

# The Planning Commission

Town of New Fairfield

New Fairfield, Connecticut 06812

Planning Commission Town of New Fairfield  
AGENDA Special Meeting Minutes  
Monday December 12, 2022, 7:30pm  
Town Library, Conference Room

**Commissioners:** Ms. Cynthia Ross-Zweig, Chair  
Mr. Cory Neumann, Vice Chair/Secretary  
Mr. Ernie Lehman  
Mr. Jeff Morrell  
Ms. Kristen Bennett O'Rourke

**Alternates:** Mr. Dylan White  
Mr. Patrick Callahan  
Ms. Olivia Micca (absent)

**Guests:** Wayne Skelley  
Evan White, Town of New Fairfield Zoning Enforcement Officer

**Call to Order:** 7:30 pm

## **APPROVAL OF THE MINUTES**

The November 28, 2022 Planning Commission Regular Meeting minutes were tabled until the next meeting.

## **CORRESPONDENCE/ANNOUNCEMENTS**

**Budget** – Cynthia Ross-Zweig went over the budget report that includes salaries, supplies, legal expenses, etc. The 2022 budget was \$6248. The proposed 2023 budget would include a decrease for supplies, an increase in salaries due to hours for the POCD, and salaries. A discussion was held regarding the POCD and how to get input from the people in town – survey monkey, workshops, posters. Ads in the newspaper, and meetings. An idea was given to add a link on the Planning Commission Facebook page.

Cory Neumann made a motion to approve the 2023 Planning Commission budget of \$5,000 for salaries and \$1,000 for materials and supplies. Kristen Bennett O'Rourke seconded the motion. (5-0-0) **All in favor**

## **PUBLIC COMMENT**

none

**NEW BUSINESS**

**Election of Officers**

Ernie Lehman made a motion to elect Cynthia Ross-Zweig as chairman. Jeff Morrell seconded the motion. (5-0-0) **All in favor**

Jeff Morrell made a motion to elect Cory Neumann as vice chairman/secretary. Kristen Bennett-O'Rourke seconded the motion. (5-0-0) **All in favor**

**OLD BUSINESS**

**POCD** Cynthia stated there hasn't been any additional information received from the First Selectman's office. The cost will be approximately \$60,000. Jeff Morrell stated that he was at a meeting where monies had been requested for the POCD but needs to go before the board of finance and be presented at a town meeting. Board members should plan on attending the town meeting.

**Discussion of Barn Brook litigation resolution** – it was received from the attorney's office this afternoon. –Cory Neumann read the first part of the stipulation (see attachment) The bond amount was set at \$ 645,296.85 which included 10% maintenance bond. The bond states that once the road is roughed in, drainage and catch basins installed, and the first binder of asphalt laid down two-thirds of the bond will be released. The amount to be released is \$430,197.90. The bond reduction will come before the board at the next meeting. Wayne Skelley stated the catch basin issues were resolved. A check was given to the Town of New Fairfield for maintenance. The bond release amount and timing is court ordered. All information has also been sent to Tony Iadarola, Town Engineer.

**STANDING ITEMS**

**Subdivision Log** – Kristen Bennett-O'Rourke stated Warrens Hill has five lots – three lots completed, one under construction, one not developed yet.

**ADDITIONAL ITEMS**

Evan White stated that there is a meeting hosted by the Connecticut Bar Association on March 11, 2023 from 8-4:30 pm via zoom that any board members can opt to attend. The fee is to be announced. Evan White is getting the specifics. Each committee member will need to have four continuing education credit hours per year as of January 1, 2023 and this class would fulfill this requirement. A second option is to have the town attorney do a four-hour training session.

**ADJOURNMENT**

Kristen Bennett O'Rourke made a motion to adjourn the meeting at 7:55 pm. Cory Neumann seconded the motion. (5-0-0) **All in favor**

**Attachment**

Order & Stipulation

Respectfully submitted

Dana Ulibarri

December 14, 2022

DOCKET NO: DBDCV226041940S

SUPERIOR COURT

ORDER 428420

HEARTH HOME BUILDERS, LLC  
V.  
PLANNING COMMISSION OF THE TOWN  
OF NEW FAIRFIELD

JUDICIAL DISTRICT OF DANBURY  
AT DANBURY

11/22/2022

ORDER

ORDER REGARDING:  
09/08/2022 102.00 STIPULATION

The foregoing, having been considered by the Court, is hereby:

ORDER:

After a hearing and testimony by Mr. Skelly in accordance with C.G.S. Sec. 8-8 (11) as to the settlement of the appeal, the court approves the terms and conditions of the settlement agreement attached as an exhibit hereto.

