

RECEIVED FOR FILING  
East Haven  
DATE 08/02/2022 TIME 2:53 PM  
TOWN CLERK'S OFFICE  
EAST HAVEN, CONN

*Lisa Baltes*  
TOWN CLERK

**TOWN OF EAST HAVEN  
PLANNING AND ZONING COMMISSION  
MINUTES OF THE REGULAR MEETING  
JULY 6, 2022**

**IN PERSON AT EAST HAVEN SENIOR CENTER, 91 TAYLOR AVENUE**

Chairman William DeMayo called the regular meeting to order at 7:15 p.m.

**I. Roll Call and Pledge of Allegiance**

The Pledge of Allegiance.

The commission members introduced themselves. Mr. DeMayo welcomed Commission member Mr. Robert Cubellotti via Zoom videoconference. Mr. DeMayo introduced the staff.

Sotonye Otunba-Payne, Clerk, called the roll for the Commission as follows:

Robert Cubellotti (via Zoom videoconference) - Present

William DeMayo - Present

Marlene Asid - Present

John Tarducci - Present

Louis Fusco - Alternate, Present

There was a quorum.

Mr. DeMayo gave preliminary instructions to those in attendance.

The following were in attendance:

Joseph Budrow - Zoning Enforcement Officer

Attorney Jennifer Coppola - Counsel to the Board

**II. Review and Action on Prior Meeting Minutes**

1. Minutes of April 6, 2022 Special Meeting
2. Minutes of April 13, 2022 Special Meeting
3. Minutes of May 4, 2022 Regular Meeting
4. Minutes of May 10, 2022 Special Meeting
5. Minutes of May 24, 2022 Special Meeting
6. Minutes of June 1, 2022 Regular Meeting
7. Minutes of June 27, 2022 Special Meeting

There were discussions about what minutes had been provided to the Commission.

The Commission indicated that the May 10, 2022 Special Meeting minutes and May 24, 2022 special Meeting minutes had not been distributed.

**Ms. Asid motioned to approve the following: The Minutes of the April 6, 2022 Special Meeting; the Minutes of the April 13, 2022 Special Meeting; the Minutes of the May 4, 2022 Regular Meeting; the Minutes of June 1, 2022 Regular Meeting; and the Minutes of the June 27, 2022 Special Meeting. The Minutes of the May 10, 2022 Special Meeting and May 24, 2022 Special Meeting would be discussed at another meeting. Said motion was seconded by Mr. Fusco. The motion passed unanimously.**

### **III. Public Hearings**

No public hearings are scheduled.

### **IV. New Applications**

1. **Application No. 22-10 – Tesla, Inc., c/o Scott Austin, 75 Frontage Road.** An application of a Site Plan Modification to locate twelve EV Tesla charging posts with accessory equipment at 75 Frontage Road.

Mr. Budrow indicated that the presenter, Scott Austin, was ill and could not attend the meeting. Mr. Austin requested that the Commission receive the application and continue it to August 3, 2022.

Mr. DeMayo indicated that the Commission had no problem with the requested continuance. The Commission could not act on it as there would be some questions regarding this. Mr. Scott Austin would have to appear for this application.

**Ms. Asid motioned to continue Application No. 22-10 to the August 3, 2022 Regular Meeting. Said motion was seconded by Mr. Fusco. The motion passed unanimously.**

### **V. Deliberation Session.**

1. Discussion and possible decision on **Application No. 22-10 – Tesla, Inc., c/o Scott Austin, 75 Frontage Road.** An application of a Site Plan Modification to locate twelve EV Tesla charging posts with accessory equipment at 75 Frontage Road.

### **VI. Other Business**

1. **Application No. 22-07 – East Haven Planning and Zoning Commission.**

A Petition for a Text Amendment to the East Haven Zoning Regulations to complete the draft revision from 2019 and adding new proposals. (Public Hearing postponed to August 3, 2022.)

