that all acceptable light fixtures are not included in the proposed chart. Mr. Owen said the chart was meant as a source of information and read from Section 12.15.1, which stated that fixtures similar to the ones shown in the chart could be used if they meet the requirements of 12.15.1. Mr. Rosiello noted most of the outdoor lighting regulations he had read addressed industrial areas and thought the Washington proposal was extreme for a residential area. Mr. Owen stated the Commission had attempted to keep the proposed regulations "vague" enough so there would not be any necessary lighting function that could not be done. Mr. Rosiello agreed improper outdoor lighting was a problem, but said the lighting of key landscaping features and lighting to get from one place to another should be permitted. Mrs. Friedman responded that it was not possible to propose a regulation that states, "Do it the right way and you're OK." She explained the Zoning Commission was handling the problem in the only way it is equipped to. Mr. Rosiello complained that staff comments noted the proposed regulations would be too vague to enforce and he asked how good vs. poor lighting would be determined. Mr. Owen said many of the staff comments had already been addressed in the revised proposal under discussion tonight and that the Commission had tried to focus on enforceable provisions. He, too, thought the Commission might recommend a simple townwide ordinance so that when the threshold of offense is met, the Town could ask that those fixtures be replaced. He said the Commission's immediate goal was to increase public awareness and that the next step would be regulations to govern outdoor lighting in the business districts.

Mrs. Frank suggested that the Washington Environmental Council become involved and work with the Commission to change the Town's culture so that residents turn off lighting two hours after sunset. She said this would save electricity and the night sky. Mr. Owen noted the 3/11/07 letter from Mrs. Arturi of WEC, which supported the proposed regulations and encouraged the adoption of similar outdoor lighting regs for the commercial districts.

Mr. Bennett of Kent Greenhouse asked what the procedure would be for the approval of residential lighting. Mr. Owen responded proposed fixtures would be shown on the sketch plans and site plans submitted with zoning and Special Permit applications.

There were no other questions or comments from the commissioners or the public.

MOTION: To close the public hearing to consider revisions to the following sections of the Washington Zoning Regulations: 1) proposed Section 12.15: Outdoor Lighting in Residential Districts, 2) Sections 4.3.8, 5.3.6, 6.3.6, 7.3.18, 8.3.19, 9.3.6, and 10.3.5: requirement that outdoor sports courts in all districts be unilluminated, 3) Sections 14.2.e and 14.3.l: requirement that all sketch plans and site plans submitted with zoning and Special Permit applications include the location and description of all exterior lighting fixtures, and 4) proposed Section 16.3.4: regulation of illumination of signs. By Mrs. Friedman, seconded by Mr. Wyant, and passed 4-0.

Mr. Owen closed the public hearing at 8:09 p.m.

Revision of the Washington Zoning Regulations/Section 13.20: Outdoor Wood Burning Furnaces and Related Revisions

Mr. Owen reconvened the public hearing at 8:09 p.m. and noted since the last meeting the only new information to be submitted were the info sheets, "Outdoor Furnace Facts," dated 1/29/07 by Central Boiler, a furnace manufacturer.

Mr. Owen explained that at recent meetings the Commission had discussed banning outdoor wood burning furnaces, but after consulting with Atty. Zizka, now proposed to permit them by Special Permit. He noted the state empowered the Town to enforce the state regs; 1) that outdoor wood burning furnaces be located at least 200 feet from the nearest residence other than the residence being served, 2) the furnace chimney must be taller than the height of the roof peaks located within a specified distance of the furnace, and 3) only wood that hasn't been chemically treated may be burned in them. Mr. Owen proposed that they be permitted by Special Permit as long as they met the following criteria: 1) all applicable Ct. statutes are met, 2) the property owner signs a statement that all applicable Ct. statutes will be met, 3) an acceptable plan is submitted with the application, and 4) the permit would be good for three years and could be renewed without reapplication if it is found upon inspection that it remains in compliance with the state statutes. He said Atty. Zizka thought it would be difficult to use the Special Permit process to determine some proposed furnaces would be OK, while others would not, but Mr. Owen disagreed. He noted the Zoning Commission already regulates these furnaces because they are structures and said the Special Permit process would not impose stricter standards than those that already exist at the local and state level. He thought the public hearing requirement would provide neighbors the opportunity to voice their opinions and to see that the owner had agreed in writing to meet all applicable state laws.