428420

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Judge: BARBARA BRAZZEL-MASSARO

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

D.N. DBD-CV22-6041940S	:
	: SUPERIOR COURT
	:
HEARTH HOME BUILDERS, LLC	: JUDICIAL DISTRICT OF DANBURY
Plaintiff	:
	:
v.	: AT DANBURY
	:
PLANNING COMMISSION OF THE	:
TOWN OF NEW FAIRFIELD	:
Defendant	: JUNE 14, 2022

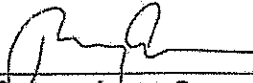
**STIPULATION TO SETTLE ADMINISTRATIVE APPEAL  
PURSUANT TO C.G.S. § 8-8(n)**

1. Plaintiff is the successful applicant before the Defendant Planning Commission of New Fairfield in connection with an application to re-subdivide Lot 12 in the Barn Brook Estates subdivision.
2. Said approval contained terms unacceptable to Plaintiff and Plaintiff brought this timely appeal of said conditions.
3. The parties had commenced negotiations prior to bring this appeal and those negotiations have continued after this action was brought and the parties have now reached agreement to settle this appeal by amending the resolution of approval to amend certain conditions and remove certain conditions and otherwise create terms of approval acceptable to both parties.
4. On or before June 16, 2022 at least 24-hours in advance in accordance with the provisions of Practice Book 14-7B(j), the Commission duly warned a May 17, 2022 special meeting of the Commission to consider the settlement of this appeal.

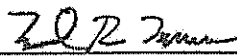
5. At its meeting of May 17, 2022, the Defendant Commission approved an amended resolution of approval a copy of which is attached at Appendix A (the "Amended Resolution").
6. The parties hereby stipulate, subject to approval of this Stipulation and settlement by the Court and the granting of their joint motion for entry of judgment in accordance with this Stipulation, that they agree that the terms of the Amended Resolution and the conditions contained therein, and the amount of the bond contained therein are acceptable to both parties and that judgment may enter for the Plaintiff that the amended resolution of approval attached hereto at Appendix A is and be the resolution of approval in substitution for that which precipitated this appeal.

DATED at Roxbury, in Litchfield County Connecticut and Danbury in Fairfield  
County, Connecticut as of this 14<sup>th</sup> day of June 2022.

THE PLAINTIFF-APPELLANT

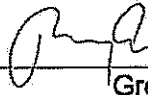
By  JURIS #305270  
Gregory James Cava - JURIS #305270  
THE CAVA LAW FIRM LLC  
Post Office Box 209  
73 Southbury Road  
Roxbury, CT 06783  
TELEPHONE: 860.350.3650  
FACSIMILE: 860.799.8304  
[greg@greccavalaw.com](mailto:greg@greccavalaw.com)

THE DEFENDANT-APPELLEE

By  JURIS #100090  
Neil Marcus – JURIS # 100090  
COHEN & WOLF PC  
158 Deer Hill Avenue  
Danbury CT 06810  
TELEPHONE: 203.792.2771  
FACSIMILE: 203.791.8149  
[nmarcus@cohenandwolf.com](mailto:nmarcus@cohenandwolf.com)

CERTIFICATION

This is to certify that the parties have provided each other with a signed copy of this motion via electronic mail to the addresses set forth in their respective signature blocks on the foregoing page.

 JURIS # 305270  
\_\_\_\_\_  
Gregory J. Cava  
Commissioner of the Superior Court

May 17, 2022

**Amended Resolution of Approval  
Barn Brook Estates Resubdivision Phase III  
Hearth Home Builders, LLC – Applicant**

**Section I: History and Recitals:**

WHEREAS, The New Fairfield Planning Commission (the "Commission") at its regular meeting on April 26, 2021, accepted an application from Hearth Home Builders LLC (the "Applicant") for the approval of Phase III of the Barn Brook Estates Resubdivision on Elwell Road (being a resubdivision of Lot #12 of Phase II located on Barnbrook Road), New Fairfield; and

WHEREAS, The Commission finds that said application conforms to the submission requirements of the subdivision regulations (2004 revision) of the Commission; and

WHEREAS, A public hearing was opened on May 24, 2021 and closed on August 23, 2021; and

WHEREAS, The New Fairfield Health Department in a memo dated May 25, 2021 approved feasibility of the general design concept for the six lot resubdivision with the following conditions:

1. An individual engineered plan for each lot with septic detail is required for final approval by the New Fairfield Health Department; and.

