



TOWN PLAN AND ZONING COMMISSION

REGULAR MEETING
Wednesday, December 10, 2014

Town Hall Conference Room L-101
131 Cedar Street, Newington, CT 06111

7:00 p.m.

REVISED AGENDA

- I. ROLL CALL AND SEATING OF ALTERNATES
- II. APPROVAL OF AGENDA
- III. PUBLIC HEARINGS
- IV. PUBLIC PARTICIPATION (for items not listed on the Agenda; speakers limited to 2 minutes)
- V. REMARKS BY COMMISSIONERS
- VI. MINUTES
 - a. November 24, 2014 special meeting
 - b. November 24, 2014 regular meeting
- VII. NEW BUSINESS
 - a. Petition #48-14: Site Plan Modification at Deming Farm Drive ("Newington Ridge Preserve", formerly "Deming Farm"). Griswold Farms LLC, owner/applicant; Michael Massimino, 15 Hosley Avenue, Branford CT, contact.
 - b. Bond Release:
 1. Victory Way (Victory Gardens)
- VIII. OLD BUSINESS
 - a. Petition #46-14: Revisions to Section 6.11 (Sale, Rental Service or Storage of Motor Vehicles)

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2014 DEC -5 AM 10:49

BY *Tanya D. Lane*
TOWN CLERK

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

X. TOWN PLANNER REPORT

- a. Town Planner Report for December 10, 2014

XI. COMMUNICATIONS

- a. Legal Opinion from Attorney Mark Shipman re Packard's Way subdivision

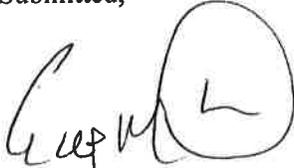
XII. PUBLIC PARTICIPATION (for items not listed on the Agenda; speakers limited to 2 minutes)

XIII. REMARKS BY COMMISSIONERS

XIV. CLOSING REMARKS BY THE CHAIRMAN

XV. ADJOURN

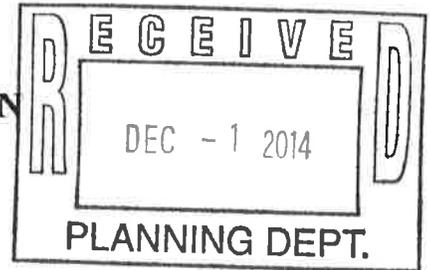
Submitted,

A handwritten signature in black ink, appearing to read 'Craig Minor', with a large circular flourish to the right.

Craig Minor, AICP
Town Planner



TOWN OF NEWINGTON
TOWN PLAN AND ZONING COMMISSION



APPLICATION FORM

*(West Side) Former Peckham Farm parcel

LOCATION OF PROPERTY: DEMING STREET * ZONE: PD

APPLICANT: GRISWOLD FARMS, LLC TELEPHONE: N/A

ADDRESS: 15 Hosley Avenue, Branford, CT 06405 EMAIL: _____

CONTACT PERSON: Michael Massimino TELEPHONE: _____

ADDRESS: 15 Hosley Avenue, Branford, CT 06405 EMAIL: mmassimino@massdevelopmentcorp.com

OWNER OF RECORD: Griswold Farms, LLC

THIS APPLICATION IS FOR (CHECK ONE OF THE FOLLOWING):

- Zoning Map Change from the _____ to the _____ Zone (Public Hearing required).
- Zoning Text Amendment to Section _____. A copy of the proposed amendment and the reason for amendment is attached (Public Hearing required).
- Subdivision
- Resubdivision (Public Hearing required).
- Special Exception per Section _____ of the Zoning Regulations. Explanation of the proposed activity is attached (Public Hearing required).

Site Plan Approval or Modification (Revising Limited Common Areas only)

Other (describe in detail, or attach): _____

SIGNATURE:

	<u>11/20/2014</u>		<u>11/20/2014</u>
APPLICANT	DATE	OWNER	DATE

COMPLETE APPLICATIONS SUBMITTED TEN DAYS BEFORE THE NEXT TPZ MEETING WILL BE PUT ON THE AGENDA. A COMPLETE APPLICATION INCLUDES THE APPLICATION FEE, TWELVE SETS OF PLANS (IF APPROPRIATE) AND A SEPARATE NARRATIVE EXPLANATION OF THE PETITION (IF APPROPRIATE).