Mr. Budrow indicated that as he was able to bring the regulation to an application, when it came time to get the item to the South Central Regional Council of Governments, he was looking at the draft book that carried over from late 2018 to 2019, he discovered it was in need of updates before making them public. As a result he had to do some amending of what was in the text. This turned out to be a bigger job than he had envisioned. Right now the goal is to have the public hearing for the regulations to be in September and October.

Attorney Coppola indicated she was aware of the endeavor to try to correct some items within the draft. She thought the public would get a good product. There were a number of typographical errors both grammar and otherwise that are being corrected as well.

Mr. Budrow added that since the South Central Regional Council of Governments requires the submission of the documents 35 days before the hearing, they would be ready to proceed with this in September.

Attorney Coppola indicated that the continuance to September would be noted in the notice of actions and decisions by Mr. Budrow for tonight's meeting just so folks are aware.

Mr. Budrow indicated that the finished product would be statutorily compliant by September.

2. **Zoning Regulations Section 51.8.4 Referral** - Discussion on a proposed modified use variance to be heard by the Zoning Board of Appeals. Request is to allow an existing mixed-use building at 164 Foxon Road, within an R-3 District, to be allowed to have four apartments and two commercial spaces.

Mr. Budrow spoke about the history of the parcel in question. Mr. Capone initially applied for a mixed-use building, apartments and offices. He got approval with conditions. The most important being that two apartments were allowed over the office spaces. and that neither of the office spaces could have retail.

Mr. Capone contacted him about whether a certain use would be allowed in the building. Mr. Budrow did some research and discovered that he had a variance with the conditions that would not allow the use. He went out to see the property as he wanted to know how it went from two apartments and

two offices to what is there today, four dwelling spaces and three commercial spaces.

Mr. Capone gave a history of how four dwelling spaces and three commercial spaces came to be. Mr. Budrow did some research and wrote down some notes. Mr. Budrow told Mr. Capone he had some options. One was to reduce the uses of the building to go back to two apartments and two office spaces knowing that was not going to be his first choice. The second choice would be to modify the variance which was way out of compliance and try to get the ZBA to approve what's there today. Mr. Capone opted to submit an application to modify his variance. As a result of Mr. Capone's application, it triggered a referral to this Commission. This was discussed last month by the Commission who had many questions. Mr. Capone did not appear for the application and Mr. Budrow did not have the answers to the questions.

Mr. Budrow indicated that since last month's meeting he had done a deep dive into the history of the property. Mr. Budrow opined that the Town had allowed what is there today through the process. The key date to look at is November 12, 2012. Mr. Capone needs to address the Commission. He just handed out some copies of building certificates of occupancy.

Mr. DeMayo thanked Mr. Budrow for the thoroughness of his research.

Mr. Frank Capone, 164 Foxon Road, East Haven, Connecticut indicated the original variance was issued 30 years ago. Over the course of time things changed. He made applications as the needs of the building changed. The 1500 square foot space, one of the commercial spaces, was much too large. He could never rent it out. So, he asked to divide it in half. That is one of the permits the Commission has.

Mr. DeMayo asked if Mr. Capone needed zoning relief when he split it up. Mr. Capone replied by saying no.

Mr. DeMayo asked if the permit was issued without being told at that time that he needed zoning relief.

Mr. Capone replied by saying correct. Mr. Capone said the permit is right there. He divided the 1500 square feet to 750 square feet each. A few years after that the retail space was not rentable. So, the third page is the certificate of occupancy for the efficiency apartment on the first floor. Mr. Capone further stated that his point was that everything was signed off and was permitted and given certificates of occupancy. The Town signed off on the upstairs, electric, and the gas.

Mr. Capone indicated that about 15 years ago, the ZBA issued a cease and desist on the building for purely political reasons. And his attorney at the time, Marjorie Shansky, proved to the ZBA that all was signed off on and the cease and desist was put aside and not followed through on.

Mr. DeMayo asked when the fourth apartment was put in?

