

TOWN OF WALLINGFORD, CONNECTICUT
SPECIAL TOWN COUNCIL MEETING
Robert F. Parisi Chambers
Wallingford Town Hall
45 South Main St.
Ordinance Committee
Thursday, September 1, 2016
6:30 P.M.

Minutes

The meeting was called to order at 6:00 P.M. The Pledge of Allegiance was said. The following Councilors were in attendance: Chairman Craig Fishbein, Vincent Cervoni, Joseph Marrone, Vincent Testa, Christopher Shortell, John LeTourneau, Jason Zandri. Councilor Laffin entered at 6:34 Others in attendance were: Corporation Counsel Janis Small, Fire Marshal Michael Gudelski, Fire Chief Heidiger, Peter Malone, CEO Thurston Foods, Bob Thurston, Plant and Operations Manager, , and Nick Stango, Kerry Hunter, Jonathan Pinkus, and others from the public noted below and in the recording.

3. Acceptance of Minutes of August 4, 2016

Motion made by: Shortell

Seconded: Marrone

Voice vote: All ayes

Motion passed

4. Discussion and possible action with regard to Fire Marshall Inspection Fees

Fire Chief and Fire Marshall proposed a fee schedule for plan reviews and certain types of inspections. Currently the State of CT regulations authorize this practice and to implement it in Wallingford, it has to be done via ordinance.

Chairman Cervoni asked how this schedule was developed; the Fire Marshall replied that they looked at other towns of similar size and adjusted it from there.

Chairman Fishbein asked if Attorney Small had a chance to review the language; she indicated she was involved in it and that it's in the final form.

VOTE ON THE MOTION TO SEND THIS LANGUAGE TO THE REGULAR TOWN COUNCIL MEETING: Made by Cervoni, seconded by Zandri. Voice vote; motion passed (all ayes).

5. Discussion regarding Blight Ordinance, Chapter 156, is there a need for a committee to establish a process or procedure to completion

Councilor Fishbein indicated that this was brought to the Council by Bob Parisi, former Chairman. He said that backup was still needed and as a result, this item will be moved forward to the next Ordinance Committee meeting in October.

6. Discussion and Possible action with regard to the Noise Ordinance, Chapter 144

Chairman Fishbein began by stating that Councilor Sullivan expressed his regret at not being in attendance due to a work commitment. He asked if it could be rescheduled, but as it could not, Chairman Fishbein agreed to read a statement from Councilor Sullivan on this issue. That statement is as follows (need to get from Craig):

Mr. Malone introduced himself and said that he had no further statements. He had sent some information to Attorney Small that was forwarded on to the Council. He said he was prepared to answer any further questions from the residents or Council at this meeting, but he deferred to Chairman Fishbein.

Councilor Zandri asked about the portable units and the three phase electrical alternative. Mr. Malone replied that when the facility was built in 1990, all units were equipped with electric outlets. Over the course of time, the three-phase electrical option became less practical and they found it was much more efficient to run the trucks on diesel. Presently, only 24 of 60 units are even electrical capable. Assuming this was even a legitimate alternative, a conservative estimate to convert all units and accompanying infrastructure (e.g. paving the lot) is \$500,000, more likely \$700,000.

Chairman Fishbein said that last time Mr. Malone was here, he indicated that the development could have been configured a different way to prevent this issue. Mr. Malone did not have a map but said the closest point on the property to the closest resident was 300 feet, and anyone could have seen that such a small distance would have been an issue as far as noise and being that close to an industrial zone.

Chairman Fishbein said that it has been proposed that Thurston could have purchased a small piece of the development. Mr. Malone indicated that throughout this process, everyone is very generous with Thurston's money with all of their proposals (for walls, new systems, etc.). Councilor Zandri replied that he has measured the sound on the secondary street in the development and didn't feel if Thurston's had bought a strip of land, it would not have mattered or made a difference.

Chairman Cervoni brought up the existing ordinance and the penalty associated with it. As he understands it, we fine violators \$60 per day. Chairman Cervoni asked Attorney Small if she would need to show a daily violation (i.e. daily testing, which would cost \$1,000 for the town to get the test) and she agreed. Chairman Cervoni brings this up because, if we are going to consider an exemption, there might be other businesses in town that might benefit from the exemption; if we are going to grant the exemption, putting some teeth in what remains of the noise ordinance so it isn't so impractical for enforcement.

Councilor Zandri commented that making this exemption only solves part of the problem; it only makes the business not in violation of the ordinance. What do the residents do? Chairman Fishbein said that if the exemption is granted, it would not impact the residents' right to bring a lawsuit against the business. Attorney Small indicated that this would constitute a "private nuisance" and does not believe that if we adopted this exemption we would have any exposure.

