



**CITY OF DANBURY**  
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DANBURY, CONNECTICUT 06810

ZONING COMMISSION  
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**MINUTES**  
**MARCH 22, 2011**

The meeting was called to order by Chairman Robert Melillo at 7:30 PM.

Present were Anthony DiCaprio, Ted Farah, Theodore Haddad Jr., Richard P. Jowdy, Alan Kovacs, Robert Melillo, Gary Renz, Terry Tierney and Alternates Elmer Palma and Patrick Venuti. Also present was Planning Director Dennis Elpern.

Absent were Walter Hoo and Alternate Thomas Spegnolo.

Chairman Melillo asked Mr. Palma to take Mr. Hoo's place for the items on tonight's agenda.

Mr. Kovacs led the Commission in the Pledge of Allegiance.

Mr. Haddad made a motion to accept the minutes of the September 28, 2010 meeting. Mr. Renz seconded the motion and it was passed unanimously.

**PUBLIC HEARING:**

7:30 PM – Petition of Crawford Holdings LLC, 62 Miry Brook Rd. (#E19018) for Change of Zone from RA-40 to R-O.

Mr. Renz read the legal notice. Attorney Paul Jaber spoke in favor of this petition. Chairman Melillo read the Planning Dept staff report dated March 14, 2011. Mr. Elpern said there is a small error in second to last paragraph and they should strike the reference to the minimum square requirements. Mr. Haddad read the Planning Commission recommendation which was negative. Chairman Melillo reminded the Commission that approval of this petition would require a super majority due to the negative recommendation.

Attorney Jaber distributed a packet of information containing from documentation from previous applications: Planning Dept. staff reports from April 1998 and August 1996, a copy of the 1996 petition to rezone specific parcels on Miry Brook Rd. to R-O. There also was a News-Times article from October 1997, a reduced copy of the Tax Assessor's map and page III.3.7. from the Plan of Conservation & Development. All of this was designated Exhibit A. He said there have been variations in the street address; sometimes this property is referred to as 74 Miry Brook and sometimes it is 62 Miry Brook. At the present time, there is a single family home on the property that was damaged by fire. The property owners have an active Building Permit to renovate the structure. Attorney Jaber then proceeded to describe each lot on Miry Brook Rd. He then told the history of the R-O Zone, why it was created and the thirteen lots that were originally intended to be re-zoned to R-O. He reviewed the background saying this was contentious and went on for many years. Many of the residents in the rear subdivisions did not like this and were against the rezoning. Many of the neighbors did not like the Hawk Trucking Terminal being located here for all of the obvious reasons. These neighbors convinced the Planning Dept. to re-zone both Contact Systems and Hawk Trucking to RA-40. It was approved and then overturned. Then the R-O Zone was created and there was a succession of attempts to rezone to it, but none succeeded. He said that the subject property was included in every rezoning petition. In 1998, four of the properties were finally changed to R-O. He said nothing has changed since then. He then made reference to the Plan of Conservation & Development. He said regarding the subject property, he had met with representatives from the neighborhood. And he had suggested to them that the property owners would be willing to file a restrictive covenant on the Land Records which would limit further development of this parcel. The Restrictive Covenant would allow them to create one additional lot, and no buildings would be constructed in the rear of the parcel, which would be designated as a "no build" area. He said that part would be preserved as open space. He said if it is possible, they would like to put a two-family on the new lot. Attorney Jaber added that the four lots that are zoned R-O are the best kept on the street. Chairman Melillo asked Attorney Jaber if there were any issues since the legal notice only listed the address as 62 Miry Brook. Attorney Jaber said there were not. Mr. Haddad asked what the neighbors thought of the Restrictive Covenant. Attorney Jaber said they were mostly concerned with what was going to be done with the property. Mr. Haddad asked if it did anything to help the opposition and also pointed out that this Commission cannot contract zone. Attorney Jaber said that was not the intent and they knew they would be taking their chances.

Chairman Melillo asked if there was anyone to speak in opposition to this petition and several people came forward.

Paul Rotello, 16 Linden Place, said the downfall of this area was when Hawk Trucking came in. All of the problems stem from that mistake; when that business was allowed to go in during the 1970's. Things are different now; in today's economy people are much more cautious about what they buy. This petitioner bought this fairly recently so it does not yet show in Vision. He added that it did not matter because this change would not remedy the

situation created by Hawk Trucking being allowed. He said that mistake led to the creation of the R-O zone, but it is not worth discussing because it is moot point. You can make a good case that this change would be appropriate. But if you balance that with how it will affect Harwood Dr. and the tri-community residents, you can also say it is not appropriate. He said the question is: are we at a point where we need more industrial land on Miry Brook Rd. The answer is no, because we no longer need to discuss extending the R-O zone. The problem with a buffer zone is that it keeps going and encroaches on the residential. The person who was harmed by this property being excluded from the original rezoning is no longer the owner of this property. The increase in value of this property is going to cause a decrease in the others property values. Mr. Farah asked why he was telling them about something that happened forty years ago. Mr. Rotello said the thing that started the whole R-O zone was the rezoning of the Hawk Trucking parcel. The neighbors eventually found themselves unable to sell their houses since they were located next to a truck terminal. Mr. Jowdy asked what ward he represents. Mr. Rotello said he represents this ward, which is the sixth ward. Mr. Jowdy then asked if he is representing his constituents specifically or all of the residents of Danbury. Mr. Rotello said he is here tonight because he was on the Zoning Commission and knows what they are going through with this application. Mr. Kovacs asked if any of the R-O zoned properties have been sold since they were rezoned to R-O.