It was noted any outdoor wood burning furnace already in existence would be grandfathered.

Mr. Ajello suggested outdoor wood burning furnaces be permitted to operate from November through March only. Mr. Owen read this portion of the 3/26/07 ZEO Report.

Mrs. Moriniere asked why these furnaces should be banned. Mr. Ajello said there had been complaints about smoky boilers, which send particulates and pollution into the air. Mr. Averill noted the physics involved in the operation of a furnace requires a maximum 10 foot smoke stack so the smoke stays low to the ground.

A Cook Street resident asked what the difference was between a wood boiler with a low stack and a wood stove chimney. Smoke comes out of both and would linger in a valley, he said. Mr. Ajello said the outdoor furnace would be much larger.

Mrs. Moriniere did not think the outdoor furnaces should be prohibited. Mr. Owen explained again that that had been the original proposal,

but in response to comments made at the last hearing, the proposal had been revised to permit them by Special Permit. He said the Commission intended to affirm it would enforce the existing regulations and create a forum for neighbors, but would not ban them.

Mrs. Frank asked if the state has air quality measurement requirements. Mr. Ajello noted there was a DEP fact sheet, which stated pollution levels increased with outdoor wood burning furnaces.

The Cook Street resident said November through March was not a long enough operating season. Mrs. Moriniere agreed. Mr. Ajello stated a wood furnace sized to heat a house during the winter would be too large to use in the spring and the fall and also said the building code does not allow wood heat to be the only form of heat in a house, so the supplemental heating system could be used in the warmer months.

Mr. Owen noted the letter sent by Mr. and Mrs. Averill who supported the use of outdoor wood burning furnaces for agricultural properties and asked whether a farm would require a longer operational season for an outdoor furnace. After a brief discussion, the commissioners set the following limitation; they may not be operated between May 1 and September 30.

Mr. Sears noted those who install outdoor wood burning furnaces have made a substantial commitment to a life style favoring renewable energy and asked if it would be fair to limit those who use them to heat their hot water to the winter months only. Mr. Averill said idling the wood furnace to heat hot water only during the warmer months would not be using it efficiently and so said he favored a seasonal limitation.

Mr. Ajello suggested the proposed definition be amended to change the term, solid waste, to solid fuel. Mr. Owen agreed, noting the state statute does not allow the burning of solid waste in the outdoor furnaces.

Mr. DiBenedetto noted if a seasonal limitation were imposed, outdoor wood burning furnaces could not be used to heat swimming pools. Mr. Owen said that was correct. Mr. Ajello pointed out that an indoor boiler could be used for this purpose.

There were no other comments or questions from the public.

MOTION: To close the public hearing to consider revisions to the Washington Zoning Regulations: 1) Section 13.20 to permit outdoor wood burning furnaces by Special Permit, 2) to add the definition of outdoor wood burning furnace to Section 21.1, and 3) to add Outdoor Wood Burning Furnace to the list of uses permitted by Special Permit in each district. By Mrs. Friedman, seconded by Mr. Wyant, and passed 4-0.

Mr. Owen closed the public hearing at 8:40 p.m.

These public hearings were recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

Mr. Owen called the Meeting to order at 8:41 p.m. and seated Members Averill, Friedman, and Owen and Alternate Wyant.

Consideration of the Minutes

The 2/26/07 Minutes were accepted as corrected.

Page 6: Change the last sentence in the next to the last paragraph to: An alternate approach would be a Town ordinance to prohibit them.

Page 9: It should be noted the Verizon cell tower application is to the Ct. Siting Council, not the Zoning Commission.

Page 9: Under Revision of the Zoning Regulations: Delete the sentence beginning in the 5th line, He stated the Town....

MOTION: To accept the 2/26/07 Public Hearing - Regular Meeting minutes as amended. By Mr. Owen, seconded by Mrs. Friedman, and passed 4-0.