Mr. Capone indicated that the building has 3,000 square feet on the first floor and 3,000 square feet on the second floor. One office is 1500 square feet. Next to that on the first floor was 1500 feet which got divided into two spaces. One was a business and the other an efficiency apartment. He had gone to Zoning Enforcement Officer Frank Biancur with the planned changes and he approved the changes.

Mr. DeMayo asked how many spaces were on the second floor. Mr. Capone replied three spaces on the second and first floors.

Ms. Asid asked what Mr. Capone's ask was of the Commission.

Mr. Budrow replied that Mr. Capone was requesting the ZBA to modify a variance given the condition the building is presently. This Commission has to give a negative or positive comment to the ZBA.

Mr. DeMayo asked about the number of parking spaces on the property. Mr. Capone said there are about 18 spaces. There are spaces at the back of the building.

Mr. Tarducci added that there was a lot of room on the property.

Mr. Tarducci asked if the spaces were compliant for parking. Mr. Budrow indicated that he did not count the spaces. However, there's definitely room to add. The parking spaces are not delineated. Mr. Budrow indicated he could find out for the Commission.

Mr. DeMayo said given the uses, 18 spaces would not be needed.

Mr. Budrow said at least 8 would be needed for the dwelling units.

Mr. Budrow said something needs to be done with variance. He said that the Commission had to decide if it was going to comment favorably or not. However, there are standards the Commission has to consider before it makes its decision when it comes to use variances.

When a Zoning Board of Appeals is looking at a use variance, they have to take into account two considerations. One of them is the subject parcel of land cannot be reasonably developed for any permanent use within the

district in which it is located because of reasons peculiar to the parcel in question and not otherwise applicable to the area as a whole. Secondly, the use will not impair the essential existing character of the area and will not conflict with the general purpose and intent of these Regulations.

He said when the Zoning Board of Appeals looked at this in 1990, this was a big vacant parcel among a strip of residentially used parcels before it opened up to commercial use going westward. When looking at the zone, is the use being requested compatible with the zone and can any other uses in the zone go there?

Mr. Budrow further commented that it boils down to the fact whether that the mixed use is something that generally fits Route 80.

Mr. Fusco said, yeah, it fits.

Attorney Coppola added there is the consideration of whether the use would not conflict with the general purpose and intent of the regulations. That's the other piece of it.

Mr. DeMayo indicated that the Commission could take all of those under consideration.

Attorney Coppola indicated that the Commission needed to vote on whether or not to issue a favorable report to the Zoning Board of Appeals so that way they could take up the modification.

Mr. DeMayo indicated that one of the things influencing him is the litany that Mr. Budrow has come up from the beginning of the project and the sign-off by the building department and the zoning person. Whatever happened happened, but Mr. Capone seems to have followed as closely as possible the rules and the regulations. Mr. Budrow's documentation of the history and the litany, in his opinion, would make this property qualify for a use variance to be presented to the Zoning Board of Appeals.

Mr. Fusco agreed a 100 percent. Ms. Asid concurred.

Mr. Tarducci also indicated that he concurred with what Chairman DeMayo said. It's fully documented here and the representatives of the Town including the town attorneys and the ZEOs had signed off on it. This property has been this way for 30 years.

Mr. Cubellotti indicated that he was in favor.

**Ms. Asid motioned to issue a favorable recommendation to the Zoning Board of Appeals regarding this item per Zoning Regulation Section**

**51.8.4. Said motion was seconded by Mr. Tarducci. The motion passed unanimously.**

3. Discussion of short-term rentals and vacation stays.

Attorney Coppola indicated at the meeting held on June 27, 2022, there was a lengthy discussion with regard to various issues concerning short-term rental use. She and Mr. Budrow did get some direction from the Commission for the drafting of a regulation.

