

**TOWN OF BROOKLYN
ZONING BOARD OF APPEALS
SPECIAL MEETING MINUTES**

The Brooklyn Zoning Board of Appeals held a special meeting and public hearing on Monday, April 27, 2015 at 7:00 p.m. at the Quinebaug Valley Senior Citizen Center, 69 South Main Street, Brooklyn, CT on the following:

Present: Dan Ross, Brien Kroeger, Bill Macnamara, Bruce Parsons and Jim Grzesiak.

Staff Present: Jana Roberson, AICP, Land Use Administrator, Attorney Peter Alter, Land Use Attorney and Audrey Cross-Lussier, Recording Secretary.

Also Present: Attorney William Sweeney, Valorie and Dale Lyon, Diane and Gary Lockard, Paul Archer and Public in Attendance.

Absent: None.

Call to Order: The meeting was called to order at 7:10 p.m.

Seating of Alternates: None.

Approval of Minutes: Regular Meeting Minutes of January 5, 2015. The minutes were not approved at this meeting. Will carry onto the next scheduled meeting agenda.

Public Hearing:

1. Reading of Legal Notice: Chairman Ross read the legal notice into the record.

ZBA15-001 Dale P. and Valorie A. Lyon 133 Wauregan Road, Map 23, Lot 42, 3.72 Acres, RA Zone, Appeal of Cease and Desist Order ZV14-006 issued by the ZEO on December 30, 2014 alleging the operation of an “unpermitted landscape maintenance business.”

2. Presentation by Zoning Enforcement Officer.

Jana Butts Roberson, AICP introduces herself as the Land Use Administrator for the last 2 years, Certified Planner for 15 years, Zoning Enforcement for about 4 years.

Please see the attachment (3 pages) for the Zoning Enforcement Officer’s Testimony Zoning Board of Appeals (ZBA15-001); Appeal of Cease and Desist Order (ZV14-006) including Public Hearing; Land Record Research; Aerial Photo Research; Additional Site Photos; Analysis of Materials Supplied by Mr. and Ms. Lyon; Findings regarding alleged grandfathering;

Analysis of Materials Supplied by Neighbors at 141 Wauregan Road; Failure to comply with Cease and Desist Order; Conclusion.

3. Presentation by Appellant.

Bill Sweeney introduces himself as a land use attorney with the law firm of Tobin Carberry in New London, CT, representing Dale and Valorie Lyon. Mr. Sweeney is a former town planner for both Norwich and Canterbury and currently serves as a special land use counsel for the East Lyme Planning and Zoning Commission and the East Lyme Zoning Board of Appeals.

Abutters certificate of mailings were submitted for the record.

Please see the attachment (14 pages) for the Presentation to the Town of Brooklyn Zoning Board of Appeals in support of the appeal of Dale and Valorie Lyon, dated April 27, 2015, including Introduction; Legal Charge; Background; History of the Property; Pre-Existing Non-Conforming Use; Municipal Estoppel; Cease and Desist Order and Conclusion. Affidavit of facts (1 page) Affiant Chuck Dobrowski.

5. Public Participation in Support of Appellant.

Attorney Bill Sweeney submits for the record written testimony from Heather R. Sica-Leonard, 151 Wauregan Road, Brooklyn, CT and Michele Smith, Owner Jeweled Innovations, LLC, Gift Shop at the Golden Lamb Buttery Brooklyn, CT in support of the appeal for Dale and Valorie Lyon.

The following is a list of public participants:

Leonard Bissonnette, Allen Hill Road, speaks in favor of the appellant.

Gary Lockard, 141 Wauregan Road, speaks not in favor of the appellant. Mr. Lockard submits for the record (36) photographs; an article titled "Vehicle Stopping Distance and Time (4 pages); E-Mails from Gary Lockard regarding the cease and desist sent to Jana Roberson and Rick Ives (27); Petition containing (20) signatures regarding the overturning of cease and desist order ZV14-006.

Ken Hunter, 48 year resident of Brooklyn, CT, speaks in favor of the appellant.

Bob DonFrancisco, 265 Gorman Road, Brooklyn, CT, speaks in favor of the appellant.

Hartley Field, 100 Mason Road, Brooklyn, CT speaks in favor of the appellant.

Cathy Jones, Brooklyn, CT, speaks in favor of the appellant.

Bob Jones, Maple Court, Danielson, CT, speaks in favor of the appellant.

John Jones, 81 South Main Street, Brooklyn, CT speaks in favor of the appellant.

