

MINUTES  
TOWN OF GROTON  
ZONING BOARD OF APPEALS  
SEPTEMBER 27, 2017 – 7:00 P.M.  
TOWN HALL ANNEX – 134 GROTON LONG POINT ROAD  
COMMUNITY ROOM 1

Chairman Stebbins called the meeting to order at 7:00 p.m.

I. ROLL CALL

Regular members present: Stebbins, Kravits, Manning, Mencer, Russotto  
Absent:  
Staff present: Zanarini, Gilot

Chairman Stebbins called the meeting to order at 7:00 p.m.

II. PUBLIC HEARINGS

1. ZBA #17-09- 540 Sandy Hollow Road – W. Decourcey & L. Porizky, Applicants and Owners; to appeal the decision of the Zoning Enforcement Officer concerning Sections 7.1-6 and 7.1-11 of the Zoning Regulations that a home occupation is being conducted and commercial vehicles and equipment are being stored in a residential zoning district. PIN 260912766868; RS-20 Zone - Continued

Chairman Stebbins reviewed the public hearing procedures, and explained that Attorney Londregan requested the continuance at the last meeting on September 13, 2017 so that the applicant would have the opportunity to be heard by five members of the Board.

Secretary Manning reread the legal ad for the record and noted that the mailings were confirmed at the previous meeting.

Attorney Jeffrey Londregan, Conway & Londregan, 38 Huntington Street, New London, represented the appellants, who were appealing the June 9, 2017 letter of the Zoning Official that no contracting equipment can be stored outside and no one other than the residents can park at the property. Mr. Londregan said the owners claim this is a pre-existing non-conforming use, but with a much less intense use. This property was used in conjunction with properties to the west as another pre-existing non-conforming commercial operation, formerly known as Comrie's Landscaping. Product such as screened topsoil was stored at the site. Attorney Londregan submitted a package of photos to the Commission:

- 1965 aerials of the subject and adjoining properties (Exhibit 1)
- 1970 aerials (Exhibit 2) Mr. Londregan not able to find that these properties were part of a subdivision; they have always been separately owned.
- 1986 aerials (Exhibit 3)
- 1990 aerials (Exhibit 4)
- 2005 aerials (Exhibit 5)
- 2006 aerials (Exhibit 6)
- 2012 aerials (Exhibit 7)
- 2016 aerials (Exhibit 8)
- 2017 aerials (Exhibit 9) from Google maps
- Groton GIS photos 1999-2015 (Exhibit 10). The Groton GIS maps show the interior roads connecting 540, 566 and 580.

Mr. Londregan explained that the appellants purchased the property in 2015 to use the property for his landscaping business. Prior to the sale, it was used with the adjoining properties to the west. The new owner claimed the operation to the west was still dumping leaves on his property so he placed some boulders on the interior roads to the business to the west and informed them that he would be using his property for his own business endeavors. In 2017, he cleaned the site (Exhibit 9), obtained building permits from the town for a barn, and currently stores his equipment in the barn. The landscaping business to the west filed a complaint with the town stating that the appellant was illegally running a landscaping business on the site.

Rick Whittle, Whittles Farm, 1030 Noank Ledyard Road, Mystic, addressed the Board. He spoke of the past use of the site as Comrie's, a large landscaping business. The properties were owned by family members, and as those family members passed, the properties were sold, and the appellant purchased one of the properties. Mr. Whittle said the new owner only has pickups, no large vehicles. Manning asked if they were separate and distinct properties. Mr. Whittle said he didn't know how it was divided, but it was always used as one property until the appellant purchased the property.

Mr. Londregan submitted a letter for the record (Exhibit 11) from the realtor of Berkshire Hathaway who represented the appellants when they purchased the property. Mr. Londregan also submitted a letter from Brian Watrous (Exhibit 12) about the history of the site. Mr. Londregan suggested to the Board that the appellant would be agreeable to impose reasonable conditions if the enforcement officer's decision was overturned. These conditions would reduce the non-conformity:

- All commercial equipment stored in a garage or outbuilding
- Any vehicles associated with the business would need to be parked in back near the barn
- Any pre-existing nonconforming storage or screening of product would be abandoned
- Accessways to the properties to the west property would be abandoned

He said the use is pre-existing non-conforming, has been in use for over 50 years, and only became an issue when the appellant asked the business owners to the west to stop using his property. He requested that the order be overturned.

All of the lots discussed have the same zoning. Mr. Londregan said Exhibit 10, page 4, shows piles of materials on 566 Sandy Hollow Road, and there has never before been any enforcement at that property. Mr. Whittle stated that he believed there is still a business running there.

Lucretia Porizky, 103 Brook Street, Noank, stated that during the transfer of the property, they were lead to believe that the property had been used in the past as a landscaping business.

