

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
November 25, 2014

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Vice-Chairman Richard Wolf, Robert Gardner, Glenn van Deusen and Alternates: John Moran and Donald Scarborough

Mr. Snaith opened the public hearing at 7:33 p.m. The Board Secretary read the agenda into the record. Mr. Snaith then explained the procedure for the applicants.

CONTINUED: VALLEY FORGE ROAD, owner, AQUARION WATER COMPANY OF CONNECTICUT, Map 9, Block 3, Lot 3, Weston Land Records Map 3574, Appeal from the Zoning Enforcement Officer's decision not to issue a cease and desist order to Aquarion Water Company of Connecticut as requested by letter on June 5, 2014

Steve Nevas, Esq. and Mr. and Mrs. Lewis came forward to discuss the appeal. Attorney Nevas submitted a memorandum of law responding to the questions raised at the last meeting. He stated that it is clear that the Town, as primary user of range, knew well before this action was filed that the area was used as a firing range and therefore, the Zoning Enforcement Officer, as an officer of the Town, should have known of the use. He also stated that they think the claim that there is currently nothing to Cease and Desist is hollow. Aquarion has known that the firing range is not permitted and asked for a permit to use the property for a firing range and currently, the Regulations don't permit a firing range as a use.

Mr. Moran commented that a letter from Mr. Sharon brought up the issue that an argument can be made that the range is related to security and they need to operate the range because they have enforcement people that need to be trained. Mr. Gardner questioned whether the length of time it has been in operation constitutes as a "grandfathered" use. Mr. Snaith noted that only location, not use, can be "grandfathered". He further noted that the issue before the Board is to reverse or affirm the actions of the Zoning Enforcement Officer. Attorney Nevas stated that the question is whether a firing range is permitted under the regulations of the Town and the enforcement of very clear zoning regulations. Mr. Snaith responded that he believes the appeal is premature and can be addressed when and if the site becomes an active firing range again. Attorney Nevas responded that leaves his clients in a state of suspended animation. The range was in use when the filed the complaint.

Mr. Snaith again noted that the purpose of the hearing is to decide whether to reverse or affirm the actions of the Zoning Enforcement Officer. There is no question that the site has been used for a range, but it is not operating right now and in the future, if they do, then things can be set into motion.

Town Attorney, Pat Sullivan, addressed the memo from Attorney Nevas noting that the Zoning Enforcement Officer has the discretion as to whether to bring an action or issue a Cease and Desist order and that the Town is exempt from zoning, not subject to zoning. She further noted that this has been going on for a long time on the property, and the Town needs to have their own officers practicing and training. Right now there is no firing activity occurring on the property and if a Cease and Desist was issued, how could you determine if it has been complied with? It is clearly premature. She also explained that Aquarion, as a public utility is not regulated by the Town the same way as private property. Discussion ensued.

Mr. Cho, Walnut Lane, commented that he would ask the Board to consider the benefits of having the range. He stated he doesn't live close to the range and doesn't know what the noise is like but they have the Weston Gun Club behind them and its use 2 or 3 times a week doesn't bother the neighbors.

John Matluck, commented that he lives 600 yards from the range and has lived there 19 years and has heard shots but infrequently. He stated that it is the "not in my backyard" syndrome but it has to be in someone's. From a safety standpoint, it is a small price to pay. He suggested that they put a notice in the paper when it will be used the 12-13 days per year. He supports the continued use of the firing range.

Robin King, Fawn Meadow Lane, commented that she supports the Weston police department, but it is not just Weston using the range. They are large guns, and very loud and they don't want to live with the noise. She asked if they could limit the use of the range to just the Weston police department for only 2 weeks out of the year.

George Logan, representative from Aquarion, stated that he has two points to reiterate, 1. that Aquarion has not and is not asserting that it should be considered exempt from the zoning regulations and 2. Training for their police force and the Weston police force, which assists them in patrolling the reservoir, is of vital importance in terms of safety and quality.

Betsy Peyreigne, Bradley Road, commented that she can hear it when they are firing at the range, she thinks it is alright and doesn't mind that the neighboring towns are using it as well. Neighboring towns assist in protecting Weston, when necessary, and a well-trained force is a good force. She thanked Aquarion for having the range there so they all can have decent training. If needed, they will be ready.

After some additional discussion, the public hearing was closed at 8:41 p.m.

Deliberations:

Voting Members: Snaith, Wolf, van Deusen, Gardner, Moran

Mr. van Deusen opened deliberations by stating that he thinks that a Cease & Desist should have been issued, but he is still trying to figure out the regulations. If they are going to resume the activity then why not issue now? On the other side, you can't issue a Cease & Desist for something that isn't happening. The questions are whether this range violates Weston zoning and

does Aquarion, as a public utility, need to be concerned. He addressed Section 321 regarding permitted uses and exceptions to that of customary use which includes protection of that water supply, which includes a police force that needs to train. He thinks it is within the regulations due to the customary usage exception. Mr. Wolf commented that the time period when the action took place and the action filed was a reasonable time and a Cease & Desist should have been issued. He is disturbed by the fact that they don't have an answer on whether a public utility has to comply with the zoning regulations. The Town says no and the Lewis' attorney says yes. He further stated that he is in favor of reversing the Zoning Enforcement Officer's position and having the matter resolved once and for all. Mr. Moran commented that there are two issues, 1. Is it before the Board legally and 2. Whether there is a right to use. Mr. Scarborough commented that he feels that not acting on the request was wrong but also thinks that Aquarion has a need to have a force and training, but doesn't know how zoning applies or doesn't apply in this situation. Mr. Gardner commented that they don't really know what Aquarion can or cannot do. Mr. Snaith commented that the notion of "stop doing what you're not doing" is compelling to him and is of the opinion that the Board should affirm the action of the Zoning Enforcement Officer. He also commented that this matter requires a different application and doesn't think that this is the right forum for a resolution.

MOTION

Mr. Snaith made a motion to affirm the action of the Zoning Enforcement Officer and Mr. van Deusen seconded. The motion was voted on and carried (4 – 1 [Wolf]).

APPROVAL OF MINUTES

Mr. Wolf made a motion to approve the Minutes from the October 28, 2014 meeting, as amended, and Mr. van Deusen seconded. All in favor, the motion carried (6-0).

APPROVAL OF 2015 MEETING DATES

Mr. Snaith made a motion to approve the meeting dates for the 2015 calendar year and Mr. Moran seconded. All in favor, the motion carried (6-0).

MOTION TO ADJOURN

Mr. Gardner made a motion to adjourn and Mr. van Deusen seconded. All in favor, the meeting adjourned at 9:11 p.m.

Respectfully submitted,

Delana Lustberg
Board Secretary

Date Approved: 2/24/15