



**CITY OF DANBURY**  
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ZONING COMMISSION  
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**MINUTES**  
**DECEMBER 10, 2013**

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The regular meeting was called to order by Chairman Robert Melillo at 7:35 PM.

Present were Jeffrey Barath, Christina Chieffalo, Sally Estefan, Theodore Haddad Jr., Rick P Jowdy, James Kelly, Annette Zatkovich, Chairman Robert Melillo, and Alternates Kevin Haas and Robert Oravetz. Also present was Planning Director Dennis Elpern.

Absent were Robert Laber and Alternate Robert Arconti. Chairman Melillo asked Mr. Haas to take Mr. Laber's place for the items on tonight's agenda

Chairman Melillo seated Mr. Oravetz for the vote on acceptance of the November 12, 2013 minutes as only those present at the meeting could vote on this. Mr. Haddad made a motion to accept the minutes of November 12, 2013. Mr. Kelly seconded the motion and it was passed unanimously by voice vote.

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

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ORGANIZATIONAL BUSINESS

1) Nomination of & Vote on Chairman and Vice-Chairman.

Chairman Melillo asked for nominations for Chairman. Mrs. Estefan nominated Chairman Melillo and Mrs. Chieffalo seconded the nomination. Chairman Melillo asked if there were any other nominations and there were none. Mrs. Estefan made a motion to close the nominations and Mr. Barath seconded the motion. Chairman Melillo then called for a vote on the nominee. Chairman Melillo was unanimously elected to remain Chairman for the next two years. He then asked for nominations for Vice-Chairman. Mr. Jowdy nominated Ted Haddad Jr. and Mr. Kelly seconded the nomination. Chairman Melillo asked if there were any other nominations and there were none. Mrs. Estefan made a motion to close the nominations and Mr. Jowdy seconded the motion. Chairman Melillo then called for a vote on the nominee. Mr. Haddad was unanimously elected to be Vice-Chairman for the next two years.

2) Setting of Effective Date for Approvals granted by the Commission.

Chairman Melillo explained that it has been this Commission's practice to have any decisions they make become effective upon publication in the News-Times unless otherwise specified. He asked if anyone had any comments or discussion on this and there were none. Mrs. Estefan made a motion to have their decisions become effective upon publication. Mr. Kelly seconded the motion and it was passed unanimously.

3) Discussion of Procedures with Planning Director Dennis Elpern.

Mr. Elpern explained that the functions of the Zoning Commission are confined to the approval or denial of petitions for zoning map changes or language amendments and to the issuance of special permits. He spoke briefly about the components that govern these functions. He said all of their actions are governed by the Connecticut State Statutes, Case Law and the U.S. Constitution. He described the procedures that are followed by the Commission during their meetings including that they operate in accordance with Robert's Rules of Order. He explained how the Plan of Conservation & Development governs much of their decisions. He also discussed attendance, ex parte communications and conflicts of interest. He then gave a quick summary of what is in each of the sections of the Zoning Regulations and reviewed the staffing and the major responsibilities of the Planning & Zoning office. Mr. Kelly asked why they have Planning Commission recommendations for Amendments and Zone Changes but not for Special Permits. Mr. Elpern explained this is governed by Sec. 8-3a of the State Statutes which require the Planning Commission to comment on proposed Amendments and Zone Changes only. He added that the time frame for this is also spelled out in the Statutes.

4) Appointment of ZBA Subcommittee – three members

Chairman Melillo explained that the Zoning Regulations require the Zoning Board of Appeals to get recommendations from both the Planning and Zoning Commissions whenever they hear a Use Variance application. He explained that this is usually handled by a subcommittee who reviews these applications and reports back to the rest of the Commission so they can make their recommendation. He then asked for three volunteers to compose this subcommittee. Mr. Jowdy, Mrs. Estefan and Mr. Haas volunteered to do this.

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PUBLIC HEARINGS

8:00 PM -- Petition of Caraluzzi's Danbury Market, LLC for a Special Permit for the Sale of Grocery Beer at 102 Mill Plain Rd. (#C14014).

8:15 PM -- Petition of Caraluzzi's Wine & Spirits, LLC for a Special Permit for a Package Store License at 102 Mill Plain Rd. (#C14014).

Mrs. Estefan read the legal notices regarding these two petitions. Mr. Haddad said he was recusing himself from these petitions and left the dais. Chairman Melillo seated Mr. Oravetz to take Mr. Haddad's place for these hearings.

