



**CITY OF DANBURY**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

ZONING COMMISSION  
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MINUTES  
FEBRUARY 28, 2006

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The meeting was called to order by Chairman Jack Knapp Jr. at 7:30 PM.

Present were Anthony DiCaprio, Ted Farah, Theodore Haddad Jr., Helen Hoffstaetter, Richard P. Jowdy, Donald Kennedy, Jack Knapp Jr., Robert Melillo, and Alternates Victoria Hickey and Joseph Notaro, Jr. (arrived at 7:52 PM). Also present were Planning Director Dennis Elpern and Acting Corporation Counsel Sharon Dornfeld.

Absent were Theresa Buzaid and Alternate Jean Anderson, both of whom are abstaining from the only item on tonight's agenda.

Mr. Melillo led the Commission in the Pledge Of Allegiance.

Ms. Hoffstaetter made a motion to accept the minutes of February 14, 2006. Mr. DiCaprio seconded the motion and it was passed unanimously.

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CONTINUATION OF PUBLIC HEARING:

Petition of the City of Danbury by Dennis I. Elpern, Planning Director to Amend Secs. 3.C.2. & 4.A.7. of the Zoning Regulations. (Deer Hill Avenue Overlay Zone). Public hearing opened February 14, 2006.

Chairman Knapp said that Terry Buzaid and Alternate Jean Anderson both had abstained from this matter. He asked Ms. Hickey to take Mrs. Buzaid's place for tonight's agenda. He re-read the Planning Department Staff Report into the record. He then read a letter from Mark Nolan which was designated Exhibit C. He said Attorney Sharon Dornfeld was here as Acting Corporation Counsel for this matter.

Attorney Sharon Dornfeld then said she was present this evening to answer the Commission's questions. Chairman Knapp said the Commission had major concerns regarding the litigation for 20 Deer Hill Ave that Attorney Marcus had referred to. Attorney Dornfeld said she is representing the Planning Commission in that appeal and that should have no impact on this decision. She said there actually are two appeals, one is a Mandamus proceeding and the other is a traditional appeal of the denial of the subdivision application. She said the Commission should know that this same applicant filed a second subdivision application for this same property prior to the opening of this public hearing. That offers them the protection of not

being required to comply with any new regulations that may become effective as a result of this petition. There were no other questions from the Commission at this time.

Planning Director Dennis Elpern then spoke. He reiterated that this is an overlay zone affecting properties fronting on Deer Hill Avenue from Wooster Street to Southern Boulevard. He said they had gone over the purpose and intent, the allowed uses and the area and bulk requirements in detail at the previous meeting. He said Deer Hill is one of the oldest streets in town, with many gracious and historic homes. There are 67 properties, 3 of which are vacant and almost all are single family homes. 45 of these lots were included in 1984-85 Danbury Preservation Trust survey of Historic and Architectural Resources. A copy of this documentation has been entered as an exhibit. He then addressed the allegations that were made by Attorney Marcus. He said this overlay zone will promote traffic safety since the uses are limited to single family homes, churches and parks, which are the lowest traffic generators of all uses. Schools, colleges, children's bereavement counseling and education center, day care, museums were eliminated as potential traffic generators. He said Sec 8-2 of the CT General Statutes allows for zoning regulations to be made with reasonable consideration for the protection of historic factors. This was done by making changes to uses, setbacks, yards, widths, and height. He said that Attorney Marcus had said historic and village districts are the only way to protect historic factors, but these kinds of districts emphasize control of the exterior architectural features of buildings, which we do not want to do. He then distributed a photocopy of a rendering that was submitted with the 20 Deer Hill application. He said it seems irrelevant to worry about controlling facades when you are going to allow development that cannot be seen from the road as shown in this rendering. He said there was no evidence given to support the allegation that this overlay zone will destroy property values. He said there is a reason that Deer Hill Ave. is one of the finest and most expensive streets in Danbury. If we can preserve the nature of Deer Hill Ave., then we will preserve the very things that have made it such a desirable street and that have contributed to its property values. He then reiterated his comments about the baseless charges that this is retaliatory zoning, spot zoning and discriminatory zoning. This is not retaliatory zoning though it is a reaction to a proposal which brought to light several defects in our regulations which needed to be addressed. The 20 Deer Hill matter is now in court and if they win, none of this will apply to them. Next, it's really hard to call regulations which apply to 67 properties throughout a neighborhood spot zoning. The overlay applies to all of these properties and various provisions will apply to individual properties differently, but that's the nature of zoning since all lots have their own peculiarities. He added that all current development will be protected as nonconforming uses. But if the 20 Deer Hill application is approved, it will result in development of one property that is inconsistent with the character of the surrounding properties. The third claim that this is discriminatory zoning also is incorrect because the overlay zone will affect all of the properties included in it. He added that 20 Deer Hill will be the only property still governed under the old rules if they win their appeal. He said it is ridiculous of Attorney Marcus to say the proposed setback restrictions discriminate because they only pertain to new construction, not existing construction. It seems like they are suggesting that you can only enact new regulations for which all existing development and all possible, potential, probable and likely new development will comply. He said there was some question about how much of the Pane parcel is inside the overlay, and the answer is two-thirds. There is a rear portion that is outside the overlay and could be used as a separate lot should Cannondale Dr. become a City street (which is in the works). Ms. Hoffstaetter asked if people could demolish their house and then come in to subdivide. Mr. Elpern said anything is possible.