NOTE:
PROPERTIES LOCATED IN THE NEWINGTON INDUSTRIAL PARKS (BUDNEY ROAD, PROGRESS CIRCLE, ROCKWELL ROAD, HOLLAND DRIVE AND PANE ROAD) ARE SUBJECT TO THE REGULATIONS, COVENANTS AND RESTRICTIONS OF THE NEWINGTON ECONOMIC DEVELOPMENT COMMISSION. APPLICANTS PROPOSING TO BUILD, MODIFY EXISTING SITE PLANS, CHANGE OR ADD TO BUILDING ELEVATIONS OR PLACE SIGNAGE ON THE PROPERTY ARE RESPONSIBLE FOR SECURING THE NECESSARY APPROVALS FROM THE ECONOMIC DEVELOPMENT COMMISSION PRIOR TO INITIATING THE WORK.

STAFF REPORT
“Limited Common Elements” at Newington Ridge Preserve
(formerly “Deming Farm”)

December 5, 2014

Petition #48-14:

Site Plan Modification for “Newington Ridge Preserve”

Deming Farm Road

Griswold Farms LLC, owner/applicant; Michael Massimino, 15 Hosley Avenue, Branford CT, contact.

Description of Petition #48-14:

The applicant would like to enlarge the “limited common element” area around each house in this PUD (planned unit development) beyond the amount originally proposed. The special exception and site plan approval were originally granted by TPZ on April 25, 2007.

Staff Comments:

The applicant recently bought this incomplete project from the original developer. The site had been graded, the road constructed up to binder course, and one house had been built. The wetlands permit had expired, so the new owner had to go through the process of having it re-issued.

Since new plans had to be prepared for the wetlands application, the new owner decided to take that opportunity to make some other minor changes to the project. One of the changes is to establish a larger “limited common element” area around each house. He asked me what, if any, TPZ approval would be necessary.

I reviewed the file for this project. The plans that were submitted to TPZ in 2006 did not, in fact, show any limited common element, so my initial conclusion was that, from the TPZ perspective at least, nothing is being changed. However, in reading the minutes from the public hearing on December 20, 2006, I learned that the distance between the houses and the amount of “limited common element” was discussed, and it was an issue of concern to the TPZ:

Attorney Sullivan: But just so I can declare this, there are no backyards in any of these units, it's a common interest community, so the individual structures will be owned, if it's approved will be owned, but all the space around is going to be owned by the association for the benefit of every unit owner. So that is why Mr. Perriginni was saying, he was mapping out a ten by X foot [attached deck], so really, the entire area can be enjoyed by the entire community.

I discussed this with the Town Attorney, and he suggested the applicant use the “site plan modification” process to get TPZ approval of this change.

I have no objection to approving this request.

cc:
Attorney Dennis Ceneviva
file

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Hearing Date: n/a
Adopted Date:
Effective Date:

Section 6.11 Sale, Rental, Service or Storage of Motor Vehicles

The Commission may grant a special exception for the sale, rental, service or storage of motor vehicles in certain zones only, subject to the following conditions and to the provisions of Section 5.2 (Procedures and Standards for All Special Exceptions), Section 3.15 (Special Exceptions Permitted in B-BT Business Berlin Turnpike Zone), and Section 3.17 (Special Exceptions Permitted in I Industrial Zones).

For the purpose of this section, “motor vehicle service uses” include ~~but are not limited to~~ those of a limited repairer as defined in Sec. 14-51(a)(4) of the Connecticut General Statutes; the lubricating of motor vehicles, adding or changing of oil or other motor vehicle fluids, changing of tires and tubes, including the balancing of wheels, or installing of batteries or light bulbs, windshield wiper blades or drive belts as described in Sec. 14-51(b) of the Connecticut General Statutes; and the sale of gasoline or any other product under the provision of Sec. 14-319 of the Connecticut General Statutes. Motor vehicle service uses are allowed, by special exception, in the I zone, B-BT zone, and PD zones only.

