

TOWN OF EAST HAVEN, CT  
ZONING BOARD OF APPEALS  
MINUTES OF A SPECIAL MEETING  
AUGUST 3, 2017 7:00PM EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO-CHAIRMAN  
GEORGE HENNESSEY-VICE CHAIRMAN  
DONALD THOMAS  
JOSEPH PORTO  
MICHAEL SMITH

MEMBERS NOT PRESENT: NONE

ALTERNATES PRESENT: VINCENT LETTIERI

RECEIVED FOR FILING  
AUG 09 2017  
TOWN CLERK'S OFFICE  
EAST HAVEN, CONN.

*Stacy Gervino, CTC*

TOWN CLERK

ALTERNATES NOT PRESENT: DAVID GERSZ

STAFF PRESENT: ALFRED ZULLO-ATTORNEY  
CHRISTOPHER SOTO-ZEO  
SUSAN IANNONE-CLERK

Refer to stenographers' transcript for complete minutes of this meeting.

Chairman Falcigno called the meeting to order at 7:00 P.M. and after a roll call was taken he stated they had a quorum. He then asked if there were any Errors and Omissions in the minutes from the last meeting. Donald Thomas made a motion to accept the minutes, seconded by Joseph Porto. Unanimous motion carried.

**APPEAL HEARING # 17-18**

**APPELLANT:** One Barberry Real Estate Holding; Property Concerned: 1 and 99 Barberry Rd; *Appeal of Cease and Desist/Action of Z.E.O. (amended cease and desist order for the slashing of trees). Hearing continued from July 13, 2017.*

Attorney Peter Alter, represented the Appellant, submitted a memo, for the record, to the Board regarding a conflict of interest. He explained that after the Appellants commenced litigation against the Town with respect to the efforts of its' officials to put them out of business, he became aware of the following comment made by Attorney Joseph Zullo to the media in his capacity as Town Attorney: "The Town of East Haven will not allow its officials or its residents to be bullied by an individual and company that are unhappy with the town's good faith efforts to protect its residents and to enforce its lawful regulations..." Attorney Alter then reached out to Attorney Al Zullo to consider whether it is improper for his firm, Zullo & Zullo, to be involved

in the actions of ZEO Soto in the Cease and Desist orders on behalf of the ZBA and on behalf of the Town in a lawsuit. Attorney Alter stated Attorney Zullo responded that he consulted Attorney Scignari who agreed there wasn't a conflict. Attorney Alter commented that Attorney Scignari represented the mayor and didn't think he would have an unbiased opinion. He believed his clients right to a fair hearing would be compromised by the conflict of having Attorney Zullo advise the Board. He requested the Board ask Attorney Zullo to recuse himself as council.

Attorney John Conway, who represented ZEO Soto, stated he had no objection to Attorney Zullo as council.

Attorney Al Zullo stated he thought it was appropriate to contact Atty. Scignari since he was the town attorney prior to Atty. Joseph Zullo and had experience with hiring outside council. Attorney Al Zullo also contacted the attorney for the Grievance Committee for the District of Hartford who also did not think there was a conflict of interest. Atty. Zullo stated his firm does not represent anyone in the litigation and he has recused himself when there was a conflict in the past. He knows his job is to advise the ZBA and can do it fairly. He said that if it was an issue Atty. Alter should have brought it up sooner than two days before the hearing. He was not going to leave the board without council for this hearing. He asked the Board deny Atty. Alters request.

Donald Thomas agreed with Attorney Zullo's comments and saw no reason for him to recuse himself.

Chairman Falcigno asked for a motion to deny Attorney Alter's request. Donald Thomas made the motion, seconded by Joseph Porto. Unanimous motion carried.

