

**Bolton Planning & Zoning Commission**  
**Regular Meeting**  
**7:30 p.m., Wednesday, April 14, 2021**  
**Virtual Meeting utilizing Zoom**  
**Minutes and Motions**

**Members Present:** Chairman Adam Teller, Vice Chairman James Cropley, Christopher Davey, Arlene Fiano, Thomas Manning, Thomas Robbins and Alternates Jeremy Flick, Rodney Fournier and Marilee Manning

**Members Not Present:** Benjamin Davies

**Staff Present:** Patrice Carson, AICP, Consulting Director of Community Development, and Jim Rupert, Interim Administrative Officer and Zoning Enforcement Officer

**Others Present:** Ronald Beaudoin, Chris Bergin, Mark Byam, Luke DiStefano, William Grondin, George Koutouzis, Andrew Ladyga, Kimberly Masiuk, Richard Mihok, Attorney Stephen Penny, Jim Smart and Joe Williams

**1. Call to Order:** Chairman A. Teller called the meeting to order at 7:30 p.m. M. Manning was seated for Benjamin Davies.

**2. Approval of Minutes: March 10, 2021 Regular Meeting Minutes**

- Correct the spelling of Chris Berman to Chris Bergin in four places. One on Page 1, two on Page 2 and one on Page 4.
- On Page 3 of 7, in the 4<sup>th</sup> paragraph from the bottom, correct landscaping information to landscaping use.
- On Page 6 of 7, in the first paragraph, first sentence, A. Teller asked about electric vehicle chargers not T. Manning.

**C. Davey moved** to approve the minutes as amended. **J. Cropley seconded.** The motion passed unanimously 7:0:0.

**3. Public Hearings (begin at 7:45 p.m.)**

**a. Continuation of Public Hearing: Special Permit Application for Nursery and Value Added Agricultural Business, 1225 Boston Turnpike, Happy Town LLC (#PL-20-13)**

A. Teller opened the public hearing at 7:57 p.m. Attorney Stephen Penny, engineer Richard Mihok, electrical engineer Jim Smart, property owner Andrew Ladyga, Chris Bergin from Shamrock Tree Service and Mark Byam of All American Tree Care were present.

Atty. Penny requested that the revised site plan dated April 12, 2021, be shared online. Richard Mihok discussed the changes since the last site plan were discussed - proposed lattice fence and gates and a proposed two-foot high wood chip berm to segregate areas. The next plan revision will change the reference of compost to wood chips. A four-foot fence will replace curb stops that were a public safety hazard. Low shrubs are proposed along Route 44 where people were crossing from Old Coventry Road, and low shrubs are proposed along the frontage of the site in front of the farm stand.

A. Fiano asked about the variety and height of the low shrubs that are proposed. Mr. Mihok stated that they would be junipers or a similar evergreen no higher than two feet high so they will not block the site lines.

P. Carson shared the lighting plan that was submitted on Monday, April 12, 2021. Jim Smart, an electrical engineer who has been in practice since 1981 explained the plan. His approach was to personally visit the site twice and he also passes the property frequently. Currently, only the Lyndale stand has been lit at night. Each proposed fixture is described in the notes on the plan. Virtually all of the lighting would be new and would mainly be for security and safety. The average light fixture height would be 18 feet. The distances from the barns and the property lines were taken into consideration. He discussed the details of the fixtures. The wall fixtures will be at eight feet high. Mr. Smart consulted the Bolton regulations and these were taken into consideration when he proposed this lighting plan. This plan is a substantial upgrade. No light should be shining upward. T. Manning stated that he was in favor of this plan.

Atty. Penny asked to show the pictures of bunkers that he submitted on Monday, April 12, 2021. The lower barn that had been in the pictures is now gone. The 2009 photos, 2016 photos and current photos show different uses for the bunkers. Rob Giglio wrote a letter outlining the previous uses of the bunkers. T. Manning said the addition of the fencing along the bunkers satisfies his previous concern.

A waiver letter from Atty. Penny to P. Carson was reviewed. This included a waiver under Section 15D of the regulations to permit the use of a mixture of gravel and millings in the currently non-bituminous-paved proposed parking areas and a waiver of the proscription against outside storage of vehicles and/or materials. Another waiver not included in the letter would be relief from buffering along zone districting line. This area will be buffered with evergreen trees instead.

A. Teller questioned why the proposed buffer of evergreen trees only goes part way. Atty. Penny replied that the nursery itself would be a buffer but that plan can be altered if the commission would be more comfortable with that.

A. Teller asked where materials would be stored. Atty. Penny replied that they would only be stored in the bunkers. A. Teller said that now there is a fence over these bunkers, it's not the same. Atty. Penny said the bunkers are well screened and have been used for this purpose in the past.

C. Davey asked where the proposed lattice gate and fence would be in relation to the bunker. Could the structure of the bunker during cutting up of logs and shredding contribute to noise being funneled out of the bunker? Would the noise "shoot out" of the bunker if houses were built in the field at some point? Atty. Penny replied that there is a very wide throat on the bunkers. Some portion of the bunkers may be stationary and the land between the throat openings are the only means of access via a land bridge for the Giglios to get to their farm property. There is a wetland on the property with phragmites that can't be disturbed.

A. Fiano said that she doesn't recall about wood being processed. How is this not manufacturing? Atty. Penny said this was discussed at the first night of hearing. She is not convinced that it's not manufacturing and she needs clarification. Manufacturing is not allowed in this zone. Atty. Penny said that he referenced cases about this. A. Fiano asked what zones those cases were in. Atty. Penny replied that they were farming and residential and what the cases established was that they were value-added agricultural businesses per the language in the Bolton regulations.

J. Flick commented that he doesn't feel that there is manufacturing happening. There is no milling of wood or furniture making. It is just processing of logs, mulch, wood chips and lumber and storage of equipment.

C. Davey commented that the cases Atty. Penny mentioned were for use on the same land as where the processing was done and this application seems different. The courts in the cited case allowed the use because the wood was being used on that site regardless of where it came from. The Bolton regulations do not define value added.

A. Teller noted that the proposed business is not growing anything. They are bringing in product. Chris Bergin from Shamrock Tree Service said the intention is to plant and to grow on site. A. Teller said the trees that are being planted are not the ones being processed. The trees are currently being cut at commercial or residential properties and are being brought to this site. Once the commission authorizes they may be authorizing things that are not specific to the current application. Mr. Bergin said that they want to be able to use the processed material on the site, not elsewhere. A. Teller said that is okay but will you be selling the products elsewhere? The product is not being grown for this purpose and is not considered forestry. Atty. Penny noted that value-added agriculture and forestry agribusiness are inextricably together in the regulations. A. Teller replied that the trees are being removed from other properties. This is not forestry or agribusiness as they were not grown to be sold. This is not forest management. P. Carson noted that forestry is the science of managing a forest. A. Teller said that if the trees were on this lot he would have no problem. Forestry cannot be stretched to include this.

Andrew Ladyga said the letter submitted from the prior owner said they stored wood for processing, future use and/or sale. J. Flick said that this is basically a green venture - reprocessing for firewood, mulch, etc. They are also beautifying Lyndale Stand.

J. Rupert is concerned that if the application is approved with the ability to process firewood without limitation that could be a problem in a residential zone. A tub grinder could be used. It would be very noisy and disruptive to a residential zone. There is a State statute regarding noise but there is no town statute. He feels that the application can be approved with conditions prohibiting large equipment. Real specificity of that would be difficult. Hand held equipment is acceptable. Issues could be a cutting area in the parking lot with a large conveyor into the silage bunkers. With no limitation this could happen down the road. Mr. Bergin and Mr. Byam said that they have no intentions of operating a tub grinder or a large firewood processing rig.

C. Davey noted that the applicant is requesting until September to make the changes in the latest plan to the site. They are currently under a cease and desist order that has been in place for at least six months. This raises questions about reliability to meet a set deadline based on this order. Their past performance has not been good. Atty. Penny said that based on what the prior owners were doing which was like kind and quality, the tree services went into this thinking that they weren't doing anything wrong. This process was started last summer. J. Rupert said that there were a few suggestions that he and P. Carson made to immediately reduce the non-conformity and these were taken care of very quickly. A. Teller noted that the cease and desist order carries a hefty fine. It was appealed and upheld. The Town could push the owner. If September comes and goes, the permit could be revoked and they would be stuck with the cease and desist order. There are consequences to noncompliance. J. Flick feels that people who are trying to start a business could use a helping hand and asked if there is a small window of time that could be offered so they could prove themselves. A. Teller said no, there is no provisional permit option. Either comply or there is a violation. J. Cropley will recuse himself due to a conflict of interest.

Atty. Penny offered to submit additional case law to support his stance but the commission members were satisfied with the answers they were given.

**T. Manning moved** to close the public hearing at 9:21 p.m. **M. Manning seconded**. The motion passed 6:0:0. J. Cropley recused himself.

**4. Resident’s Forum (Public Comment for items NOT on the agenda):** There were none.

#### **5. Staff Reports**

P. Carson reported that they are busy and staff reviews of pending applications are in progress.

J. Rupert said that it is exciting to see increased activity and interest in Bolton. He will be acting as the Zoning Enforcement Official along with his new position as Interim Administrative Officer. More information will be available at the next meeting.

#### **6. Old Business**

##### **a. Discussion/Possible Decision: Special Permit Application for Nursery and Value Added Agricultural Business, 1225 Boston Turnpike, Happy Town LLC (#PL-20-13)**

**A. Teller made a motion** to approve Happy Town LLC’s Special Permit for nursery and value added agricultural business at 1225 Boston Turnpike, application #PL-20-13, in accordance with the plans submitted as “Proposed Concept Plan Improvement Location Survey, Prepared For Happy Town, LLC, Lot 1, Boston Turnpike Associates, LLC Subdivision, 1225 Boston Turnpike, Bolton, Connecticut” (1 sheet) dated: 05/04/2020, revised through 04-12-2021, and Site Lighting Plan (1 sheet) dated 04-08-2021, which is conditioned on the following modifications:

1. The approval letter shall be placed on the mylars to be recorded in the Office of the Town Clerk.
2. This approval is subject to compliance with any comments or requirements of the Health District and the Town Engineer.
3. All appropriate seals and signatures of the design professionals for these plans shall be placed on the plans before recording.
4. Stone or product shall not be stored in a setback area except within the concrete bunkers.
5. The landscape screening shown on the southerly boundary of the site shall be extended to the western property line.
6. There shall be no storage of anything – materials, vehicles or equipment – allowed on the residentially-zoned area of the lot except wholly within the concrete bunkers.
7. The area on the plans shown as the “composting area” shall be renamed the “wood chip storage area” and shall be delineated by a physical barrier such as a concrete waste block, bollards, etc.
8. Any and all improvements required as part of this decision shall be completed and in compliance with any permit issued by Thursday, September 30, 2021.
9. References in the application to the operation of a landscaping business on the site have been withdrawn by the applicant and such activities are not approved by this commission.
10. No tub grinders, or industrial scale equipment for processing logs shall be used on the site.

The Planning and Zoning Commission approves the following waivers requested by the applicant:

1. A waiver is granted under Section 15D of the regulations to permit the use of a mixture of gravel and millings in the currently non-bituminous-paved proposed parking areas and driveways provided that the same are scarified and gravel top-dressed annually, to implement the goals of Low Impact Development on this historically agricultural and rural-character appearing property.
2. A waiver of the proscription against outside storage of vehicles and/or materials, limited to storage wholly within the concrete bunkers is granted given the particular circumstances of this application including: that the site is bifurcated by a residential zone-district classification to the rear of the property; the existence of the two storage bunkers and uses that are also so-bifurcated;

and the historic agricultural use of the property and closely aligned agricultural and forestry based nature of the proposed commercial uses on the site as special permit uses, and recognizing that the bunkers will be completely screened by fencing.

3. A waiver is granted of the requirement for screening at the zone line between the residential and commercial zone given that screening will exist at or near the property line for the whole property.

The Planning and Zoning Commission finds with these conditions the plan meets the requirements of the Bolton Zoning Regulations.

**M. Manning seconded.** A. Teller is not totally convinced this activity fits within the value added agricultural and forestry use but there is no clear definition in the regulations. The proposed activity is not that unlike past activities on the site that have been there without objection from the community. The property behind it is zoned residential and very large, and is currently being farmed. If it becomes a residential development, any conflicts can be handled at that time. Overall, this application, if done correctly, will be an improvement to the site and it will have a valid economic use. It is being repurposed. There are limited places in the town for businesses like this to operate. The Town will be strictly enforcing the conditions of application. The commission granting this application should not be taken as laxity but rather trying to meet the applicant at a certain point. The motion passed 6:0:0 with J. Cropley recusing himself.

Attorney Penny thanked the Commission for their consideration.

**b. Other:** There was none.

## **7. New Business**

There was no objection to reviewing the New Business before starting the public hearing at 7:45 p.m.

Discussion ensued as to how best handle the open applications. P. Carson suggested grouping applications together where the same engineer is being utilized. May 5, 2021, or May 19, 2021, were suggested for special meeting dates. May 5, 2021 was selected as the special meeting as all commission members would be available. The applications will be allocated appropriately between the special meeting scheduled for May 5, 2021, and the regular meeting scheduled for May 12, 2021.

### **a. Application: Site Plan Modification: Expand Existing Outdoor Patio for Dining, 275 Boston Turnpike, George Koutouzis (#PL-21-2)**

This application does not require a public hearing. The commission acknowledges that they have officially received application #PL-21-2 and it will be discussed with a possible decision at the regular Planning & Zoning meeting scheduled for May 12, 2021.

Mr. Koutouzis joined the meeting subsequent to this decision and found the May 12, 2021, date to be acceptable.

### **b. Application: Special Permit Application: Excavation Business, Equipment Storage & Material Processing Areas, 1 Notch Road, William Phillips (#PL-21-1)**

A public hearing is required for this application. Mr. Phillips is agreeable to discussing this at a public hearing on May 12, 2021.

**A. Teller moved** to officially receive application PL-21-1 and set a virtual public hearing for 7:45p.m. on Wednesday, May 12, 2021, utilizing Zoom. **T. Manning seconded.** The motion passed unanimously, 7:0:0.

**c. Application: Special Permit Application: Proposed Retail Development, 2-lots, 1100 Boston Turnpike, Garrett Homes, LLC (#PL-21-5)**

A public hearing is required for this special permit application.

**A. Teller moved** to officially receive application PL-21-5 and set a virtual public hearing for 7:45p.m. on Wednesday, May 5, 2021, utilizing Zoom. **T. Manning seconded.** The motion passed unanimously, 7:0:0.

**d. Subdivision Application: Proposed Retail Development, 2-lots, 1100 Boston Turnpike, Garrett Homes LLC (#PL-21-6)**

This application does not require a public hearing. The site has been discussed in the past and according to P. Carson, the use of the property is the only issue.

**A. Teller moved** to officially receive application #PL-21-6 and it will be discussed with a possible decision at a special meeting scheduled for Wednesday, May 5, 2021. **T. Manning seconded.** The motion passed unanimously, 7:0:0.

**e. Application: Site Plan Application: Convenience Store & Gas Fueling Operation, 129 Boston Turnpike (Alltown Fresh Bolton), Global Montello Group Corp. (#PL-21-7)**

This application does not require a public hearing. It is a redo of an existing gas station, lessening the number of gas pumps from six to four. The curb cuts will not change although the footprint of the building will be larger and the car wash removed. It is a very visible site at the entrance to the town. J. Cropley said that any improvement to the site would be welcome.

**A. Teller moved** to officially received application #PL-21-7 and it will be discussed with a possible decision at a special meeting scheduled for Wednesday, May 5, 2021. **C. Davey seconded.** The motion passed unanimously, 7:0:0.

**f. Other:** There was none.

**8. Correspondence**

**a. CT Siting Council Letter: EM-CING-012-210329 – New Cingular Wireless PCS, LLC (AT&T) notice of intent to modify an existing telecommunications facility located at 130 Vernon Road, Bolton, Connecticut**

This appears to be only a modification to the existing tower. No specifics were included in the letter. Jim Rupert said that in general there is an ongoing upgrade to 5G across the country.

**9. Adjournment:**

The meeting adjourned at 9:56 p.m.

Respectfully submitted,

*Leslie J. Brand*

Leslie Brand  
Recording Secretary

Please see minutes of subsequent meetings for approval of these minutes and any corrections hereto.