Other Business

Revision of the Zoning Regulations/Section 12.15/Outdoor Residential Lighting and Related Revisions

MOTION: To approve the following revisions to the Washington Zoning Regulations: 1) addition of Section 12.15: Outdoor Lighting in Residential Districts, 2) addition of the requirement in Sections 4.3.8, 5.3.6, 6.3.6, 7.3.18, 8.3.19, 9.3.6, and 10.3.5 that outdoor sports courts in all districts shall be unilluminated, 3) addition of the requirement in Sections 14.2.e and 14.3.l that all sketch plans and site plans submitted with zoning and Special Permit applications shall include the location and description of all exterior lighting fixtures, and 4) addition of Section 16.3.4 to regulate the illumination of signs. By Mrs. Friedman, seconded by Mr. Wyant, and passed 4-0.

Revision of the Zoning Regulations/Section 13.20: Outdoor Wood Burning Furnaces and Related Revisions

It was agreed that the seasonal limitation, banning the operation of outdoor wood burning furnaces between May 1 and September 30, should be added as Section 13.20.3 and the original 13.20.3 changed to 13.20.4. Also, it was again noted that the definition of Outdoor Wood Burning Furnace should be amended to refer to solid fuel, not solid waste. There was a 5 minute recess from 8:45 p.m. to 8:50 p.m. to make copies of the proposal to facilitate the discussion. It was also noted this use should be added to the list of uses permitted by Special Permit in all districts.

MOTION: To approve the revision of the Washington Zoning Regulations as revised at the 3/26/07 Commission meeting to 1) add Section 13.20 to permit outdoor wood burning furnaces by Special Permit, 2) add the definition of Outdoor Wood Burning Furnace to Section 21.1, and 3) to add Outdoor Wood Burning Furnace to the list of uses permitted by Special Permit in each district. By Mr. Owen, seconded by Mr. Averill, and passed 4-0.

Mr. Owen noted the order of the agenda would be altered to accommodate those present.

Other Business

Revision of the Zoning Regulations/Section 13.19: Tele- communications Antennae, Towers, and Facilities and Verizon Cell Tower Application to the Ct. Siting Council

Mr. Owen read the following statement:

After consultation with our land use attorney, we decided to consider deleting our telecommunications regulations because their main effect has always been to confuse people, by suggesting that the Zoning Commission has regulatory powers that it does not, in fact, have. Despite what our comprehensive-sounding regulations suggest, municipalities in Connecticut have no regulatory power over free-standing telecommunications towers. Our proposal to delete these regulations was unrelated to Verizon's current proposal to the Connecticut Siting Council to place a tower in Washington, but because of its timing its main effect has probably been to confuse people even more. I therefore suggest that we withdraw our current proposal, and postpone any consideration of altering our telecommunications regulations until after the Siting Council has made its decision regarding Verizon's proposed tower.

I want to remind the Zoning Commission and all residents of Washington that Verizon has not applied for, and does not need to apply for, any sort of permit or approval from Zoning or any other Washington agency. Cell towers are governed exclusively by state and federal law, and decisions about their placement are made by the Siting Council. Municipalities can attempt to influence the Siting Council's choice of sites, but by both state and federal law they cannot simply impede the spread of the national telecommunications network, and the kinds of input they can offer are limited. (Connecticut state law does reserve for municipalities the power to regulate the placement of telecommunications facilities inside existing structures, such as church steeples and clock towers, but that is not what Verizon is seeking.) The Zoning Commission deserves neither credit nor blame (depending on one's point of view) for the fact that Washington has minimal cell service. The explanation for that is economic: we are too sparsely populated (and probably have too many large hills) to have been a priority for wireless providers.

The commissioners unanimously agreed with Mr. Owen's suggestion to withdraw the proposal to delete Section 13.19.

Mr. Owen invited Mr. Sears, First Selectman, and Mrs. Payne, Conservation Commission chairman, to discuss the Verizon cell tower application to the Ct. Siting Council. He briefly described the procedure the Town had followed when it had applied for intervenor status during a similar application for a tower on a site along Rt. 109 in New Milford and he noted the Town is concerned about the health, safety, and welfare of its residents and about environmental impacts and adverse impacts to property values.