Connie Lyon, 133 Wauregan Road, Brooklyn, CT, Mother to Dale Lyon, speaks in favor of the appellant.

Sherry Gomez, former Brooklyn resident 94 Wauregan Rd, speaks in favor of the appellant.

Michael Beech, 957 Apt A North Main St, Dayville, CT speaks in favor of the appellant.

Fred Moran, Dayville, CT speaks in favor of the appellant.

Paul Haveles, 963 Maple Street, Danielson, CT speaks in favor of the appellant.

Jim Malbaurn, Hyde Road, Brooklyn, CT, Brother to Dale Lyon, speaks in favor of the appellant.

Bob Hunter, Anderson Road, Brooklyn, CT, speaks in favor of the appellant.

Austin Tanner, 19 Purvis Road, Brooklyn, CT, speaks in favor of the appellant.

Albert Basley, Danielson, CT speaks in favor of the appellant.

Joseph Beauregard, 157 Wauregan Road, Brooklyn, CT speaks in favor of the appellant.

Jim Hunter, 166 Canterbury Road, Brooklyn, CT speaks in favor of the appellant.

Adam Tetreault, 133 Wauregan Road, Brooklyn, CT speaks in favor of the appellant.

Kyle Green, 144 Wauregan Road, Canterbury CT speaks in favor of the appellant.

Lisa Menard, 127 Wauregan Road, Brooklyn, CT speaks in favor of the appellant.

6. Response/Summary by Zoning Enforcement Officer.

Ms. Roberson addressed the following:

If complaints have not been made would an investigation been done. Ms. Roberson noticed signs after a visit of the Lyon property earlier in the summer to issue a zoning permit for a swimming pool. At that time she asked Mr. Lyon then about the business on his property and asked if he had a Home Enterprise Permit which Mr. Lyon stated he did.

Ms. Roberson stated that she was asked numerous times by Mr. Sweeney to rescind the order, but felt there were no grounds to rescind the order. Mr. Sweeney said Brooklyn validated the approval in 2002. Ms. Roberson stated despite the newly received affidavit from Mr. Dobrowski, he did not issue a certificate of zoning compliance for the barns. Ms. Roberson describes zoning permit/final ZEO compliance process.

Aerial Photos: nothing before 1972 is relevant. Aerial photos can be obtained from the period that Mr. Beardsmore operated the property, there is one from 1970. The interest is from the period of 1972 to 1976 and 1976 earlier. These photos would have to be obtained from the Connecticut State Library. Aerial photos from 1986 and several other later dates have been obtained. Despite testimony, Ms. Roberson did not see evergreen trees being cultivated on the property from aerial photos.

Ms. Roberson stated that Mr. Sweeney said Mr. Lyon approached the Town and said “they don’t care.” Ms. Roberson states this is unusual, and would certainly not say that.

1976/1977 Zoning Regulations: Ms. Roberson will check the 1976 and 1977 zoning regulations regarding the description of home industry and sign permits.

Expansion of Lawn Mowing Business: Ms. Roberson does not believe the current activity is within a scope of the original grandfathered use. Ms. Roberson discusses the significant deficiencies and substantial impacts from the expansion with Commission Members. Ms. Roberson submits (3 pages) of 2 site visits from her field journal.

Brien Kroeger asked Ms. Roberson when Mr. Lockard first contacted her. She stated she believes it was in May of 2014. Mr. Kroeger asked if she knew when the property was purchased. Ms. Roberson stated she believes Diane Lockard owns the property but cannot confirm of how long she has owned the property. Mr. Kroeger asked there was no complaint up until a year ago regarding the property. Ms. Roberson stated she received the first complaint a year ago.

Wetlands Permit: The wetlands permit is not the issue before the ZBA Board. The issue is the cease and desist order. One relevant point the soil is being sold and that is a commercial activity and never listed as a use on the wetlands permit.

In conclusion, Ms. Roberson stated “good for Dale for being a hard worker and outstanding individual”, this is not a personality contest and how many people managed to get into the room on the night of the hearing, it is about the facts of the case.

7. Response/Summary by Appellant.

Traffic Issues: Mr. Sweeney comments on traffic issues brought up by Mr. Lockard. Mr. Sweeney noted to the Board that Courts have ruled that issues of traffic are issues to be submitted for expert testimony. Mr. Lockard did not identify himself as a traffic engineer or anyone with any kind of traffic background and asks the Board to reject all of his comments regarding traffic it is simply anecdotal evidence.

