

TOWN OF FRANKLIN
PLANNING & ZONING COMMISSION (PZC)
FRANKLIN TOWN HALL
7 Meetinghouse Hill Rd.
Franklin, CT 06254

REGULAR MEETING MINUTES
Tuesday, December 18, 2018, 7:30 p.m.

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1. Call to Order: Chairman McGuire called the meeting to order at 7:30 p.m.

Members Present: Peter Ballaro, Secretary Matt Calvert, Chairman John McGuire III, Pat Osten, James Wheeler. **Alternate Members Present:** Don McClure. **Alternate Members Absent:** Leo Bienvenue, Niels Jeppesen. **Also Present:** Ron Chalecki, Zoning Enforcement Officer, Carly Myers, SECCOG Town Planner.

2. Recognition of Visitors: Chairman McGuire recognized visitors.

3. Public Hearing:

- a. **PZC #18-10 Franklin Hills Estates & Country Club:** Proposed Text Amendment Request to Chapter 10 Special Exceptions, Section 10.14.5(B), Golf Course Community, of the Franklin Zoning Regulations.

APPLICANT / PRESENTATION: Attorney Harry Heller of Heller, Heller, & McCoy was present to represent the Applicant. Attorney Heller reviewed existing Franklin Planning & Zoning Regulations as associated to this application and the proposed text amendment.

History of Previous Franklin Hills Estates & Country Club Site Plan Application: Attorney Heller provided history of a previously approved application for Franklin Hills Estates & Country Club for construction of a golf course granted by the Planning & Zoning Commission and Inland, Wetlands, & Watercourses Commission. Specifically, Attorney Heller referred to the granting of certain waivers by Planning & Zoning with respect to the location of a number of tees, greens, and landing locations.

Reference to Case Law “McKenzie”: Attorney Heller reviewed appellate case law referenced as the “McKenzie” case to show correlation of court decisions with language used in this proposed text amendment. Attorney Heller stated the appellate court held in the McKenzie Case that the authority to grant a waiver, notwithstanding the fact that it was specifically authorized in the Town of Monroe regulations, violated the statutory scheme of zoning regulations because that power was reserved to the Zoning Board of Appeals. Attorney Heller noted Franklin Hills submitted a new site plan application for golf course construction to the Planning & Zoning Commission last summer which was later withdrawn. Subsequent to the withdrawal, Attorney Heller had significant discussion with Town Counsel concerning whether or not the Town’s Zoning Regulation 10.14.5b, which allows you to reduce the separating distance between greens, tees, and landing areas, violated McKenzie.

Applicants Contact with Town of Franklin Town Counsel: Attorney Heller stated he sent correspondence to the Town of Franklin, Town Attorney, dated September 6, 2018, setting forth in detail why he was of the opinion that the Town of Franklin proposed zoning regulation language would pass muster under McKenzie because it is not a waiver but rather it is a reduction. Attorney Heller noted Franklin Town Counsel was uncomfortable that if PZC took current action on waivers like in the 2004 approval that a court could hold that such decision violated McKenzie and that power was reserved for Zoning Board of Appeals.

Why Applicant is Proposing Text Amendment: Attorney Heller stated that, as a result of discussions with Franklin Town Counsel, the applicant is choosing to file the proposed text amendment.

Review of Proposed Text Amendment Specifics: Attorney Heller continued in that proposed text amendment language before the Planning & Zoning Commission essentially eliminates the 50 foot set-back from a boundary to an exterior property line; and therefore, substitutes a set-back of 150 feet from any existing dwelling located on an adjoining property exterior to the golf course community. Based on conversations with multiple golf course architects it is their opinion this is more than sufficient to achieve safety standards required for setbacks from existing properties. It also eliminates the requirement of any set back from an interior parcel that may be created in a golf course community which would give golf course architects and project architects flexibility in designing the community based phase with their parameters for vistas that they may want to achieve including privacy between golf course and homes or lodging created in golf course community.

Franklin Hills Golf Course Community Submittal - New Site Plan Application: Attorney Heller stated, as you are aware, the applicant is in the process of preparing site plans for construction of a golf course to re-submit to your Commission. We have looked at this project to determine if we can submit under your current 10.14.5b Regulations and determined we cannot. Also, there are additional constraints to consider. When you look at constraints resulting from on site regulated wetlands and 95 acres granted for a conservation easement in accordance with Army Corp and DEEP permits, there is not a lot of flexibility to obtain lengths we need in golf course design and yet avoid those resources to the extent we need to avoid them and remain in compliance with Army Corp.

Reference to Zoning Regulation 5a 3.3: In response to associated and current Zoning Regulation 5a 3.3, it was found it bears no relationship to the proposed reduction request that could be considered. It is a front yard set-back requirement. We did not find anywhere in the regulations that this reference correlates to.

