

**TOWN OF SOUTH WINDSOR
ZONING BOARD OF APPEALS**

Minutes

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November 7, 2019

MEMBERS PRESENT: Erik Dabrowski, Wayne Kilburn, James Kupchunos, Teri Parrott,
Steven Carty

ALTERNATES PRESENT: Edwina Futtner

STAFF PRESENT: Pamela Oliva, Zoning Enforcement Officer
Donna Thompson, Recording Secretary

The following are motions made during the June 6, 2019 Public Hearing/Regular Meeting.

Chairman Erik Dabrowski called the public hearing to order at 7:30 pm.

The Recording Secretary read the legal notice as published in the Journal Inquirer on Saturday, May 25, 2019 and Saturday, June 1, 2019.

Public Hearing

App. 2834-19 – South Windsor Technologies Center, LLC – appeal of Cease and Desist Order issued by the Town ZEO for earth filling and conducting site work without prior site plan approval on property located at R010 Sullivan Avenue, Industrial zone.

Mr. David Caron, owner, represented South Windsor Technologies Center. Mr. Caron stated he wants to farm his land and is bringing in fill in preparation for this type of activity. Mr. Caron explained that he and his engineer met with town staff three months ago to discuss constructing a building on this property. Due to owing back taxes on the property it was unlikely he would be able to get a building permit for the structure. A site plan was requested from the engineer showing what Mr. Caron intended to do. The engineer provided the plan to town staff a couple of weeks later. Mr. Caron stated that he believed there was no problem with him farming his land and began bringing in material to begin the process. He was informed by town staff that he did not have approval to be doing this. The Zoning Enforcement Officer (ZEO) issued the Cease and Desist Order with the required corrective action that all activities cease and all fill material deposited in the last 30 days be removed until receiving approval from Inland Wetlands and Planning & Zoning Commission (PZC). Mr. Caron has not deposited any additional material since receipt of the ZEO's letter but has not removed the fill already brought in, or submitted an application to either Inland Wetlands or PZC for site plan approval. He stated he was unaware of the application requirement and feels that removing the fill just to have to bring it back if approval is granted doesn't make sense.

Mr. Caron has previously been cited for earth filling and site development without prior site plan approval on this property. The site was originally approved for an industrial subdivision. Work was started on clearing the property for the subdivision, but the permit was allowed to expire without completion of the project. Mr. Caron has been informed that he needs to present an application to the Planning and Zoning Commission and be approved for farming on this property before he can continue site development for that purpose.

Commissioners reviewed the documentation on the history of the property, the violations that have occurred with activity on the property and the requirements for going forward to use the property as Mr. Caron has stated he wishes to do. Mr. Caron acknowledged that he is aware that there is a process to follow. He stated that he did what he was told to do by town staff, his engineer and the Farm Bureau. Mr. Caron stated that he was told by his attorney to come before ZBA to tell his story and that he has no problem with filing an application. He would rather do that than the alternative. Mr. Caron further stated that it is absurd that he cannot bring material onto his own land to farm it. Commissioners emphasized that there is a process for any land use activities and that everyone has to follow it. Also, based on past

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history, Mr. Caron should be aware of what is supposed to be done. Mr. Caron stated that if he submitted an application to the Town he would expect it to be approved. Commissioners stated that approval was not guaranteed, that the application would be reviewed and a determination made by the appropriate commissions. Mr. Caron stated that the Farm Bureau attorney told him you can farm your land anywhere in the United States. He stated that the USDA has precedence over town regulations.

Mr. Caron stated that he had to come before ZBA so that the Town would not fine him each day the dirt remains on the property. Pam Oliva, Zoning Enforcement Officer, stated that the Town has no ability to fine someone for zoning violations. Mr. Caron once again stated he had no problem with submitting an application to the Town, but that he had not been told by town staff that it was necessary to do so.

Commissioners questioned whether anyone who owns property in town needs permission to farm it. Ms. Oliva stated that if residential she doesn't believe so, but if industrial, when clearing half an acre, you have to have PZC approval. Mr. Caron stated he was not currently clearing land, that it had previously been cleared under permit for the industrial subdivision project years ago. The only thing he has done since 2012 is bring in the material that is in violation.

Commissioners addressed the previous violations on the property as they relate to the current violations. In 2012, the same violations occurred with the same recommendations for approval. But it was not until Mr. Caron filed his appeal to the current cease and desist order that the town was made aware he wanted to farm the land.

Mr. Caron sought clarification regarding removing the dirt from the property. He was told he has to remove the dirt he has deposited within the last thirty days without approval and cease putting anything on the property. Then when he wants to do something with the property he must go through the application process. Commissioners questioned whether Mr. Caron would still have to remove the material from the site if he proceeds with the recommended application process. Mr. Caron stated that if he is required to remove the dirt he will bring a lawsuit against the Town in Superior Court. Mr. Caron also stated that if he was aware of the requirements three weeks ago, his engineer would have taken care of it by now. He also stated that if the Town suspends any further enforcement he will have no problem meeting all the requirements within thirty days.

The ZEO stated that Mr. Caron has a number of properties in town, has been made aware of the proper procedures in the past and is aware of the process required for any land use activity. Mr. Caron was informed at the February 19, 2019 meeting what the process would be to farm his land, including the application needed. The next step for the ZEO to follow would be enforcement.

Motion to: close public hearing at 8:28 pm

Made by: Board Member Kilburn

Second: Board Member Carty

The motion: Carried

Vote: 4 yea – Kilburn, Carty, Kupchunos, Dabrowski; Parrott abstained

Mr. Caron stated that he would take the Town to Superior Court if ZBA upheld the ZEO's order.

Deliberative Session

App. 2834-19 – South Windsor Technologies Center, LLC – appeal of Cease and Desist Order issued by the Town ZEO for earth filling and conducting site work without prior site plan approval on property located at R010 Sullivan Avenue, Industrial zone.

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Commissioners were in agreement that there was a legitimate reason to issue the cease and desist order. He should have followed the rules, rules which he is aware of. Mr. Caron did not present any additional information at this meeting that would demonstrate that the ZEO's order should be overturned. Commissioners determined that Mr. Caron was aware of the process and that the ZEO's Cease and Desist Order should be upheld.

Motion to: support the Zoning Enforcement Officer's Cease and Desist Order

Made by: Board Member Kilburn

Second: Board Member Carty

Motion: Carried

Vote: 4 yea – Kilburn, Carty, Parrott, Dabrowski; 1 nay – Kupchunos

The Town will work with Mr. Caron if he shows good faith in following the appropriate process.

Approval of Minutes

Motion to: approve minutes of May 2, 2019

Was made by Board Member Kupchunos

Seconded by Board Member Kilburn

The motion: Carried

Vote: 4 yea – Kilburn, Carty, Kupchunos, Dabrowski; Parrott abstained due to absence from meeting

New Business: none

Old Business: none

Correspondence: none

Adjournment:

Motion to: adjourn the meeting at 8:42 pm

Was made by Board Member Kilburn

Seconded by Board Member Carty

The motion: Carried

Vote: Unanimous

Respectfully submitted,

Donna Thompson
Recording Secretary

Approved: November 7, 2019