Attorney John Conway, represented ZEO Soto, explained the documents he was entering into the record:

- Judgment in a Criminal Case: USA v. Frank A. Biancur, Jr., found guilty Mail Fraud Deprivation of Honest Services
- Criminal Complaint against Frank Biancur on which he was found guilty.
- Letter from Frank Biancur to Atty. Mingione dated 5/1/13 found by Mr. Soto on electronic records. This letter provides the complete opposite opinion Mr. Biancur's issued in his 11/10/14 letter.
- Document dated 4/20/17 from The Sosensky Law Firm to Chairman Falcigno containing a number exhibits (he also planned on entering) from the abutter property owner.
- Assessor's record showing what zoning district the property is located in.
- Mr. Soto's field notes with respect to the Cease and Desist orders issued.
- Zoning office phone records of citizen's complaints about activity on the property.
- Summary from Joyce Hollenbeck of complaints made to the mayor's office.
- Series of emails between Atty. Joe Zullo and Mr. Soto seeking advice about what action he should take on the property.
- Cease and Desist order dated 2/17/17.
- Letter dated 4/18/17 from CT DEEP to the Appellant. It raises concerns about the conduct of the appellant on the property.

- Letter dated 4/19/17 from the Regional Water Authority to Chairman Falcigno. Also raises questions about the conduct of the appellant.
- 4/21/17 Cease and Desist Order.
- 5/9/17 Cease and Desist Order.
- Request for Stipulated Disposition that rolls the two Cease and Desist orders into one hearing.
- Code Enforcement Committee Minutes from the 5/9/17 meeting.
- Attorney Conway's legal opinion. The question presented can the Town regulate the property's use as a quarry and to what degree.
- Disc with photos and videos taken by Mr. Soto during his investigation of the property.

Attorney Conway explained Mr. Soto was hired 8/15/15 as the ZEO to replace Mr. Biancur after his arrest. Mr. Soto served 9 years in the U.S Army with an honorable discharge and was then employed by the City of Haven as a Neighborhood Specialist responsible for zoning officer of blight enforcement. Atty. Conway stated the appellant said Mr. Soto, in issuing his Cease and Desist orders, either made a mistake in applying the law to the Farm River Rock quarry operations or his actions were taken, even though he knew his position was legally unsupported, because of improper politically motivated interference by the town. They issued no proof that he acted in bad faith or in improper motive. Atty. Conway went on to say he would prove that Mr. Soto issued the C & D orders as a result of a decision he made by objective facts observed by him of the appellants violations of the zoning regulations. Mr. Soto saw the property when he toured the town with Chairman Falcigno when he was first hired. He recalls the property being sloped up, on the south side of Barberry Road, and covered with a forest of trees. He did not observe any quarrying activities on the ridge or the slope. On 2/17/17 his office received a call from Joseph Carfora, who owns the neighboring property, who reported the clear cutting of the trees on the slope. In response to the call, Mr. Soto inspected the property. Atty. Conway then presented photos of what Mr. Soto observed that day. Mr. Soto described the photos showing the slope on Barberry Road barren of trees and of various other areas of the property. Based on his observation he determined the activity was "slashing of trees" prohibited by Sec. 31 of the town's zoning regulations unless the property owner applied for and received a temporary special exception. He then contacted Atty. Zullo and proceeded to issue the Cease and Desist order. Atty. Conway stated the appellants did not file the application as described in the C & D order. They filed a timely appeal that based on Mr. Biancur's letter their activity was not subject to Sec. 31. On 3/31/17 Mr. Soto received a call from Mr. Carfora that stumps were be removed and digging was being done on the property causing rocks to roll down the hill creating a dangerous situation. In response Mr. Soto contacted Judy Dicine with the State's Attorney's Office, to inquiry about his enforcement options, and she advised to issue an amended C & D order. On 4/20/17 Mr. Soto received complaints from neighbors that tree stumps and soil were being removed on the property and a 4' x 4' rock was sitting in the middle of the road posing a danger. In response to the complaints Mr. Soto visited the property. Photos he took were then presented of Barberry Road showing the boulder, machine on top of the mountain and trail where rock rolled down. Video was also shown of the activity on the property. Atty. Conway stated it was an urgent safety concern and public works removed the boulder from the road. Mr. Soto then spoke to Mr. Hartin and told him a berm should be built to prevent rocks from rolling into the road. Photos of the berm were shown and described by Mr. Soto. He explained that when vegetation is removed off a slope it causes a problem with water run off and destabilizes the soil. Mr. Soto then took Ms. Dicine's advice and issued the amended C & D order that also said any measures taken to protect the safety of the general public must be verified by a certain