Craig Borman, 1-7 Harwood Dr., an adjacent property, said he was surprised to hear Attorney Jaber say that he had reached out to the neighbors, because no one contacted him. He said he has been in Danbury for about five years. He said he does not care about what happened forty years ago, he is concerned about now though. He submitted a petition in opposition to this rezoning that was signed by 25 residents of this area. This was designated Exhibit B. He said the biggest problem is that no one knows what their intentions are for this property. Chairman Melillo asked Mr. Borman if he would be open to discussing the petitioner's idea on restricting the use. Mr. Borman said he does not want to talk to them now because he was not contacted despite being the adjacent property. He said he still has no idea what they plan to do and would like someone to tell him where the encroachment of the R-O zone stops.

Kurt Kleis, 13 Olympic Dr., said he has lived in the Carriage House/El Morro neighborhood since 1980. He said he is also the owner of 1 Ole Musket La., which is an adjacent property. He said he has worked as a Certified Real Estate Appraiser since 1981 and has represented parties on Miry Brook Rd. in assessing whether or not their property values were affected by the changes in this neighborhood. He said he too was on the Zoning Commission and at that time they were trying to preserve the IL-40 zone. He said initially he was not concerned about this but then he looked at the size of this parcel. He said he believes this parcel was preserved as residential because it is located at one of the main accesses to the rear residential neighborhoods. Visually this property can be seen from a number of the residences in the rear neighborhoods. This is a fairly busy corner as it serves as a main access and egress to the homes in the rear. In addition to the potential intrusion of a use that is not compatible with residential, there also are persistent drainage problems on this

hill. Right now the residential neighborhood is served by individual septic systems, but someday the sewer could be brought in and that would allow for much more intensive development on the subject parcel. In closing he said not to insult the applicant, the fact is that once this zone is changed, they can put any use permitted in the zone on this parcel.

Diane Sanders, 15A Weindorf La., said she wanted to thank the Planning Commission for their negative recommendation. She asked if the stipulation the applicant is proposing would go with the property no matter who owns it. Mr. Haddad said it would be a deed restriction and they run with the land no matter who owns it. Mrs. Sanders said this parcel intrudes into the residential neighborhood. She said although the R-O zone was meant to be a buffer, the compromise was negated because everything they wanted is not in the zone. There are no restrictions on the hours of operation and the standards for noise and odor also were eliminated. The maximum gross floor area was double what they wanted. This is not the R-O zone that they neighbors wanted. She said traffic is still an issue on Miry Brook Rd. and several of the properties are not even developed to their full potential. She said other restrictions such as no outside speakers, no merging of lots, restrictions on parking and lighting were all part of the original proposal but did not make it into the zone. She said the question of how the IL-40 zoned properties were rezoned from RA-40 was never answered. She said no one has ever been able to produce any records of re-zoning. She said she personally checked the old Zoning Commission records and even went back to when it was part of the City Council, but there is nothing. She said it just appeared on the Zoning map and that was it. She asked that this Commission not make a bad situation any worse by re-zoning this parcel. She submitted three documents which were designated Exhibit C.

Foster Crawford said he was speaking as president of Tri-Community Homeowners Association. He said he had met with the applicant and Attorney Jaber but since that meeting that he found out this change could have a negative impact on their neighborhoods. It could allow greater density and the possibility of business uses creeping into the residential area. Mr. Haddad asked him if they had seen the language of the restrictive covenant. Mr. Crawford said he had not seen it but their membership voted 9-1 that the zone should not be changed. Chairman Melillo asked if their concern was for multi-family housing or business use. Mr. Crawford said the concern is for the unknown, if the potential is there for more lots or the possibility of an office building. He said that most of their neighborhoods look down on this property, which right now provides a treed entry into their neighborhood. He added that they also are concerned about additional traffic since there already is a traffic problem on Miry Brook Rd.

Benjamin Chianese, 5 Briar Ridge Rd., said he represents the sixth ward on the City Council. He added that he also was on the Zoning Commission when this came up and he voted against it. He said the Commission spent a lot of time on this and then it ended up with only four lots zoned R-O. The rest of the lots on Miry Brook Rd. remained RA-40. The attorney said the applicant wants to re-zone this so he can use this property residentially, but it is zoned residential now. He said so now this applicant has bought this property and wants to

change the zoning. He said there is no need for it to be changed if the applicant is going to use it residentially. He said the character of Miry Brook Rd. has changed; it has become a major cut-through for travelers going to Ridgefield or the mall. The traffic has become quite significant and this piece has potential to cause more harm if it is re-zoned

Chairman Melillo asked Mr. Elpern for Staff comments.