She did speak to the Town Attorney, Attorney Michael Luzzi, earlier that day who attends all Town Council meetings. It is her understanding that there were concerns regarding short-term rentals again expressed by residents to the Town Council at its meeting on the evening of July 5, 2022. Attorney Coppola was asked by Attorney Luzzi whether it was in the best interest of the Town to pass an ordinance versus a regulation. Attorney Coppola indicated that she opined that she thought it was in the best of the interest of the Town to pass an ordinance.

It is the recommendation by her and the town staff that the Commission suspend, and simply shift in terms of the content because some of the content is going to be a little bit different in terms of what would be included for a regulation, the breadth of it is broader in an ordinance versus a regulation. Some revisions would be done. It will get submitted to the Town Council to review. And the Town Council can determine whether or not it wants to take it up as an ordinance.

Ms. Asid asked if that meant the Commission was done with this matter

Attorney Coppola replied that for the time being the Commission was done. There had not been a discussion with the Town Council regarding this matter. Attorney Luzzi is well versed regarding what had been discussed before this Commission. Attorney Luzzi is updated on the discussions before this Commission by her and Mr. Budrow. Mr. Luzzi will be provided with a draft ordinance.

Ms. Asid asked if Attorney Coppola thought an ordinance has the same or more legal enforcement than regulation for violations.

Attorney Coppola replied that if Ms. Asid compared the different ordinances and regulations she had submitted to them and looked at the breadth and the scope of the two, the differences are clear.

Mr. Tarducci said he wished the decision to draft an ordinance versus a regulation had been made months ago as the Commission had been discussing this for a long time.

Mr. DeMayo indicated that the ordinance would be more enforceable as permits, etc., would be needed down the line. Mr. DeMayo added that from the beginning this Commission had said it was working for the entire Town. They want to protect as much of the Town as possible. An ordinance has more teeth than a regulation.

Attorney Coppola indicated she did not necessarily agree with that.

4. Discussion of Public Act No. 21-1 "An act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis" (codified at Connecticut General Statutes Section 21a-420, *et seq.*) and as subsequently amended.

Attorney Coppola stated that the Commission had been provided with a number of regulations that have been passed by municipalities across the state that have chosen to act in response to the passage of the RERACA. She explained how the list originated. The Department of Consumer Protection receives updates from municipalities as they act. The up-to-date list that the Commission received consists of about 25 to 30 municipalities. This took some time to compile. It will take the Commission some time to go through it. Discussions would ensue at the next meeting.

Attorney Coppola pointed out that the moratorium was due to expire. She did not know what the Commission's inclination was.

There had been two combined meetings with the Town Council. After the Commission decides on the content, it may want to get input from the Town Council on the draft. Given what is ahead, she was not sure if the Commission would want to extend the moratorium. This will be noticed for the Commission's August meeting. It makes sense to extend it.

There is an interested joint venture that has been making inquiries. The interested party has participated remotely and in person. She endeavors to keep the interested party up to date regarding the Commission's efforts to arrive at a decision, regulation, etc., for the Town. She will continue to do that.

The Commissions has to work its way through an initial review of the documents she provided after which they would go through the details of it.

Mr. Fusco said what he had read was not too extensive. Their main concern has been x number of feet from a school, church, etc. This was prevalent throughout all the readings.

Attorney Coppola replied by saying selection of district, the type of use. Some towns are not allowing retail at all. They are allowing cultivation. There's a variety of decisions that have been made.

Mr. DeMayo indicated that there are many, many facets to this. It is imperative that the Commission as well as the Town act responsibly and for the betterment and hopefully protection of the Town. He had no problem with the recommendation to extend the moratorium a little further out for the Commission to absorb everything.

Mr. Tarducci, Ms. Asid and Mr. Fusco concurred.

Mr. DeMayo suggested December 31, 2022. He added that he would want input from both the Police and Fire Chiefs regarding this issue.

Attorney Coppola responded by saying that she would be happy to invite both Chiefs to comment for the next meeting. The State's Attorney's Offices are offering training to the departments within their judicial districts.