In summary, Attorney Heller noted he believes this text amendment is a good addition to Franklin Zoning Regulations and would allow the Franklin Hills Golf Course project to move forward. It also makes better sense if the Commission would consider any other future golf course projects in the future.

PZC COMMENTS/CONCERNS: Members discussed the following topics:

Clarification on Term "Safe": Attorney Heller was asked to further define "safe" because this is considered a very nebulous definition. Attorney Heller responded by stating there is no good definition as it depend on characteristics of each hole design in relation to hole orientation, hole hazards, property line, and range of reasonable likely missed attempts.

Reference to Safety Netting: Attorney Heller was asked if safety netting could be applied where necessary. Attorney Heller responded "no - the applicant would not accept that because it is not aesthetically appealing"

Reference to "Expired" PZC Franklin Hills Application: Chairman McGuire indicated he is surprised to see this applicant back in front of the Planning & Zoning Commission because it was determined the Franklin Hills Golf Course Application expired May 3, 2018 because the Statutory permit timeline had reached its limit of fourteen years.

Reference to Franklin Hills Official Withdrawal: Additionally, Chairman McGuire referenced a letter, dated August 13, 2018, from Attorney Heller indicating his client, Franklin Hills Estates & Country Club, LLC., officially withdrew from consideration the special permit and site plan application; and that, Town Staff immediately cease services, and return all associated unearned application fees and all bonds monies currently held by the Town immediately. Attorney Heller responded he requested the bonds back because the applicant didn't know what the timing of moving forward with the project would be.

References to Site Plans: Attorney Heller was asked how many existing structures/features are within 50 feet of the buffer and how close is the applicant planning on putting structures. Attorney Heller responded that nothing is any closer than what was proposed in 2004 but the site plan shows various tees, greens, and/or landing areas within 50 feet.

The Commission interpreted the applicants proposed text amendment to mean that, if approved, it would basically change the Town's current zoning regulation requiring a 50 foot buffer on the applicant's property to be transferred and moved onto abutting property owners. In effect, the safety distance then becomes the responsibility of abutting property owners. This is going to affect abutting property owners more than it's going to affect the applicant's property and their anticipated proposed golf course project. The applicant is taking away abutting property owner set-back distances. The property owner could not put a structure up within 50 feet of the course and its property line. In summary, this seems to be quite restrictive to adjoining property owners. Attorney Heller responded yes there is a shift and yes that is accurate.

Attorney Heller was asked why the golf course architects originally designed the Franklin Hills Golf Course Project with numerous holes so obviously close to abutting property lines. At this point, Attorney Heller presented an overall map of the golf course and pointed out the many areas in which tees, greens, and landing areas are within 50 feet of the required buffer.

Chairman McGuire asked if the applicant would consider reducing the buffer from 50 ft. to 25 ft. within the proposed text amendment. Attorney Heller responded in that the idea is to not re-arrange the geometry of holes that have already been designed during the previous application for Franklin Hills Estates & Country Club.

In reference to and summary of Attorney Heller's previous statements, the Commission is concerned this text amendment is directly related to the previously approved, expired, re-submitted, and ultimately withdrawn Franklin Hills Estates & Golf Course and that this amendment creates a "snapshot of time for a new application only" because it refers to existing structures and that the applicant is now creating a new dimension on residential abutting properties. Attorney Heller responded by stating "let's be clear this is a regulation of general application and is not just for Franklin Hills as this regulation would apply to anyone who wants to do a golf course development in Franklin".

Chairman McGuire is concerned this text amendment is being submitted right at the time of an anticipated new site plan application coming in to the Town for a golf course located on the same property that a previous golf course project had started and just recently expired; as referenced by Attorney Heller in previously stating "as you are aware, we are in the process of preparing site plans for construction of a golf course to re-submit to your Commission".

Attorney Heller responded yes and that also the text amendment would give protection to existing and future homeowners that might build, and that the property and owner would be making an informed decision where they set their house.

PZC COMMENTS: Chairman McGuire would like the Town Attorney to review proposed text amendment language to determine that the result would not lock in any future owners of abutting property to dimensional requirements as a result from a golf course project. Attorney Heller noted the proposed text amendment is quite clear "as of the date of the filing of an application"; so "it's a snapshot in time". If an application is filed it is public information so if someone wants to build closer they have the knowledge and that's a choice they make, therefore, it is not constraining in any way on use of their property.