Zanarini reviewed the building file for the Board. He said there was no evidence in the file of a business being run at the property. Manning asked if the property was used this way prior to zoning and continued on after the zoning regulations were adopted, there had to be some continuity. Zanarini said the Board

would have to determine willful abandonment, which would be pretty extraordinary circumstances. Mr. Londregan said he thought the pictures make it obvious that the business was running at all of the properties, proving that the site was being used continuously in conjunction with the properties to the west.

Bill Decourcey, 540 Sandy Hollow Road, an appellant, addressed the Board. He said he built the 40 x 48 barn on the property.

The Chair asked for comments from the public.

Marilyn Comrie, 566 Sandy Hollow Road, provided background on the property and the landscaping business started by her father. Her sister and brother-in-law purchased 540 Sandy Hollow Road and at that time the back yard was used by her father for the business. She said Comrie's went out of business in 1991 and all the equipment was sold at that time. Her father subdivided 566 and 580 Sandy Hollow Road. The property at 580 Sandy Hollow Road retained the pre-existing non-conforming use, and was sold in the mid-90's. He had a commercial establishment there until 2005.

Bill Biletzke, 580 Sandy Hollow Road, previously utilized the property at 540 Sandy Hollow Road for his business based on a gentleman's agreement with the former owner. The property was used to dump leaves, soil, compost, and once a year screen the topsoil. When the property was sold, he stopped using the property. Mr. Biletsky detailed the history and uses of the sites to the best of his recollection.

Frank Barravecchia, 553 Sandy Hollow Road, spoke about the increased truck traffic at 540 Sandy Hollow Road.

Ed Blacker, 51 Main Street, Noank, Earth Turf and Snow asked the board to allow the property to be used for the landscaping business.

Amity Arcscott, 543 Sandy Hollow Road, across from where the business vehicles enter and exit 540 Sandy Hollow Road. She spoke about the increased traffic with the business at 540 Sandy Hollow Road. She asked that the enforcement order be upheld.

Tom Zonarini, Town of Groton Enforcement Officer/Planner 1, addressed the Board. He distributed copies of Connecticut General Statutes Sec. 8,.7, "Appeals to the board" to the members, and also referenced Public Act 84-122, requiring appeals to be taken within 30 days.

Zonarini reviewed the history of several enforcement orders issued for 540 Sandy Hollow Road by previous enforcement officers for the town. Zonarini said the enforcement officer position was vacant for about 6 months, and he has subsequently issued compliance letters as a follow-up to the original orders, and believes the statues would require that an appeal be filed within 30 days of the initial order. He said the Board must deny the appeal for lack of jurisdiction. The decision was made in April 2016; Zonarini noted that his letter was not an order. The appellant sent a letter to the town acknowledging they were in violation. Zonarini said that the clock should not restart because the position was vacant for several months before he was hired by the town.

Attorney Londregan stated that Section 8.6 of the statutes refers to the Zoning Board of Appeals. He said that Mr. Zonarini's letter dated June 9, 2017 was considered an order and the appellants have the right to be heard. They can appeal the decision, and the Board can hear the appeal.

Mr. Londregan said the restriction of vehicles at the property is outside of the scope of the pre-existing uses, and should not be the concern of the Board. Regarding the use of the properties to the west, the original owner began the business in 1954. There was a nine year gap when the property was not used for the original use. Non-use is not abandonment. Discussion ensued on what is a "decision" of a code enforcement order, when appeals can be filed, and the differences between an order, a request for voluntary compliance and a cease and desist. Mr. Londregan stated that Zonarini's letter reset the 30 day appeal period. Zonarini said that no new decision was issued, so they do not have a right to appeal.

Manning asked Zonarini if they entertained the appeal, would that mean any letters issued for violations held over from the previous enforcement officers would restart the clock.

The public hearing was closed at 9:00 p.m.

### III. MEETING FOLLOWING PUBLIC HEARING

1. ZBA #17-09- APPEAL - 540 Sandy Hollow Road – W. Decourcey & L. Porizky, Applicants and Owners

The Board concurred to postpone making a decision until the next meeting in order to ask Town Attorney Carey whether this appeal was valid.

Motion to continue the discussion to the next meeting was made Russotto and seconded by Manning; motion passed unanimously.

### IV. CORRESPONDENCE- None

Staff distributed the quarterly CFPZA newsletter to the Board.

### V. APPROVAL OF MINUTES

1. September 13, 2017

MOTION: To adopt the minutes of September 13, 2017, as amended.

Motion made by Mencer , seconded by Kravits, so voted unanimously.

### OLD BUSINESS- None

### VI. NEW BUSINESS

Staff said an application for a non-conforming sign at 479 Gold Star Highway was submitted, but a variance may not be necessary.

Staff explained the two pending applications which had been postponed to the next meeting to allow the applicants enough time to complete their mailings.

VII. REPORT OF STAFF- None

VIII. ADJOURNMENT

Motion to adjourn at 9:10 pm made by Russotto, seconded by Kravits, so voted unanimously.

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Thomas Manning, Secretary  
Zoning Board of Appeals

Prepared by Debra Gilot  
Executive Assistant