**Mr. Tarducci moved that staff and counsel draft an Extension of the Cannabis Moratorium to be discussed at the Commission's August meeting with potentially an end date of December 31<sup>st</sup>, 2022. Said motion was seconded by Mr. Cubellotti. The motion passed unanimously.**

5. Discussion of provisions of Public Act No. 21-29 "An Act Concerning the Zoning Enabling Act, Accessory Apartment, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and A Commission on Connecticut's Development and Future" (codified at Connecticut General Statutes Section 8-20) pertaining to accessory apartments or accessory dwelling units.

Attorney Coppola indicated that what she had noticed was that for many Planning and Zoning Commissions was that the subject matter of cannabis, accessory apartments or accessory dwelling units and parking limitations were on the same agenda. She did have information to share. She was not entirely done with the accessory apartments research. She would like to give the Commission concrete information.

Attorney Coppola further indicated that she and staff would like some direction from the Commission in terms of what the allowance is going to be. It was discussed at the Town Council meetings as well regarding content. She referenced a checklist of different considerations, e.g. square footage, type (same footprint, attached, detached), etc. They are important decisions and there are other regulations the Commission is considering.

Mr. DeMayo indicated that the Commission had a lot on its plate.

Attorney Coppola indicated that the last discussion the Commission had with the Town Council was that the Commission would endeavor upon a draft. She is at the point of turning all the information over to the Commission.

Mr. DeMayo suggested that the Commission keep it going. If it necessitates scheduling special meetings, Attorney Coppola should let the Commission know and it would make the provisions. The Commission is fully cognizant of what is before it.

The opt-out requirements were discussed.

Attorney Coppola indicated that her submissions would be ready soon. Scheduling was discussed. Correspondence would be sent to determine availability for a meeting for the end of July.

6. Discussion of provisions of Public Act No. 21-29 “An Act Concerning the Zoning Enabling Act, Accessory Apartment, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and A Commission on Connecticut’s Development and Future” (codified at Connecticut General Statutes Section 8-2(d)(9) and 8-2p) pertaining to dwelling units parking limitations.

A separate public hearing on the parking limitations would be held on the same date.

Once a date for a special meeting has been determined, it will be noticed.

## **VII. Adjournment**

Ms. Asid motioned to adjourn. Said motion was seconded by Mr. Fusco. The motion passed unanimously.

The next regular meeting is on August 3, 2022.

The Commission adjourned at 8:07 p.m.

Respectfully submitted,

Sotonye Otunba-Payne





7. Discussion of short-term rentals and vacations stays.
8. Discussion of Public Act No. 21-1 “An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis” (codified at Connecticut General Statutes Section 21a-420, *et seq.*) and as subsequently amended.

Attorney Coppola indicated the commission had to decide where it was going with cannabis. There had been meetings including a combined meeting with the East Haven Council. There were discussions about scheduling another meeting that the commission felt would be helpful. Dates should be proposed to accomplish this.

9. Discussion of provisions of Public Act No.21-29 “An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and A Commission on Connecticut’s Development and Future” (codified at Connecticut General Statutes Section 8-2o) pertaining to accessory apartments or accessory dwelling units.
10. Discussion of provisions of Public Act No. 21-29 “An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and A Commission on Connecticut’s Development and Future” (codified at Connecticut General Statutes Section 8-2(d)(9) and 8-2p) pertaining to dwelling unit parking limitations.

Attorney Coppola indicated that she assumed the commission would want discussions at the council level regarding Item Nos 2 and 3 to continue. The commission said yes.

## **VII. Adjournment**

**Mr. Fusco motioned to adjourn. Said motion was seconded by Mr. Tarducci. The motion passed unanimously.**

The next special meeting is scheduled on June , 2022.  
The next regular meeting is scheduled on July 6, 2022.  
The Board adjourned at 9:17 p.m.

Respectfully Submitted,

Sotonye Otunba-Payne