professional to be adequate measures for the operations taking place. Proper sedimentation and erosion control should also be installed around the areas where work is being done. Mr. Soto repeated that after the approval of a special exception by the Planning and Zoning Commission then activities could resume on the site. From 4/21-5/9/17 Mr. Soto went to the site, consulted with the town engineer and made attempts to have property owners provide plans. Mr. Soto stated during that time he and the town engineer went to the site and met with John Patton and Mike Hartin and discussed the unsafe situation. The town engineer asked for professional drawings of how/where they would be excavating. He said Mr. Patton was trying to get what it was the town needed. Mr. Soto told him they needed a special exception and to continue to make earthen berms was a continued violation of the order. They need engineering documentation that showed the berms were a sufficient course of action. Mr. Soto said they made the representation that they hired the firm Milone and MacBroom to do the documents but he has not received any. Additional photos were shown of the berm and were taken to see if it was sufficient. On 5/3/17 he went back because they were told the sedimentation and erosion control were properly installed by an engineering firm but the siltation fence was still drooping and not dug/buried in and there was space between the hay bales. On 5/8/17 he went back after he received a call that they were blasting on top of the hill. A photo was shown of the blasting equipment. Mr. Soto indicated it was a safety concern. Mr. Soto said at the town's Code Enforcement meeting on 5/9/17 he was informed they had applied for a blasting permit. He then issued a Cease and Desist order for the quarrying operation activity. Atty. Conway stated the appellant did not comply with the order but filed an appeal. Photos taken from road were shown from Mr. Soto's 5/17/17 visit after continued compliant calls. On 6/14/17 he received a call that they were taking rock in and out. He and Ellen Pellegrino (Deputy Zoning Inspector) then observed trucks and berm hydro-seeded (photos shown of both).

Atty. Conway said it is the board's roll to find the facts and apply the zoning regulations. The appellant submitted arguments to why the Cease and Desists Orders do not apply to them:

1. They had a pre-existing non-conforming use - however, in East Haven you are not allowed to move topsoil or grade without a temporary special exception. It is their burden to show, that they did not prove, the quarry operated prior to the towns' zoning regulations beginning in 1936. Photos were presented and explained by Mr. Soto showing a 1934 aerial shot showing no quarry was present. A 1965 photo also showed no quarry. They were pointed to these maps by the town of North Branford who also have an issue.
2. The town should be estopped from enforcing their zoning regulations based on Mr. Biancur's letter - however, if the boards finds that Mr. Biancur's letter was not issued in good faith or in the scope of his authority, then the board can determine that do not have the right to initiate municipal estoppel. There is good evidence Mr. Biancur's letter was not issued in good faith and no evidence as to why he issued it and if it was in his scope. Even though the letter stated there were no zoning issues, circumstances have now changed.
3. If municipal estopped can be evoked, the town can't regulate the use of a quarry - however, the town does have the right to regulate it's pre-existing nonconforming use so long as it pertains to the safety, health and welfare of the town. He quoted from Atty. Fuller's book that even though nonconforming use must continue a municipality still has some right to regulate. They needed to obtain a special exception for the removal & grading of topsoil, etc. and the size of the operation does not matter. The planning commission has the right to make changes under to Sec. 31.5.13.

Donald Thomas asked Mr. Soto if he consulted anyone on what size the berm should be. He replied that appellant needed to provide a plan. Mr. Soto also explained the process for obtaining a blasting permit.

Atty. Al Zullo asked if there was an application made for a certificate of zoning compliance or opinion in the file prior to Mr. Biancur's letter. Mr. Soto replied there was only the letter from Mr. Mingione and a memo from Atty. Joseph Zullo stated they did not determine it to be pre-existing nonconforming use.