Councilor Shortell indicated that he thought Chairman Cervoni's point was an excellent one and that our enforcement of ordinances is designed to dissuade people from burning leaves in their backyard, not to dissuade businesses from violating it. He said that he had great respect for Thurston and that, on this long process, there have been plenty of opportunities to give Thurston a break because they are such a great business in town, and there could be opportunities in the future. But, tonight, he continued to not support the exemption and would vote "no."

Chairman Fishbein is concerned that there is no cap on the noise level, if the exemption is passed. Councilor LeTourneau said he still feels that Planning and Zoning should have done something ten years ago since this was a unique situation and Thurston warned of this situation. Attorney Small said that the P&Z had no authority to order the developer to solve the noise problem.

Councilor Zandri brought up the example of when Wal-Mart originally went in near Circle Drive, where he lived at the time, and the fact that Wal-Mart wanted to build the property perpendicular to rt. 5 (with the back of the building facing the neighborhood). The floodlights and noise was a huge issue for the neighbors and they had to fight to get a barrier fence put up.

Councilor Marrone is concerned that the ordinance exemption is overlay broad, and doesn't help Thurston's as there could still be a private action. Passing this exemption also doesn't help the neighbors; it only helps the Town Council Ordinance Committee move this issue along. As such, he is against the exemption.

Chairman Cervoni asked if some kind of limit could be posed on the exemption to give Thurston some room, but give the residents some assurance that there was a cap. He also wants to discuss giving the noise ordinance further teeth.

Motion was made: for the legal dept. to review and come back with language that 1) caps the noise allowed in the exemption and 2) give the ordinance further teeth given the cost implications of enforcement to the town.

Made by: Chairman Cervoni

Seconded by: Councilor LeTourneau

Councilor Laffin said he saw all sides of this issue and he agrees with Councilors Marrone and Cervoni that the noise ordinance exemption doesn't solve the problem. Everybody is trying to figure out how to balance all of this. Councilor Marrone indicated thinks both the residents and Thurston's deserve an up and down vote and doesn't want to kick the can down the road. Councilor LeTourneau feels this is a complex issue and that is why he seconded Chairman Cervoni's motion.

John Pinkus, Padens Court, agrees that putting a cap is a good thing. His recommendation is to put a cap on the number of days to be in violation and then force an injunction. Chairman Fishbein said that we don't have the legal ability to force an injunction and that a court would have to do it, and it would be a difficult case.

James Chao, Padens Court, commented that as Thurston expands, their noise level will likely increase, and that a cap is appropriate. There are options the residents have suggested and they don't all cost a million dollars.

Kerry Hunter, 36 Padens Court, had comments on the noise limit. There have been four studies done dating back to 2014. Her property is where the readings were done, and then there is a wetlands area owned by the homeowners association, and then her property. The noise measurements should have been taken one foot off of Thurston’s property; instead, they were taken on her property. Each of the reports measured sound in excess of the ordinance, and that a six decibel increase is a ratio of 4:1; sometimes it reaches 10:1. She said that she cannot sleep in their master bedroom even with ear plugs and noise machines.

Mr. Kolas, Padens Court, asked about the timing of the ordinance and Chairman Fishbein confirmed it was implemented in 2002. This resident also said that he wanted us to consider the town’s responsibility in this.

Paul Lahey, lives off Mansion Road, said that he moved to this town 29 years ago and did his due diligence. He said he does still hear the Oakdale occasionally; he said that he encourages the Council to pass the exemption for Thurston Foods. Wallingford is growing and should be trying to attract businesses, not drive them away.

Jonathan Pinkus, Padens Court, read a statement.

VOTE ON THE MOTION:

Cervoni: Yes	Marrone: No	Shortell: No
Laffin: Yes	Sullivan: Absent	Testa: Yes
LeTourneau: Yes	Zandri: No	Fishbein: Yes

MOTION PASSED: 5 AYES, 3-NO

7. Discussion and Possible action with regard to creating tax abatement program to encourage development in the Incentive Housing Zone (IHZ).

Attorney Small’s understanding was that this would be addressed in October once the EDC has provided further information & examples.

8. Adjournment

Motion to adjourn: Marrone
Second: Shortell

Meeting adjourned at 8:05 pm.

In accordance with Title II of the Americans with Disabilities Act- Individuals in need of auxiliary aids for effective communication in programs and services of the Town of Wallingford are invited to make their needs and preferences known to the ADA Compliance Coordinator at 203-294-2070 five days prior to meeting date.