For the purpose of this section, “auto-related uses” include ~~but are not limited to~~ dealers and repairers as defined in Sec. 14-51 (a) (1), (2), and (3) of the Connecticut General Statutes, car washes, car and truck rental businesses and other uses as may be determined by the Commission. Auto-related uses area allowed, by special exception, in the I zone only.

- 6.11.1 Auto-related uses, motor vehicle service uses, and equipment such as fuel dispensers shall be at least 30 feet from any street right of way line.
- 6.11.2 Auto-related uses and motor vehicle service uses which include repairs shall be entirely within a building and at least 30 feet from any street right of way line.
- 6.11.3 Entrances and exits for auto-related uses and motor vehicle service uses shall be at least 100 feet from a church, school, playground, hospital or any residence. ~~The Commission reserves the right to alter this requirement when, in its opinion, the natural, topographical, or manmade utilities of the site clearly indicate that this requirement is inappropriate. The distance may not be increased to more than double nor decreased to less than half the requirement herein, and any such action shall require a two-thirds vote of the Commission.~~
- 6.11.4 No display, sale, rental, or storage of any motor vehicle is permitted in the required front yard or in the street right-of-way.
- 6.11.5 No portion of any use relating to motor vehicles shall be within 100 feet of a residential zone. ~~The Commission reserves the right to alter this requirement when, in its opinion, the density of the residential zone and the natural, topographical, or manmade utilities of the site clearly~~

New text is shown in **bold underline**. Deleted text is shown in ~~bold strikethrough~~.

~~indicate that this requirement is inappropriate. The distance may not be increased to more than double nor decreased to less than half the requirement herein, and any such action shall require a two-thirds vote of the Commission.~~

- 6.11.6 The façade of the building shall be a combination of brick, split face block or dryvit. Wall signage shall be uniform in size, design and lighting. The architectural style and design shall provide for a good appearance and blend harmoniously with adjacent buildings, and shall be approved by the Commission.
- 6.11.7 Overhead service doors shall not be permitted on the public street side of an auto-related use or a motor vehicle service use. ~~The Commission reserves the right to alter this requirement for a corner lot or when, in its opinion, the natural, topographical, or manmade utilities of the site clearly indicate that the requirement is inappropriate. Such action shall require a two-thirds vote of the Commission.~~
- 6.11.8 The minimum lot area for a parcel containing an auto-related use or a motor vehicle service use shall not be less than one (1) acre. Such uses may be combined with other commercial uses when the total parcel size is not less than three (3) acres.
- 6.11.9 Pursuant to Sec. 14-321 of the Connecticut General Statutes, effective June 6, 2006 the Town Plan and Zoning Commission shall act as the local authority in approving Certificates of Location (Gasoline and Motor Oil Sales).
- 6.11.10 Pursuant to Sec. 14-54 and Sec. 14-55 of the Connecticut General Statutes, effective June 6, 2006 the Town Plan and Zoning Commission shall act as the local authority in approving Certificates of Location (Dealers and Repairers Licenses).



John Salomone
Town Manager

TOWN OF NEWINGTON

131 Cedar Street Newington, Connecticut 06111

Town Planner

Craig Minor, AICP
Town Planner

Memorandum

To: Town Plan and Zoning Commission
From: Craig Minor, Town Planner *CM*
Date: December 5, 2014
Re: **Town Planner Report for December 10, 2014**

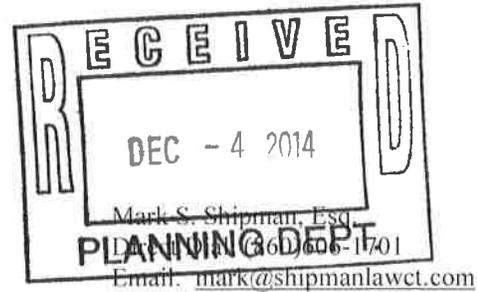
-
1. **Zoning Enforcement Issues Raised at Previous TPZ Meetings:** None.
 2. **Old Performance Bonds held by Town:** I will have a report at the meeting.
 3. **Newington Junction TOD Committee:** Nothing new to report.