Land Use Administrator Summary: Ms. Roberson made a comment that she could find more aerial photos from 1972. Ms. Roberson testified that the investigation has been going on 11 months, and Ms. Roberson wants more time to go find more evidence to try to find something to hang Dale Lyon on. Mr. Sweeney feels that there is bias on Ms. Roberson’s part. Mr. Sweeney also feels that Ms. Roberson lied tonight. She told you that she was aware of what was going on;

on Dale's property and that it wasn't a complaint that drove her to file the cease and desist. Mr. Sweeney submits into evidence several dozen photos, approximately (98) of an illegal car operation being run from the Lockard property (141 Wauregan Rd) which was shared with the Land Use Administrator. Ms. Roberson refused to take action unless Mr. Sweeney filed a complaint.

Mr. Sweeney asked the Board for three things:

1. End it tonight and close the public hearing.
2. Find that this order was issued in error, would like this reverse and overturned and wants all Board members to vote for it.
3. He also requests that a letter is sent to Board of Selectmen that the application fee be refunded.

Chairman Ross called for a 5 minute recess.

Meeting reconvened after the 5 minute recess.

Attorney Alter suggests to Commission Members if the Board has questions of anyone that offered testimony these questions should be asked before closing the public hearing.

Bill Macnamara asked Ms. Roberson why she thought anything prior to 1972 was relevant. Ms. Roberson stated that in 1972 zoning regulations were adopted. The grandfathering provision only applies to uses that were actually being conducted at that time. Mr. Macnamara asked what was occurring at that time was relevant. Ms. Roberson stated yes.

Bruce Parsons asked if a property has a non-conforming use, is there a time limit to when the use ceases. Ms. Roberson stated there is not a time limit on it, but intent of abandonment is what the law looks for. Mr. Parsons further discusses this issue with Ms. Roberson.

Brien Kroeger voices his concerns with regards to the expansion of the use and the cease and desist order.

Attorney Alter reads from a Supreme Court case that states the following: in determining whether an activity is legally non-conforming or whether the current activity constitutes an impermissible expansion of a non-forming use three factors must be considered:

1. The extent which the current use reflects the nature purpose of the original use. If you are satisfied with the information that you have, that what is going on today is substantially to which the current use reflects the nature and the purpose of the original use that meets that test.
2. Any differences in the character, nature and kind of the use involved. Attorney Alter gives the example he cites to – sand and gravel operation that was legally existing non-conforming grandfathered, it would not have been permitted in the zone it was in, put up bins and started a ready mix concrete business right alongside the sand and gravel business. The Town said you cannot do that and it went to court. The court said that is not consistent with the original use that is a new business. Attorney Alter felt that Attorney Sweeney's argument is that this is not a new

business, this is the same business, and it just got bigger. What the ZEO has said is a lawn care business is not a business that screens and sells top soil, sells mulch. This is for the Board to decide which you think it falls into the category – that it is in fact not different in character, nature and kind of use or it is. The ZEO has taken the position that this is an expansion that goes beyond a regular use. Attorney Sweeney has said it is not and has offered you his information and she has offered her information in that regard.

3. Any substantial differences in the effect on the neighborhood. Has there been a substantial change that causes effect on the neighborhood. In other words, has the business gotten so big that it is different that it was before and therefore it impacts the neighborhood. There has been a great deal of testimony from people says it does not and there has been some testimony from some saying it does. Again, this is for the Board to decide whether or not those tests can make it an impermissible expansion has been met or not.

Discussion ensued.

Brien Kroeger asks Diane Lockard property owner, 141 Wauregan Road when she bought the property. Ms. Lockard stated she bought it in 2003. Mr. Kroeger asked if she knew what was going on next door. Ms. Lockard stated it was not the same nature and it wasn't the same scale. Mr. Kroeger asked for Ms. Lockard to give a description. Ms. Lockard stated it was much smaller, with pick-up trucks, with a lawn care business. There was a smaller barn. Over a period of time he added on to it with equipment, trucking, noise, and disturbance. Mr. Kroeger asked Ms. Lockard when Mr. Lyon got his barn permit and develop the property along the way did she ever object to that. Ms. Lockard stated no. Mr. Lockard stated she would not have objected because she was not notified. Discussion ensued.

Jim Grzesiak questioned Attorney Alter with the spoils from the dredging of the pond and the piles of loam. Attorney Alter addressed this issue. Discussion ensued.