Attorney Paul Jaber said the presentation for each of these petitions is virtually identical as they are located in the same building and the applicants are basically the same. He suggested making one presentation although these petitions must be kept separate and voted on separately. Chairman Melillo agreed to hear one presentation for both petitions but to keep them as separate matters. Attorney Jaber said with him this evening is Mark Caraluzzi, whose family has stores in Bethel, Newtown and Georgetown. He said this site is under contract to purchase contingent upon obtaining these two permits. He said also with him is Professional Engineer Ben Doto, who distributed 11 X 17 color renderings of the proposed stores. Attorney Jaber said this site adjoins the Duchess property and is across the street from Aunt Hack Road. He added that it also adjoins an office building and then described all of the businesses in the area. He then discussed the purpose and intent of the CA-80 zone. He said in 2011, this property was granted a special exception for retail use and trip generation (meaning it generates an average of more than 500 vehicle trips per day). He added that the State Traffic Commission (STC) regulates the usage of Mill Plain Rd. because it is a State road. An STC permit was granted in 2011. They are back before the Planning Commission now because the number of trips generated by the proposed stores exceeds what was previously approved. He said there are no changes to the existing 2011 approval other than changes to the interior uses of the building. He added that the previous approval required some road widening as well as them having to acquire rights for an accessway through 100 Mill Plain Rd. to direct traffic to the signal located at the Aunt Hack Rd. intersection. Also they have submitted documentation from a CT licensed land surveyor that there is not another package store within 2,000 feet of this site. In closing, he pointed out the criteria in Secs. 3.F.2. and 10.C.4. of the Zoning Regulations that must be satisfied in order for a special permit to be approved by this Commission. He said although the traffic issues fall under the purview of the Planning Commission, the Regulations do state that the criteria in both of these sections must be satisfied. He added that a traffic study was submitted as part of the special exception application and is being reviewed by the City Traffic Engineer as part of the special exception application. He then pointed out the accessway that will allow some of the traffic to be diverted to the Aunt Hack intersection. Chairman Melillo said that usually when they are considering a special permit, the site already has been approved by Planning, so this Commission can rely on that approval to address the specifics of how the traffic will be affected by the proposed use. He said this Commission would want to be aware of any safety concerns, but could be confident that the findings in 10.C.4 had been made by Planning. He added that when these hearings were scheduled, staff had anticipated that the public hearing before the Planning Commission would already have been closed.

Ben Doto PE, then said he wanted to add one thing to what Attorney Jaber had said. He said the previous approval required more parking than this one will, but they left the additional

parking spaces. He said the only change to the parking area was the addition of some cart corrals which are necessary with the grocery store use. He then said all of the loading and deliveries areas will be located in the rear of the building. There was no further discussion.

Chairman Melillo asked if there was anyone to speak in opposition to this and one person came forward.

Attorney Gregory Cava said he is representing some property owners. He said he had just gotten involved in this today and had reviewed some parts of the file of the information but had not been able to review all of it. He said since they cannot take action on this petition due to the fact that the Planning Commission has not yet taken action on the special exception; he wanted to request that this be continued until the next meeting. He said Sec. 3.F.1. of the Regulations specifies that the special exception for trip generation must be approved before the special permit can be decided. He said he also wants to have a chance to review the traffic report since this commission needs to make findings based upon information contained in it. He added that the trip generations are much greater than what is shown on the site plan. He said much of this is caused by the change to a grocery store from straight retail. He said there is a drastic difference which will also require them to go back to the STC for a new approval. He said the combination of them having over two hundred parking spaces as well as access/egress on a State road makes them what the STC considered a "major traffic generator". He reiterated that since they cannot act on these special permits until the Planning Commission acts on the special exception; he wants to be sure he will have another opportunity to speak. Chairman Melillo asked him to clarify if he is saying they cannot act on the grocery beer permit or if he is saying they cannot act on either petition. Attorney Cava said he believes they cannot act on either petition.