Zoning Enforcement Officer Comments:

1. How does this text amendment affect site plans of the previously approved plans that the wetland commission now has? Attorney Heller responded that wetlands approved plans allow regulated activities to occur but we don't have a special permit in place now. The Franklin Hills Golf Course cannot be built and used as a golf course without a new special permit.
2. Does the plan you have shown and referred to this evening during the public hearing process depict the golf course layout based on plans approved by IWWC or plans as withdrawn from PZC? Attorney Heller stated general routing is the same between PZC and IWWC plans. There are generally subtle changes; however, Hole 4 is materially different. The plan shown this evening is from 2014/2015 and not the original 2004. They came back to you in 2014-2015 as a result of requested modifications as a result of Army Corp permitting process.

Chairman McGuire clarified the 2015 modifications were for a revised site plan for a 100 room lodge and associated parking only.

3. Are you writing and submitting this text amendment to change current Planning & Zoning Regulations in order to bring the already designed and withdrawn site plans from the prior Franklin Hills Estates & Country Club project into compliance for re-submittal of a golf course project as you previously stated.

Attorney Heller responded the applicant is requesting this regulation amendment because based on the Town Attorney's opinion you do not have the authority to grant the reduction that would have allowed what we have applied for and you approved in 2004.

Mr. Chalecki asked PZC to consider if the applicant is proposing this text amendment for their purpose only so that they do not have to go back and re-design and re-draw site plans that were submitted with the original Franklin Hills Estates & Golf Course application that expired and potentially would not be in compliance with current zoning regulations today and would require Zoning Board of Appeals review?. Attorney Heller responded that it is not a question of revising previous site plans and that it is a question of achieving design parameters needed for this type of resort facility.

Mr. Chalecki cautioned an approved text amendment affects the entire town and all future developments and abutting property owners associated to a golf course project and that PZC should specifically review how this would affect the entire town and not just the current Franklin Hills property.

TOWN STAFF/PLANNER CONCERNS: Carly Meyers noted she is concerned with the absence of a reference to commercial property within this proposed text amendment. If approved, the amendment would go into effect for the entire town and all future golf course developments. Therefore the absence of reference to commercial property could create an issue with future applications. For instance, if the Town wishes to promote abutting commercial property for economic growth, the Town could not do so. In addition, she noted the proposed regulation amendment pushes the buffer onto abutting property owners and this could be considered restrictive to persons whom purchase abutting property in the future. Attorney Heller responded .. yes.

Ron Chalecki: Mr. Chalecki recommended Town Counsel review the proposed amendment and provide an opinion in the best interest of the Town prior to PZC rendering an informed decision.

PUBLIC COMMENTS:

1. Mr. Albert Rudolph spoke about the Franklin Hills Golf Course Project and drainage problems near his property and on his property. He is concerned this project may be causing such erosion and sedimentation problems.
2. Russ Beisiegel noted to be clear the idea of this proposed text amendment is that there is a restriction as to where tees, landing areas, and greens can be in relation to an abutting existing "structure" on an abutting property. He then asked the question - is there also a change in the set-back from the tees, landing area, and greens to the boundary? If this text amendment was approved, as proposed, it would then say there is no requirement for a set-back of any kind from the boundaries. Attorney Heller responded "Yes. In summary, Mr. Beisiegel stated this is a very important fact to point out for the record.

PZC COMMENTS/CONCERNS: There was review of an existing site plan for a project that has been withdrawn showing tees, landing areas, and greens within 15 feet of boundaries which consequentially presented numerous violations of the Town of Franklin Planning and Zoning Regulations. Mr. Calvert offered the possibility of changing PZC regulations from a current buffer requirement of 50 feet to 15 feet to align the site plan with approved regulations. In response to Mr. Calvert, Mr. Beisiegel noted that his comment is true to this project – but not any other project that may occur within the town. This proposed text amendment would have a town wide affect. In effect, not having that 150 foot requirement could make a difference. You could have someone with a house currently at 25 feet from the boundary and next thing you know an applicant builds a golf course where there is a landing area 15 feet from the boundary and now the linear feet is 40 feet from an existing structure. In summary, both restrictions should be included.

Ron Chalecki indicated the applicant is fully responsible for proposing the text for a regulation change and not the Commission. The Town is not making the amendment. If the applicant feels they wish to make a change based on PZC and public discussion, it is their responsibility. The Commission is responsible for adopting or not adopting the text amendment or continuing the Public Hearing.

PZC CONCERNS:

- Concerned that if this proposed text amendment were approved any applicant, now or in the future, could then essentially install tees, landing areas, and greens directly up against a property line.
- PZC is more comfortable if a 15 foot buffer was in place because it preserves the property/boundary and prevents an applicant from installing tees, landing areas, and greens directly up against property line.
- Concerned with using the language "tees, greens, and landing areas must be located a minimum of 150 feet from any structure occupied as a residential dwelling on property located exterior to the golf course or golf course community" because this creates a variable that significantly affects and restricts abutting property owners.
- Concerned this text amendment is being proposed while at the same time Franklin Hills Golf Course plans to re-submit a Planning & Zoning application for a golf course project that previously expired and that would not meet current Zoning Regulations. Attorney Heller responded that this text amendment protects vested rights and takes affect at the time of application and it is expected to protect the people already there.