Mr. Farah asked for clarification regarding historic factors. Mr. Elpern said these historic factors would be using zoning issues to develop properties in conjunction with an existing area to preserve the nature of it. Mr. Notaro arrived at this time.

Chairman Knapp asked if there was anyone else to speak in favor of this petition.

Attorney Robert Talarico, 10 Deer Hill Ave., said Mr. Elpern had said most of what he wanted to say. He said some of the Commission member's comments brought the point home that they are not here in retaliation to Attorney Marcus's clients. This is a reactive approach to the potential deterioration of one of the finest streets in Danbury. Attorney Marcus's description of a historic district would be much more restrictive and controlling than what is proposed here. He said there are at least four undeveloped properties left on Deer Hill, but probably only one which would allow for this kind of substantial increase in density. He said the difference is that they are here trying to keep Deer Hill Ave. the same, unlike an out of town developer whose interest is strictly to make money

Jehad Sebbagh, 98 Deer Hill Ave., said the one important thing this Commission did was change the multi-family regulations making it more restrictive, which will help keep the older neighborhoods intact. Although these changes affected hundreds of properties, the residents will reap the benefit of the decrease in density. He added that this proposal is just another part of the preservation of Danbury.

Chairman Knapp asked if there was anyone to speak in opposition to this petition.

Attorney Neil Marcus said he was here again representing the property owners of 20 Deer Hill Ave. He said he was not going to repeat his comments from last meeting. He said he was not challenging Mr. Elpern's position that eliminating churches and schools would reduce traffic. He added that if the Commission thinks this will do that, then they should adopt this. He suggested they ask Corporation Counsel what retaliatory zoning is. He then proposed that the Mayor told Mr. Elpern to write these regulations specifically to prevent the subdivision of 20 Deer Hill. He said the letter from Mark Nolan is definitely retaliatory zoning. He said the rendering that Mr. Elpern showed the Commission was just a concept of the type of housing that would work on this lot. He added that the house at 20 Deer Hill is not all that historic since it was rebuilt after a fire. He suggested that to prevent increased density they should develop coverage and bulk limits in the Regulations. He said this proposal is specifically directed at 20 Deer Hill. He again suggested that if they honestly want to do historic zoning they should add bulk and coverage requirements, that way all parcels would be affected the same way. To suggest this will protect Deer Hill is just not true, this is part of an ongoing plan to prevent the development of 20 Deer Hill. He said there are a lot of misconceptions and asked that they study this and not do it just because it is politically correct. He said if the court reverses the Planning Commission denial of this subdivision application, then these lots will be developed. If the Mandamus proceeding is approved, then these new regulations will not apply to his client's property. He disagreed as to whether or not the action of this Commission has any bearing on the litigation. He said the judge will know that the rules were changed. Mr. Haddad asked him if his clients would be affected by what this Commission does or if he was just here because he is opposed to this proposal. Attorney Marcus said they are afraid that this petition was directed specifically at his

clients. He said they are only talking about three one-acre lots, it is not an enormous thing. Mr. Farah asked about retaliatory zoning versus reactionary zoning. Attorney Marcus said retaliatory is directed specifically at a project or property and reactionary is the result of a study over time. He then said the historic factors are lot size, houses being centered within the side yards of lots, uniformity in setbacks, relatively large upscale houses and a very well kept neighborhood with little deterioration. Ms. Hoffstaetter said since they have determined that this will not affect 20 Deer Hill, does he still think this is retaliatory. Attorney Marcus said yes, the only thing it doesn't impact is the current plan, if they choose to do something different they will not be able to and all of the undeveloped properties will be victims of retaliatory zoning. If this is approved, they will be up-zoning the few lots left that can be developed. Mr. Jowdy said they should only be talking about the petition that is before them, they are spending way too much time discussing 20 Deer Hill when that is not a part of this petition. Attorney Marcus said they should figure out how this will affect every property, not just the ones left undeveloped at this time. In closing he said this petition is targeted at 20 Deer Hill as he cannot see benefit for any parcel on Deer Hill and it is improper to use zoning for retaliation.