Chairman Melillo said these are two separate petitions although the Commission had agreed to hear one presentation since much of the information is the same. He asked Attorney Cava if he is saying they only cannot act on the grocery beer permit, because if that is what he is saying, then the applicant might want to come forward and make a separate presentation for the package store permit. He added that if that is the case, then he would ask Attorney Cava to limit his remarks to the grocery beer permit. Attorney Cava said that is a fair point but he would have to disagree due to the way the Regulations are written. He explained that one of the standards for approval is the traffic impact and he was not able to get a copy of the traffic study today. He said the discussion on the traffic would include the traffic for both the grocery store and the package store. And the traffic for the package store has been combined with the other retail being proposed so without having the chance to review the actual traffic study in depth, he cannot tell how the package store by itself, will impact the traffic. He added that the number of trips listed on the site plan for the combined package store and retail falls just under the five-hundred trips per day, so the number of trips is pretty significant. He said he believes the package store is an adjunct to the grocery store. Chairman Melillo said based on the applicant's presentation; it seems they are concerned about obtaining the package store permit because there are only a limited number of them

available in the City. He said he would disagree with Attorney Cava saying that the package store would generate almost five-hundred trips per day because it would be a rare package store that would generate that much traffic. Attorney Cava said he is basing his comments on the information contained in the special exception application. He said because they combined the trip generation for both the uses, it brings up the question of whether these applications were properly noticed. And since the traffic information is not available specifically for the package store use; he is questioning if their application is complete. He said based on all of this, combined with the fact that he was unable to get a copy of the traffic study today; he believes it would be best for all sides if these hearings are continued. Mr. Elpern then asked Attorney Cava who he is representing. Attorney Cava said his clients are an LLC named SBBJB, LLC. He continued saying that one of the principles of the corporation lives in the vicinity of this site and the corporation owns the Goodhouse Package Store which is located at 71 Mill Plain Rd.

At 8:52 PM, Chairman Melillo called a five-minute recess so that he could confer with the Planning Director. ***After returning from the recess, the secretary made an error with the recording system and did not realize it was not restarted after the recess. The minutes that follow are from the secretary's notes.***

The meeting was called back to order at 8:55 PM and Chairman Melillo noted that all of the Commission members were still present. He then said if we are going to keep this public hearing open, we will need for the applicant to grant us an extension because the 35 days will be up on January 14, 2014 which is that date of the next meeting. Attorney Jaber said they would submit an extension letter tomorrow.

Mr. Elpern then spoke saying he wanted it on the record that there was no effort to hide the traffic study from Attorney Cava. Attorney Cava showed up at the office today unannounced and reviewed these petition files as well as the special exception file. He was told the traffic study would be emailed to him tomorrow and he agreed to that. Mr. Elpern added that he would be sure it was taken care of tomorrow morning.

Chairman Melillo asked Mr. Elpern to remind the Commission what their purview is with regard to traffic studies. Mr. Elpern said Sec. 10.C.4. lists the findings that need to be made in order for the Commission to approve a Special Exception or Special Permit. He pointed out item number three: "will not create conditions adversely affecting traffic safety or which will cause undue traffic congestion". He read the last sentence in this section which says that when looking at Special Exceptions or Special Permits, either the Planning or Zoning Commission "may impose such reasonable requirements as may be necessary to insure compliance with these conditions of approval".

Attorney Jaber spoke briefly saying that since this is the only meeting this month due to the holidays, they would be willing to continue this until the January meeting.

Chairman Melillo asked if there was anyone else to speak in opposition to either of these petitions and there was no one. Since there was no one else to speak in opposition, Chairman Melillo asked that someone make a motion to continue both of these public hearings. At this point, Attorney Cava stated that he wanted to be sure he would be able to speak at the next meeting. Chairman Melillo assured him that he would be able to speak again.

Mrs. Estefan then made a motion to continue both of these public hearings. Mr. Jowdy seconded the motion and it was passed unanimously.

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#### NEW BUSINESS

Petition of the City of Danbury by Dennis Elpern, Planning Director to Amend Sections 2.B. & 10.J. of the Zoning Regulations. (Temporary Moratorium on Applications for Medical Marijuana Dispensaries & Facilities) Public hearing scheduled for January 14, 2014.

Chairman Melillo said because this is a proposed amendment to the Regulations it must be referred to the Planning Commission. Mrs. Estefan made a motion to refer this to the Planning Commission. Mr. Jowdy seconded the motion and it was passed unanimously.

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Chairman Melillo noted that listed under Other Matters is a schedule of regular meeting dates for 2014. He asked that everyone note these dates in their calendars so they do not miss any meetings. There is nothing under Old Business or For Reference Only.

At 9:45 PM, Mrs. Estefan made a motion to adjourn the meeting. Mr. Kelly seconded the motion and it was passed unanimously.