cc:
file

Phone: (860) 665-8575 Fax: (860) 665-8577
cminor@newingtonct.gov
www.newingtonct.gov



Shipman, Shaiken & Schwefel, I.L.C.
ATTORNEYS AT LAW



Craig Minor, Town Planner
Town of Newington
131 Cedar Street
Newington, CT 06111

December 2, 2014

Re: Packard's Way Subdivision

Dear Mr. Minor:

You have asked our opinion as to whether an eight (8) lot subdivision known as Packard's Way, which was approved on May 2, 2007 is a valid subdivision; and whether the conveyances that have and/or will be made, referencing the recorded map are valid.

FACTS.

At its Meeting of April 25, 2007 the Planning & Zoning Commission (the "Commission") approved the application of Greene Associates, Donna DiMauro and Hollis Kobayashi, owners, for an eight (8) lot subdivision. Two (2) of the lots contained houses (Petition # 69-06). The approval required that certain things be completed before the Chairman would sign the mylars. The submitted subdivision plan had to be amended to reduce the ten (10) lots to eight (8) lots; to show Conservation area of not less than 21,000 square feet, protected by a conservation easement along the backyards of Vincent Drive; A concrete sidewalk along the north side of proposed street; and a notation that existing overhead utilities to 68 and 80 Maple Hill Avenue shall be located underground; the removal of the existing stone wall along the front of the properties. The project engineer also needed to certify that relocated driveways serving properties 68 and 80 Maple Hill Avenue do not exceed the standard 10% grade.

Notice of the approval was filed on May 2, 2007. No appeal was taken.

Sometime prior to August 8, 2007, a new map and mylars was submitted to the Commission's staff. On August 8, 2007, the Commission was advised by staff that it was reviewing the revised plan. Thereafter, on September 11, 2007 the Commission discussed the revised plan and expressed its satisfaction. The mylars were signed by the Chairman of the Commission on October 24, 2007 and recorded promptly thereafter.



December 2, 2014

Craig Minor

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QUESTIONS:

WHAT IS THE EFFECT OF THE SUBDIVISION MAP NOT FILED WITHIN THE REQUIRED NINETY (90) DAY PERIOD?

1. STATUS OF TRANSFERS AND CURRENT OWNERS.
2. STATUS OF THE SUBDIVISION.

STATUS OF TRANSFERS AND STATUS OF CURRENT OWNERS.

The issue of the rights of transferees or mortgagees is resolved by the provisions of Connecticut General Statutes § 47-36aa(b) which provides "...Any deed, mortgage, lease...or other instrument made for the purpose of conveying...mortgaging or affecting any interest in real property in this state recorded after January 1, 1997, which instrument contains any one or more of the following defects or omissions is as valid as if it had been executed without the defect or omission...". Among the defects which are validated by this statute are "...transfers (of) an interest in land by reference to a filed map or subdivision plan and the map or plan does not comply as to preparation, form, certification, approval or filing with any requirement of any special or general law, municipal ordinance or regulation...". Connecticut General Statutes § 47-36aa(b)(3).

The effect of this statute is to validate all of the deeds to lots within the subdivision, whether the subdivision map was timely filed or otherwise filed properly or not. In addition to the Validating Act provisions of Connecticut General Statutes § 47-36aa(b)(3), there is a statute which deals specifically with subdivision maps. Connecticut General Statutes § 8-26h provides:

"No use or occupancy of or the presence of any building or other structure erected on a lot or lots either shown on a filed or recorded map or plan of subdivision or located in a subdivision created by the physical division of land into three or more parcels shall be deemed illegal or invalid because ... because the filed or recorded map or plan of subdivision fails in any manner to comply with any requirement of any general or special law, ordinance or regulation".



Shipman, Shaiken & Schwefel, LLC
ATTORNEYS AT LAW

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We, therefore, conclude and opine that Transferees are entitled to Building Permits, Zoning Permits and Certificates of Occupancy, which would otherwise be provided, except for concerns over the possible late filing of the subdivision map.