Frank Bondatti, 116 Deer Hill Ave., said he is a lifelong resident of Deer Hill Ave. He said Attorney Talarico and Attorney Marcus had already answered most of his questions. He said they should look at the whole street when considering this petition because there is a difference between the residential side versus the business side. He asked if this would prevent him from doing any work out of his home or selling to someone who wants to do that. He questioned how to define historic, since a modular home was put on the street three years ago and that was not in harmony with rest of street. He said a historic district should require stick-built homes. He said he has been hoping to sell his house to a professional but if this will prevent them from having a home office, he needs to know now. Chairman Knapp asked him to state his position as this is not a question and answer period. Mr. Bondatti said he had mixed feelings after hearing both sides of this. He said he is in favor of this if it is okay to knock a house down and replace it, but if the intention is to stop 20 Deer Hill he is opposed. He said he is in favor of this if someone can purchase a home within this district and practice their profession while living in the home. He then mentioned something about a speed bump in the new subdivision application which was submitted by Attorney Marcus's clients. Chairman Knapp said that is not within this Commission's purview, so they cannot discuss it.

Since there was no other opposition, Mr. Elpern then spoke in rebuttal. He said in response to Mr. Bondatti's question, home occupations are allowed in this overlay zone. He said Attorney Marcus was the one who brought up 20 Deer Hill during this meeting and the previous one. He said this is not retaliatory, they just wanted to prevent this from happening in other places. These regulations were not directed at a specific property, they looked at the whole street. He said if Attorney Marcus's clients win their appeal of the Planning Commission denial, they will be able to proceed with their development plans, regardless of what happens tonight on this petition. He added that Attorney Marcus knows that, but is still suggesting that tonight's decision will override the court's decision. He says this is a sordid affair designed to retaliate against his client and that is definitely not true. He has implied that there is some vast government conspiracy going on here, and that the Mayor should stay out of issues affecting the future growth and development of the City. That is a curious thought since the Mayor not only has the right but is obliged to care about the future of his City. He added that the people

who support this petition all live in Danbury; they have no pecuniary rewards resting on this decision. They are many distinguished people who have bought homes, raised families and invested their lives and their work in our City. They are looking to us to protect their neighborhood and these regulations were an attempt to do just that. Mr. DiCaprio asked Attorney Dornfeld to respond to Attorney Marcus's claim that the outcome of this petition could affect the court decision. Attorney Talarico asked if he could speak in rebuttal and Chairman Knapp said no, because only the petitioner gets to do rebuttal.

Attorney Dornfeld said the decision on this petition is not going to affect the Mandamus action, because it is about time constraints not being met. With regard to the administrative appeal, the judge will review the record and make a decision based on that information. She asked that they limit deliberation on this matter to the normal issues (consistency with zoning, impact on health safety and welfare of city. They should not consider whether or not Attorney Marcus will sue them. Mr. Haddad suggested that the wise thing would be for the City to withdraw this petition. Attorney Dornfeld said she is not going to advise them on how to proceed. She said that she is prepared to defend whatever action they take but the merits of the application or whether or not to act is up to them. Mr. Haddad asked if they can be sued personally. Attorney Dornfeld said as elected officials, they are indemnified by City, unless there is a conflict of interest or an ex parte communication. Mr. Melillo said he felt it was prudent to address a loophole in regulations rather than wait for more applications to slip through. Attorney Dornfeld said the 20 Deer Hill Ave. application brought to light a situation that we do not want to see happen again. She said they need to weigh the risk of other applications being submitted before these new regulations are enacted. She then she does not agree that this is retaliatory since it affects 67 properties. It is not spot zoning since the owners of 20 Deer Hill are not being prevented from using their property in the same manner as all of the other properties on Deer Hill Ave. Ms. Hoffstaetter mentioned that Attorney Marcus had said he would appeal this if it is approved. Attorney Dornfeld said she had been trying to figure out what grounds he would use for appeal since many of his comments were contradictory. She added that there were points that he had made that actually made a case for the overlay district. There was no further discussion.

Mr. DiCaprio made a motion to close the public hearing. Mr. Melillo seconded the motion and it was passed unanimously by voice vote. Attorney Dornfeld left the meeting at this time.

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Chairman Knapp said there was one new matter listed under New Business and it was a public hearing scheduled for March 14, 2006.

The Correspondence consisted of four Zoning EIC Cease & Desist Orders and one EIC Cease & Desist Order. There was nothing listed under For Reference Only.

At 10:00 PM, Mr. DiCaprio made a motion to adjourn. Mr. Farah seconded the motion and it was passed unanimously.