Mrs. Payne noted that she and the Conservation Commission's cell tower subcommittee had requested that the Board of Selectmen hire an RF engineer to assess the adequacy of telecommunications coverage along the Rt. 202 corridor and to hire an attorney to represent the Town as an intervenor. Mr. Owen noted that if the Town wanted to tell the Siting Council that neither proposed tower site was OK, it would have to submit scientific evidence; testimony taken at the public input session would not be adequate.

Mr. Owen said the Washington Zoning Regulations do not apply to this application, but they could, perhaps, influence the Siting Council. He briefly reviewed the sections of 13.19, which were confusing and seemingly contradictory and noted there was no basis of support in the Zoning Regulations to support the Conservation Commission's suggested strategy.

Mr. Owen asked Mr. Sears what role, if any, the Board of Selectmen wanted the Zoning Commission to take in this matter. Mr. Sears responded the first step would be not to alter the Zoning Regulations at this time. Mrs. Payne agreed. Mr. Owen thought the Town's experience with the Siting Council regarding Verizon's current application would be a good guide as to whether the Siting Council would

pay attention to the Town's regulations or whether Section 13.19 should be deleted in the future. He suggested another option might be the adoption of a provision in the Zoning Regulations to ban telecommunications facilities except as required by state and federal law. Mr. Sears stated the Town would apply for intervener status as recommended by the Conservation Commission, but had not yet decided whether to hire an attorney or an RF engineer.

It was noted that in 2002 when Washington made a case against the proposed tower on Rt. 109 in New Milford it had based its arguments on the Town Plan of Conservation and

Development, but that this had not changed the outcome. Mr. Sears asked if any towns had ever had an impact on a decision by the Siting Council, but this was not known.

Mrs. Payne noted there was another application pending for a tower at the Northville Firehouse and that many people thought the Siting Council should wait to see if that would increase coverage along Rt. 202 before acting on the application for Marbledale. Mr. Owen said he understood from Atty. Zizka that already having adequate coverage would be a legitimate argument to make to the Siting Council, but that the claim would have to be backed up with facts.

Mr. Owen suggested a Town meeting be held to discuss whether or not to hire an attorney and a consultant to oversee the cell tower application process and to consider how much each would cost the Town.

Revision of the Washington Zoning Regulations/Eating and Drinking Establishments and Related Revisions

Mrs. Friedman read two proposed bans, Section 2.3.2.g: Formula restaurants, which by the nature of their standardized appearance and operations undermine the unique rural character of the Town and 2.3.2.h: Eating and drinking establishments that serve customers who are in motor vehicles. She then read a proposed definition for Formula Restaurant: An eating and drinking establishment that is devoted to the preparation and offering of food and beverages for sale to the public for consumption either on or off the premises, and is required by contractual, franchise, or other arrangements to be closely similar to related establishments in other communities in regard to standardized menus, food preparation, decor, architecture, uniforms, signage, trademarks, and the like. Other minor revisions proposed were to use the term, eating and drinking establishments throughout the Regulations because it is a broader term than restaurant and to change the language in Sections 9.4.1.d and 10.4.1.a to make it consistent. Mr. Averill said, and the other commissioners agreed, that this was a better approach than what had previously been considered. Mr. Owen thanked Mrs. Friedman and Mr. Boling for their research. A public hearing was scheduled for Monday, May 21, 2007 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.

Rural Roadscape Zone - 12/6/06 Draft: This document had been circulated at a previous meeting. It was the consensus that it was unfocused and would be difficult to enforce and that the Town already had the Scenic Road Ordinance that partially addressed the concerns of the proposed Rural Roadscape Zone. The commissioners decided not to proceed with further discussion about this proposal, but instead to concentrate their efforts on lighting regulations.

Enforcement

Moore/25 Litchfield Turnpike/Unauthorized Commercial Use of Residential Property: Mr. Ajello said he would remind Mr. Moore that he would have to apply for structures built without permits and for the ongoing commercial use of the property.

Mr. Owen asked Mr. Ajello to check to determine whether the signs at Marty's on Green Hill Road comply with the Regulations as the name on the awning makes it a sign.

MOTION: To adjourn the meeting. By Mr. Owen.

Mr. Owen adjourned the meeting at 9:45 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator