

**PLANNING & ZONING COMMISSION  
TOWN OF SCOTLAND  
P.O. Box 122, 9 Devotion Rd, Scotland, CT 06264  
Telephone: (860) 423-9634**

**NOVEMBER 15, 2017 REGULAR MEETING  
7:30 PM –SCOTLAND FIRE DEPARTMENT MEMORIAL HALL  
47 BROOK ROAD, SCOTLAND, CT**

**MEETING MINUTES**

- I. Call to Order.** Chairman Greenberg called the meeting to order at 7:32 pm.
- II. Roll Call/Seating of Alternates.** In Attendance: Chairman Gary Greenberg, Vice-Chairman Terry Delaney, Secretary Larry Miller, Peter Martin, George Perry and Alt. Jeff Jakubowski. Absent: Lee Hebert, Robert Brautigam, Alt. Wendy Sears and Alt. Henry Bowers. Commissioner Jakubowski was seated for Brautigam. Staff in Attendance: Liz Burdick, ZEO.

**III. Additions to and/or Changes in the Order of the Agenda –None.**

**IV. Approval of the Minutes–October 18, 2017.**

*Upon MOTION by Larry Miller, Seconded by Peter Martin, it was voted unanimously to APPROVE the minutes of the 10/18/2017 PZC meeting.*

**V. Audience of Citizens.** None.

*Upon MOTION by Terry Delaney, Seconded by George Perry, it was voted unanimously to ADJOURN to the Public Hearing.*

**VII. Public Hearing:**

**A. PZ1706–** Town of Scotland Planning and Zoning Commission: Consideration of Decision to “Opt Out” of Public Act 17-155 – An Act Concerning Temporary Health Care Structures.

Chairman Greenberg opened the Public Hearing and Secretary Larry Miller read the legal notice into the record. Liz Burdick, ZEO, advised the notice was advertised on Tuesday November 7, 2017 because the publisher could not get the ad in on time for Monday November 6, 2017 as originally requested.

Chairman Greenberg stated that the Commission had discussed the October 1, 2017 State Law that required Towns in CT to allow Temporary Health Care Structures in accordance with Public Act 17-155 or opt out in accordance with the opt out provision of the law.

The Commission had instructed and the ZEO had written a regulation to accommodate the use, but the Commission wanted to revise it to allow either the impaired person or the caregiver to reside in the structure. However, after discussion with the Town Attorney Mark Branse, the regulation had to be written to comply with the law exactly and that he was advising all his Towns to opt out. Attorney Branse sent an informal memo to Chairman Greenberg read as follows:

In response to Chairman Greenberg who had asked Attorney Branse if the Commission could change the State Law to fit the town, Attorney Branse stated "a short answer that a Town cannot adopt anything that conflicts with the Statue unless the Town decides to Opt Out. Opting Out does not require town meeting approval only a Planning and Zoning Commission public hearing and then approval by the Board of Selectman.

Attorney Branse continued stating: We are advising all of our Towns to Opt Out because the statue is so terribly written. It doesn't even say who in the municipalities is supposed to issue the permits for the pods, the ZEO, the Building Official, the Health Director, the First Selectman, or the Dog Warden. And what is with this: 15 business days with when one wishes to act? Why provide notice to abutters by certified mail if there doesn't have to be a hearing and the decision has to be made within three weeks? What if the decision isn't made in three weeks? Lots of questions and no answers. Opt Out and do your own version which is what most of our other Towns are doing. As written the statute says that it requires the impaired person to live in the pod while the care giver lives in the main dwelling. As you point out there is no reason that the reverse may not be preferable. I understand that the pods are specifically designed for disabled people and that is why the statue is drafted as it is, by the folks that manufactured these pods. But in many cases Grandma would rather live in her own home with all the deficiencies and have someone live nearby to help out. As a result, the Zoning ownership, Zoning regulates the use of land not its ownerships as long as the occupants qualify, we can't regulate amongst the property.

I am attaching a sample motion for Opting Out that I did for Old Saybrook. Note that you have to hold a public hearing on the Opt Out and the Board of Selectman upon your recommendation must concur. I am attaching a local regulation from Killingworth that is drafting its own regulation. I think they plan to allow either the impaired person or the care giver to live in the pod."

Chairman Greenberg stated that he was submitting the e-mail and attachments for the file. ZEO Burdick replied that she was marking the Public hearing as Exhibit "A." He continued that the Commission has, from ZEO Burdick, a memo which spells out the concerns that Attorney Branse has raised and that was discussed briefly at the last meeting. It is regarding how the Public Act is allowing the municipalities to Opt Out of the requirements of the Act. Although the Commission believes that it is appropriate that the Connecticut Municipalities to provide for the care givers the required for persons

requiring for assistance due to age, disability or illness. The Town of Scotland is too rural and lacks sufficient staff to comply with many of the procedural requirements of the Act. An example is the 15-day period for the Commission to act when the Commission does not meet every 15 days. In addition, the Act contains inconsistencies such as notice requirements via certified mail which conflict with the Connecticut General Statutes and the Act fails to specify the procedure by which approvals are to be granted therefore creating ambiguities and potential legal appeals. If the Commission feels that such uses are appropriate for the Town of Scotland a locally adopted regulation can resolve procedural problems while still addressing the legitimate need that spawned the Act.

If the Commission votes to Opt Out the following motion is suggested: The Commission Affirmatively decides to Opt Out of Public Act 17-155 because the Town of Scotland is too Rural and lacks sufficient staff to comply with many of the procedural requirements of the Act. The Act contains inconsistencies and the Act fails to specify the procedure by which approvals are to be granted thereby creating ambiguities and potential legal appeals and locally adopted regulation can resolve procedural problems while still addressing the legitimate need that spawned the Act and the Commission recommends the Town of Scotland Board of Selectman Adopt an Opt Out resolution similar to this one adopted by the Commission.

Chairman Greenberg stated that the matter is on the agenda for the month of December so the Board of Selectman knows that this is coming down the pike. And all the evidence presented this far has to do with resolving to Opt Out. He asked the Commission if there was any discussion about this topic. No Comment was made.

Chairman Greenberg continued that ZEO Burdick has a copy of the formal version of what she has drafted for the Board of Selectman. Chairman Greenberg stated that the reason they are doing this is because it makes the Board of Selectman's job easier and they can just adopt the resolution as their own. Chairman Greenberg asked ZEO Burdick if there was anything else that needed to be covered. She agreed that it is recommended that all Towns Opt Out because of the inconsistencies.

Discussion between ZEO Burdick and Chairman Greenberg about when the adoption is effective and if there needs to be an advertisement of adoption of the resolution and ZEO Burdick concluded that she would find out and if there needs to be she will do so within the legal time frame.

***Upon MOTION by Terry Delaney, Seconded by Larry Miller. It was voted unanimously to CLOSE the public hearing and resume the regular meeting.***

## **VI. New Business:**

**A. PZ1706** – Town of Scotland Planning and Zoning Commission: Consideration of Decision to “Opt Out” of Public Act 17-155 – An Act Concerning Temporary Health Care Structures.

The Commission closed the Public Hearing for this application and Chairman Greenberg stated that the Planning and Zoning Commission is voting to recommend the Town “Opt Out” of Public Act 17-155 – An Act Concerning Temporary Health Care Structures. There was no further discussion.

*Upon MOTION by Terry Delaney, Seconded by Jeff Jakubowski, it was voted unanimously to “Opt Out” of Public Act 17-155 – An Act Concerning Temporary Health Care Structures as follows:*

**WHEREAS**, Public Act 17-55 allows municipalities to “opt out” of the requirements of that Act; and

**WHEREAS**, the Commission believes that is appropriate for Connecticut municipalities to provide for caregivers for persons requiring assistance due to age, disability, or illness; however

**WHEREAS**; the Town of Scotland is too rural and lacks sufficient volunteers or staff to comply with many of the procedural requirements of the Act; an example is the 15-day period for Commission action on any application under the Act when the Commission does not meet every 15 days; and

**WHEREAS**, the Act itself contains inconsistencies, such as notice requirements (certified mail) which conflict with the Connecticut General Statutes Section 8-7d(a), and the Act fails to specify the procedure by which approvals are to be granted, thereby creating ambiguities and potential appeals; and

**WHEREAS**, the Commission feels that if such uses are appropriate for the Town of Scotland, a locally adopted regulation can resolve those procedural problems while still addressing the legitimate need that spawned the Act; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Scotland Planning & Zoning Commission does hereby affirmatively opt out of the provisions of Public Act 17-55; and hereby recommends that the Scotland Board of Selectmen adopt an opt-out resolution similar to this one adopted by the Commission.

**ADOPTED**, at a Regular Meeting of the Scotland Planning & Zoning Commission on November 15, 2017, by a simple majority vote to approve

#### **SCOTLAND PLANNING & ZONING COMMISSION**

Gary Greenberg, Chairman

#### **B. Approval of 2018 Planning and Zoning Commission Meeting Dates.**

There was discussion that third Wednesday on November 21, 2018 was too close to Thanksgiving and the Commission decided that Wednesday, November 14, 2018 was a better date due to conflicts with the holiday and Board of Selectman meetings.

*Upon MOTION by Terry Delaney, Seconded by Larry Miller. It was voted unanimously to APPROVE the 2018 PZC Meeting Dates, with a change in November 2018 to the second Wednesday of the month, as follows: JANUARY 17, 2018, FEBRUARY 21, 2018, MARCH 21, 2018, APRIL 18, 2018, MAY 16, 2018, JUNE 20, 2018, JULY 18, 2018, AUGUST 15, 2018, SEPTEMBER 19, 2018, OCTOBER 17, 2018, NOVEMBER 14, 2018, and DECEMBER 19, 2018.*

**VIII. Old Business:** None.

**IX. Sub-Committee Reports.** None.

**X. Audience of Citizens.** None.

**XI. Administrative Reports.** None.

**XII. Communications and Bills.** None.

**XIII. Commission Open Discussion.**

Chairman Greenberg wanted to report back about the meeting with John Filchak, NECCOG, about Rural Businesses. He handed out a regulation that he had just received from John Filchak regarding the rural businesses. It was just a model. It sort of combines home occupations and rural businesses. The Town of Scotland already has a number of home occupations. But rural business is not a home occupation even if it takes place in a residential location. Chairman Greenberg handed out the sample regulation for the Commission to read over and the Commission would talk about this topic next month.

One thing Chairman Greenberg wanted to cover at the meeting was that the Commission needs to get away from inconsistencies in their own regulations and how they approach things regarding regulations. Chairman Greenberg asked the Commission if there were any suggested conceptual changes that needed to be included. For example, like big ideas like Equestrian subdivisions or creating districts specifically for village districts or commercial districts etc.

Discussion of keeping it simple. It was also discussed about a past event about changing the zone of Ziegler Rd and how it did not turn out well and that the Commission would need the Resident's Support and why try it again if they do not have the resident's support.

The Commission had further discussion about taxes for commercial businesses and how it works. Chairman Greenberg stated that he would talk to the new Assessor to get answers and to see if they could make it more commercially friendly without tax overkill.

Chairman Greenberg stated that he would like to get NECCOG to do a regulation rewrite for the Town to get rid of inconsistencies and make it more friendly for people to do things without the regulations being revised case by case. He stated further that it will cost money to do so and that First Selectman Dan Syme told Chairman Greenberg that the Commission has the money to do so since they did well at coming in under budget for the writing of the Plan of Conservation and Development. It will cost \$2,100 - \$5,000.

ZEO Burdick had stated that another option to include would be commercial recreation that was a past avenue that was suggested.

Commissioner Jeff Jakubowski stated in his opinion that the Commission should stay away from zones. He stated that if the blueprint of what the Town is looking for then there would be no need for Zones and it would possibly help bring in more business. He also asked if it was worth it to write regulations about a water company business and Chairman Greenberg stated that John Filchak has those already included.

Chairman Greenberg recapped that intent would be to have NECCOG to help with the regulations and make it more business friendly and get rid of case by case issues and make the regulations more uniform and easily readable for the residents etc. He will get the Commission a time frame as soon as he can and the goal would be within the fiscal year.

Chairman Greenberg brought up to ZEO Burdick about following up with the Beakey Residence and the dog issues that have yet to be resolved. ZEO Burdick stated that she would do so.

#### **XIV. Adjournment.**

***Upon MOTION by Larry Miller, Seconded by Jeff Jakubowski, it was voted to ADJOURN the meeting at 8:04 p.m.***

Respectfully Submitted,

Joanna Fisher

APPROVED BY THE SCOTLAND PLANNING & ZONING COMMISSION ON \_\_\_\_\_, 2018.