STATUS OF THE SUBDIVISION.

A subdivision map must be recorded within ninety (90) days after the expiration of the appeal period or if an appeal is taken, within ninety (90) days of the termination of the appeal. Any map which is not filed or recorded within the time limit is void, except that the commission may extend the time for filing the map for two additional periods of ninety days each, and in the event of an extension, the plan remains valid until expiration of the extended time period. .
Connecticut General Statutes § 8-25.

In the instant matter, the Approval was granted on May 2, 2007 and the appeal period expired on May 18, 2007. This would bring the ninety (90) day filing requirement to August 18, 2007. However, in its approval, the Commission stated that the Chairman would not sign the mylars for recording until the following was done by the Applicant. The submitted subdivision plan had to be amended to reduce the ten (10) lots to eight (8) lots; to show Conservation area of not less than 21,000 square feet, protected by a conservation easement along the backyards of Vincent Drive; ~~2~~ A concrete sidewalk along the north side of proposed street; and a notation that existing overhead utilities to 68 and 80 Maple Hill Avenue shall be located underground; the removal of the existing stone wall along the front of the properties. The project engineer also needed to certify that relocated driveways serving properties 68 and 80 Maple Hill Avenue do not exceed the standard 10% grade.

The same section which requires the ninety (90) day recordation, also provides:

“All such plans shall be delivered to the applicant for filing or recording not more than thirty days after the time for taking an appeal from the action of the commission has elapsed or not more than thirty days after the date that plans modified in accordance with the commission's approval...are delivered to the commission...”, Connecticut General Statutes § 8-25.

This creates the possibility of an anomalous situation where a commission does not deliver the plan within the ninety (90) day period because of the conditions of approval and no extension has



Shipman, Shaiken & Schwefel, L.L.C.
ATTORNEYS AT LAW

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been granted. Interestingly, Connecticut General Statutes § 8-25 does not appear to require an application for the extension. Nor does the statute contain a bar to the Commission granting an extension to itself. The fact that the Commission addressed the efforts of the Applicant after the expiration of the ninety (90) day period, and continued to do so until it was satisfied that the conditions had been met, would appear to create an inference that the Commission did not believe that it had an obligation to give the signed mylars to the Applicant until "...thirty days after the date that the plans modified in accordance with the commission's approval are delivered to the commission...". That date appears to have been August 6, 2007. The Commission then considered the plans within the thirty (30) day period and ultimately, again, acted outside that parameter.

It appears clear that the Commission required the additional time for itself; and appears to have provided itself the necessary extensions *nunc pro tunc*. *Nunc pro tunc* is a phrase which theoretically applies to acts that are allowed to be done after the time expires, generally, where a court, or by implication, a quasi-judicial body, allows an act to be done retroactively. Based on the actions of the Commission, it appears that it granted itself the necessary extensions to complete the approval process and the map was timely filed thereafter. This determination is not inconsistent with all of the statutory efforts to validate the transfer of lots in deficient subdivisions.

It is also noted that the predecessor to Special Acts to Connecticut General Statutes § 47-36aa (commonly known as the Validating Acts) was held to validate a recorded subdivision map which was approved in November 1993 but not signed by the chairman of the planning commission. Adams v. Warren Planning and Zoning Commission, CV97-0074240, Superior Court at Litchfield, December 19, 1997; 9B CTPRAC § 55:1.

Finally, given that all but one of the lots have been transferred; and the one lot that has not yet been transferred will be validated once it is, the issue of the validity of the subdivision itself appears to be moot. The only purpose for invalidating the subdivision would be to justify a refusal by the Town to issue the necessary permits. That is neither necessary nor an option.

Whether by virtue of the actions of the Commission or the various validating acts, it is our opinion that the Packard's Way subdivision is a valid and existing subdivision.



Shipman, Shaiken & Schwefel, LLC
ATTORNEYS AT LAW

December 2, 2014
Craig Minor
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Respectfully submitted,

Shipman, Shaiken & Schwefel, LLC

A handwritten signature in blue ink, appearing to read "M. Shipman", written over a horizontal line.

Mark S. Shipman, Member