Mr. Elpern said he does not claim to have the historical knowledge that Atty. Jaber has although talking about this does jar his memory. He added that in defense of the Planning Dept., we were just trying to come up with a compromise by creating the R-O zone. At that time, both sides gave a little bit, but it just didn't work out. It was contentious and went back and forth for quite a while. Finally the petition to re-zone the four lots came in and it was the best we could do. He said the Plan of Conservation & Development was approved in 2002, but the re-zoning happened in 1998, so they were not talking about all of Miry Brook Rd. when that statement was made in the Plan. There is a land use map in the Plan which shows this property should be single-family residential and that was the end of it until now. He said he would like to check with Corporation Counsel on the validity of a deed restriction and how long it could stay in effect. He then said that the only limitation preventing the applicant from splitting the property into two lots is the minimum square requirement. He added that they could go for a variance to that, which would ensure that only uses permitted in RA-40 would continue be permitted. In closing he said there is no way to make everybody happy and unfortunately this is what happens when zoning is done without planning in advance.

Attorney Jaber then spoke in rebuttal to the opposition's comments. He said the proposed deed restriction would be filed on the Land Records for perpetuity and nothing would ever change that. The applicant would stipulate to there being two lots, each with one building on it. He then said although there is no contract zoning in CT, the Commission has to make a judgment call about whether the applicant is good for his word. Other states have contract zoning and it runs with the land and is binding upon any successor to the current owner. This will not be spot zoning because it adjoins other parcels that are also zoned R-O. Chairman Melillo asked him to stick to the points that were made. He said it is not fair to say that the applicant bought the property zoned RA so he should not be allowed to change it. Mr. Crawford had contacted him and told him of their opposition so they arranged to meet and discuss the application. He said they could have gone to ZBA for the minimum square variance but they believed that was not the right way to handle this.

He said it is correct that they did not reach out to Mr. Borman, although apparently they should have. Mr. Kleis indicated that the drainage and septic have problems. That should not be an issue since any development will be a lower density than the subdivisions. He added that an appraiser can make the finding either way how this change could affect the area and one additional home will not affect the traffic. Some of the other uses in R-O are two-family dwelling, business/medical offices, banks, a library, an art gallery, a music studio, and adult

or child daycare. None of the things Mrs. Sanders indicated because the R-O zone does not allow industrial uses. The subject property was included on several of the previous applications that were denied. The four parcels that eventually were re-zoned came in together and did not include this, but just because this parcel was not included does not mean it should never be re-zoned. He said the concept of all or nothing is unfair to the other property owners on the street.

Mr. Tierney said he knows the applicant and it seems like the reason they are asking for this is to get a two family house. Atty. Jaber said they wouldn't file the restrictive covenant until after the zone change was granted but they could do anything that is permitted in R-O zone. He said the applicant intends to put up a two family house. Mr. Farah asked if the purpose of the restricted covenant is to allow them to build a two family on the second lot. Atty. Jaber said any of the uses permitted in R-O would be allowed on either of the lots. Chairman Melillo said the RA zone would require them to meet the minimum square but the R-O zone does not have a minimum square requirement. Mr. Palma asked why he didn't specify what use he wants. Chairman Melillo said they don't have to for a zone change; they can do anything that is allowed in the zone.

Atty. Jaber asked that they keep the hearing open so he can revise the restrictive covenant. Mr. Haddad they can't contract zone but if they don't restrict it to residential use, then the neighbors will not be satisfied. Mr. Elpern suggested they continue the hearing pending receipt of the revised restrictive covenant.

Mr. Farah made a motion to continue the public hearing pending receipt of a revised restrictive covenant. Mr. Palma seconded the motion. Chairman Melillo asked Mr. Farah if the intent of his motion was that the hearing was to be continued specifically for this item. Mr. Farah said that was what he meant. Chairman Melillo said then that means that the only thing they will be talking about at the continuation of public hearing is the revised restrictive covenant. He then called for a vote on the motion to continue the public hearing specifically for the revised restrictive covenant. The motion was passed unanimously.

#### NEW BUSINESS

Mr. Haddad made a motion to add the following petition to tonight's agenda under New Business:

Petition of the City of Danbury by Dennis I. Elpern, Planning Director to Amend Secs. 2.B., 4.D.3., 5.D.3., 5.F.2., 5.F.3., 5.F.4., 5.F.5., 7.E., 7.F. & 8.C.1.b.(5) of the Zoning Regulations. (Downtown Revitalization Amendments) **Public hearing scheduled for 5/10/11.**

Mr. Kovacs seconded the motion and it was passed unanimously. Mr. Farah then made a motion to refer this petition to the Planning Commission for a recommendation. Mr. Haddad seconded the motion and it was passed unanimously.

Chairman Melillo asked if anyone had anything to discuss under Other Matters and there was nothing. He added that there was nothing under For Reference Only.

At 9:55 PM, Mr. Kovacs made a motion to adjourn. Mr. Palma seconded the motion and it was passed unanimously.