Ron Chalecki asked Attorney Heller if the applicant really needs this text amendment and if it was not approved by PZC would the applicant proceed with the anticipated new PZC Golf Course Site Plan. Attorney Heller responded by saying the applicant will not re-submit without it because the applicant has specific design parameters that must be met as a condition of the designation of an Arnold Palmer Signature Course. The design is not very flexible to move things around particularly with location of wetlands along the southerly boundary. Additionally there is no flexibility due to the necessary architectural distances needed for landing areas to greens for the desired level of challenge for this signature course.

MOTION #1 (12.18.18): made by Mr. Calvert **SECONDED BY** Mr. Ballaro that the Planning & Zoning Commission continue the Public Hearing to the Planning & Zoning Meeting of January 15, 2019, at the Franklin Town Hall with a meeting start time of 7:30 p.m.

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

4. Additions to the Agenda: None

5. Approval of Minutes:

a. November 20, 2018:

MOTION #2 (12.18.18): made by Ms. Osten **SECONDED BY** Mr. Ballaro that the Planning & Zoning Commission approve Meeting Minutes of November 20, 2018 as amended:

- Under Adjournment "Don McClure" seconded the motion and the time was 7:48 p.m.

VOICE VOTE: Matt Calvert - Abstained;

MOTION CARRIES

5. Report of the Zoning Enforcement Officer:

a. **15 LATHROP LANE:** Mr. Chalecki has sent a blight violation letter to property owner.

6. Correspondence/Commission Matters:

a. Notification from City of Norwich Notice to Town of Franklin Regarding Proposed Mill Conversion to a Hotel: The following was determined by our Town Planner, Carly Myers, SECCOG: "I have reviewed the applications from Norwich under Section 8-7d(f) of the General Statutes concerning IWWCC #18-12, SP #18-08, and SDP #1042 regarding a proposed mill conversion to a hotel at 140 Yantic Road. I have no concerns of potential negative impacts to the Town of Franklin regarding this development at this time. 1) Access to the site will be from an exit off Route 32 south of the Franklin border, and should not impact traffic on town roads, and 2) Any storm runoff from the site would drain into the Yantic River south of Franklin.

b. Franklin Hills Golf Course Project - correspondence submitted to members:

➤ **CLA Engineers Report - May 22, 2018:** CLA was tasked with evaluating current site conditions and to identify any erosion and sediment control issues prior to any construction activities restarting on site. **In summary, considerable construction has occurred all over the site, including, but not limited to, soil stockpiles on several different fairways, constructed fill slopes and establishment of vegetation on multiple fairways. This work should have been inspected and reported to the Town by the developer's engineer.**

- **CLA Engineers Report - November 20, 2018:** CLA was tasked with evaluating current site conditions and to identify erosion and sediment control issues. Activity on site was apparent. Disturbance adjacent to the resource area located to the east on the parcel between hole 3 and Avery Lane. No erosion control measures were present in this area and no signs of stabilization of the disturbed area was evident. **In summary, in some cases, issued identified in the May report have continued to deteriorate. Worsening conditions were specifically noted in Items 1 through 5.**
- **CLA Engineers Report - December 5, 2018:** (addressed to IWWC Chairman): CLA Engineers Inc. investigated recent activity on subject project site between hole 3 and Avery Lane. This activity was first documented during the November 19, 2018 site walk. Field investigation was done to determine approximate location of disturbance as it relates to the resource area. The disturbance could not be precisely located. **In summary, we do not believe all disturbance is located within resource area, however, disturbance area is receiving run-on which flows through disturbed area and then discharges to resource area near Station 7+00 as staked in the field.**

c. Notification from Town of Bozrah of zoning text amendments: Reviewed as submitted in packet.

The following was determined by our Town Planner, Carly Myers, SECCOG: I have no concerns of potential negative impacts to the Town of Franklin regarding this development at this time.

7. Report of the Building Official: Installation of a new diesel tank was approved for Bestway Gas Station.
8. Report of the Wetlands Enforcement Officer: Reviewed CLA December 5, 2018 memo as noted above.
9. Unfinished Business: None.
10. New Business: None.
11. Public Comment: None.
12. Adjournment:

MOTION #3 (12.18.18): made by Ms. Osten **SECONDED BY** Mr. Ballaro that the Planning & Zoning Commission adjourn the meeting at 9:01 p.m.

VOICE VOTE: UNANIMOUS;

MOTION CARRIES

Respectfully submitted,

Sherry Pollard,
Administrative Assistant to the Commission