Jim Grzesiak discusses the aerial photographs within the file Ms. Roberson.

Jim Grzesiak asked if Mr. Lyon has permits from the State of Connecticut for his business.

Attorney Sweeney stated yes he has a number of motor vehicle licenses, registered with the Secretary of State, his sole proprietorship was turned into an LLC. Mr. Sweeney asked Mr. Lyon to address this question directly.

Mr. Lyon stated that the industry is licensed by the Department of Agriculture. Mr. Lyon went to vocational agricultural school to learn landscaping, horticulture and forestry. Brien Kroeger asked if he is licensed to operate all of the equipment and bonded. Mr. Lyon stated he is licensed and that a bond is not needed for a private job only a State Job.

Brien Kroeger asked Mr. Lyon when Ms. Lockard bought her home where they amicable neighbors. Mr. Lyon stated yes, he mowed her lawn and plowed the driveway. Mr. Kroeger asked if he discussed building of the barn and what he was doing with the property with Ms.

Lockard. Mr. Lyon stated yes he did. When she moved in 2003, the old barn was dismantled and they were in the process of building the new barn.

Mr. Grzesiak discusses the certificate of final zoning compliance versus zoning permit with Ms. Roberson. Discussion ensued.

Attorney Alter spoke with regards to clarification of the issue at hand. The issue is not the buildings, the issue is the use. The buildings are irrelevant except to the extent that you feel they are an indication of the existence of the use. This is all about use and not structures. The question is, does the use comply and if it does not comply is it grandfathered as a legally existing non-conforming use. Attorney Sweeney has given his client's side that it is a legally existing, that it predates zoning and therefore it has a constitutionally protective right to retain it. The ZEO has said it has expanded beyond its original use not in accordance with the law, without any permits and should not be allowed to continue in its present expanded form. Discussion ensued.

A motion was made by Jim Grzesiak to close the public hearing. Bruce Parsons seconds this motion. No discussion held. All in favor. The motion passes unanimously 5-0.

A motion was made by Bill Macnamara to rescind the cease and desist order ZV14-006 issued by the ZEO on December 30, 2014 alleging the operation of an unpermitted landscape maintenance business as the business occurring at 133 Wauregan Road, Brooklyn, CT, has continued as a nonconforming use prior to 1972 to current in its nature and purpose of original use has naturally expanded and there has been no substantial change and effect on the neighborhood. Brien Kroeger seconds this motion. Discussion held.

Bruce Parsons supports Bill Macnamara's motion and discusses his reason.

Jim Grzesiak supports the motion and discusses his reason.

Brien Kroeger supports the motion and discusses his reason.

Dan Ross supports the motion and discusses his reason.

Vote was taken all in favor of: Dan Ross, Brien Kroeger, Jim Grzesiak, Bruce Parsons and Bill Macnamara. The motion passes unanimously 5-0.

New Application Acceptance:

1. ZBA15-002 Brooklyn Center Complex, LLC, 71 Vina Lane, Map 24, Lot 158, RA Zone – Requesting variance from section 6A.4.1 from 150 feet to 48.23 feet, Article 2 Interior Lots from 50 feet to 48.23 feet.

Paul Archer, Archer Surveying, represents application ZBA 15-002. Mr. Archer gives the following summary:

The property is located off of Wauregan Road. There are four chicken coops in the back. The applicant would like to use the agricultural reuse. The regulation regarding the agricultural reuse

requires 150 feet of road frontage in the RA Zone. This piece of property only has 48 feet on Wauregan Road. The other variance being asked for is going to definitions-access way. The access way to a rear lot has to be 50 feet. Variance requested is the access reduced from 50 to 48.23. The variance from section 6A.4.1 is from 150 feet to 48.23 feet for the frontage for the agricultural reuse. Discussion ensued.

A motion was made by Brien Kroeger to accept application ZBA15-002 Brooklyn Center Complex, LLC, 71 Vina Lane, Map 24, Lot 158, RA Zone-Requesting variance from Section 6A4.1 from 150 feet to 48.23 feet; Article 2 Interior Lots from 50 feet to 48.23 feet, and to schedule a public hearing with the date to be determined. Jim Grzesiak seconds this motion. Discussion held. All in favor. The motion passes unanimously 5-0.

Adjourn: A motion was made by Brien Kroeger to adjourn the meeting at 10:50 p.m. Jim Grzesiak seconds this motion. No discussion held. All in favor. The motion passes unanimously 5-0.

Audrey Cross-Lussier
Recording Secretary