Attorney Steven Sosenky, represented Joseph Carfora and Gloria Acres, LLC, property owner across the street on Barberry Road. If there was no authority for Mr. Biancur to issue his letter, publish a notice in the New Haven Register that was not within 15 days and without notification to the public, then would make the letter powerless. The appellant made no effort to prove the validity of the letter.

Chairman Falcigno asked if anyone wanted to speak and the following did:

Lindsey Suter, 16 Mill Rd., North Branford, spoke at the request of the Planning & Zoning Department of North Branford. He stated it's not true that there has always been a quarry on that property and people who have lived there all their lives can attest to it when it was a farm. People came to this area with the reasonable expectation of living in a R-40 residential/farm zone not in an extractive industry zone with the traffic, noise, dust, disturbance and blasting. The truck traffic and material spill offs makes it unsafe for bicycling and running. Also, has a financial impact on rental property.

Debra Johnson, 919 Thompson St., East Haven. Stated this whole thing is a hoax. The guy (Biancur) who worked for the town illegally changed paperwork in order to give a permit. Chairman Falcigno clarified there's no proof he changed any documentation and did not issue any permits. Debra Johnson went on to say they are ruining the area by slashing the trees, the water run off, noise and property values.

Donna Pusley, Marjorie Rd., North Branford, stated she bought her house in 1987 and there was not a quarry at that time. Borrelli Rd. is all torn up. Until the Cease and Desist you could see at least one dump truck coming down the road every five minutes. They don't care how/when they blast and there's no whistle like Trap Rock. She doesn't open her windows because of the dust and probably lives a mile away.

Pete Strickland, 44 Mill Rd., North Branford, stated he grew up there his whole life. As a teenager he worked there on the farm and there was no quarry. They should look into the photo from 1936. Maybe the farmer sold sand/gravel to supplement his dairy farm. Also look into power lines, when they took the land by eminent domain, to see what was there.

John Licciardi, 26 Mill Rd., North Branford, said he bought his house two years ago. Thought he was moving into a rural community. The number of trucks on Mill Road makes it unsafe to walk his dogs or push a stroller. The gravel spill from the trucks on the road is dangerous to motorcycles and is not cleaned up in a timely fashion. If he knew there was commercial quarrying activities taking place less than a mile away he never would have bought his house.

At 8:47 Atty. Alter requested a recess until 9:00.  
Meeting resumed at 9:01.

Leo Tancreti, 399 Barberry Rd., East Haven, presented for the record, information from the public website Mine Safety and Health Administration ([www.msha.gov](http://www.msha.gov)). Mine #0600655 was registered to Joseph Spezzanno 1997-2006, changed name to MLS Construction 2006-2014 and changed to Blue Rock Construction LLC beginning 2014. He then read from the report the hours mined, number of employees and safety violations/penalties. The new mine operator, John Patton/TQ Quarry LLC/Farm River Rock, LLC #0600779 operated 2013-2016. Read hours/number of employees a total of 57 safety violations. He did not see any violations for Tilcon, a much larger operation. They do not operate under a safe environment and disregard for the public.

Attorney Alter requested the board leave the public hearing open until the following Thursday.

Donald Thomas made a motion to continue the hearing on August 10, 2017. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING # 17-20

APPELLANT: One Barberry Real Estate Holding; Property Concerned: 1 and 99 Barberry Rd; *Appeal of Cease and Desist/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel). Hearing continued from July 13, 2017.*

Chairman Falcigno opened the hearing.

Attorney Conway requested the board allow all of the information/testimony submitted from #17-18 be incorporated in #17-20.

Donald Thomas made a motion to accept the testimony from #17-18 to be included in #17-20. Joseph Porto seconded the motion. Unanimous motion carried.

Donald Thomas made a motion to continue the hearing on August 10, 2017. Joseph Porto seconded the motion. Unanimous motion carried.

Donald Thomas made a motion to adjourn the meeting. Joseph Porto seconded the motion. Unanimous motion carried.

Chairman Falcigno adjourned the meeting at 9:12 PM.

Respectfully submitted,

Susan Iannone  
Clerk