WHEREAS, On May 18, 2021, the New Fairfield Inland Conservation Commission approved Phase III of the Barn Brook Estates Resubdivision subject to certain conditions which subjects the approval to certain terms and conditions; and

WHEREAS, The Town Engineer and the Public Works Department in letters dated August 23, 2021 and September 25, 2021, made specific recommendations to the Commission, some of which have been addressed in the plans and the balance of which have been and are hereby rejected by the Commission; and

WHEREAS, The Commission voted to approve the Applicant's Resubdivision of Lot 12 (otherwise known as Phase III of Barn Brook Estates) on or about September 27, 2021 but did not adopt a resolution of approval until November 17, 2021 with conditions and advertised notice of the said approval in the Town Tribune newspaper on December 16, 2021 and the



Applicant took a timely appeal of the conditions of that decision (the "Applicant's Appeal"); and

WHEREAS, the Commission, the Town, and the Applicant desire to settle the applicant's Appeal; and

WHEREAS, the Commission does adopt in replacement of its resolution of approval dated November 17, 2021 the resolution which follows and to the extent to which this amended resolution of approval is inconsistent with the previously adopted resolution of approval, the provisions of this amended resolution shall be deemed to have repealed and replaced any such inconsistent provisions:

**Section II. Approval Resolution and Conditions of Approval:**

**BE IT HEREBY RESOLVED THAT**

The operative application, documents and plans consist of the following:

Re-Subdivision maps dated March 26, prepared by PAH, Inc., and Letter from Michael J. Mazzucco, P.E. dated April 12, 2021, Plans with Title Sheet dated March 26, 2021, Area Map dated March 26, 2021, Existing Conditions Plan dated March 26, 2021, Supplemental Map dated March 26, 2021, Farview Drive Road Plan dated March 26, 2021, revised June 23, 2021, Road Profile dated March 26, 2021, Supplemental and Erosion Sediment Control Plan and Notes, dated March 26, 2021, Construction Details and Notes dated March 26, 2021, revised June 23, 2021, Drainage Calculations dated March 26, 2021, and Subsurface Sewage Disposal Report dated March, 2021, and such other revisions that may be included in the Planning Commission record.

The New Fairfield Planning Commission approves the application for Barn Brook Estates Subdivision Phase III and authorizes the Chairperson, or Vice Chairman in their stead, to take the steps necessary to facilitate the Applicant's compliance with this Approval Resolution and with the Subdivision Regulations to ensure that the following stipulations hereby assigned as conditions of approval are satisfied:

1. All information, Commission conditions, Applicant stipulations and references to necessary compliance with Subdivision Regulations and Connecticut General Statutes are incorporated into this Section II.
2. Following the expiration of the General Statutes section 8-8

appeal period (fifteen days from the date notice of this Approval Resolution is published), the Planning Commission reserves the right to record a copy of this Approval Resolution signed by the Chairman of the Planning Commission on the Town of New Fairfield Land Records.

3. Compliance with stipulations in the approval of the Inlands/Wetlands Commission permit.
4. Conditions imposed by the New Fairfield Health Department are complied with.
5. Certification from a licensed surveyor that all required monuments and pins are set in place.
6. The developer has presented plans for the construction of the water supply to the New Fairfield Fire Department Water Supply Committee, which water supply plans have been reviewed and approved by the Town Engineer.
7. All driveway aprons must be paved.
8. Prior to any building permits being issued for certain lots, where applicable, a licensed structural engineer must prepare design drawings for the proposed retaining walls, the drawings for which must be approved by the town engineer and the Chief Building Official for the Town.
9. All catch basins are to be standard size basins with 2-foot sumps or as stipulated on approved drawings. All basins located prior to any leaching galleries should have 3-foot sumps, or as stipulated on approved drawings, and must be cleaned twice per year in the spring and the fall. The bottom of the galleries must be set on a bed of clean stone. The bottom of clean stone must be one foot higher than the highest water table marker as determined during the deep hole tests.
10. Prior to filing of the Record Re-Subdivision Map or any building permits being issued for these lots, the Applicant shall comply with the requirements of Section 6.10 of the Subdivision Regulations.
11. Presentation of one Mylar in recordable form (36"L x 24"W) of the record resubdivision map and four prints of all maps and plans as approved by the Planning Commission, upon satisfaction of the conditions listed in paragraph 12 below the Mylar will be signed

by Inlands/Wetlands Chairperson and the Planning Commission and released to the Applicant for recording in the Town Clerk's Office.

12. A time limit of ninety (90) days from the date of the Commission's approval is set for the applicant to satisfy condition number 10 set forth above and condition numbers 2 and 3 set forth below; extensions of this time period to be controlled by Connecticut General Statutes section 8-25.
13. The Commission and the Applicant will take immediate steps, consistent with this Resolution and state statute, which will allow for the endorsement of, and recording of, the Record Map for Phase III on the Land Records. The Record Map for Barn Brook Estates Resubdivision Phase III shall be recorded in the New Fairfield Land Records.
14. Unless an appeal is taken by the Applicant or a member of the public concerning the terms of this approval resolution, including the conditions and stipulations set forth herein, both the Commission and the Applicant concede and stipulate that the terms and conditions of this Amended Resolution of Approval control the prospective governance of Phase III of the Barn Brook Estates Re-Subdivision.

**The Commission's approval is also conditioned upon the following:**

1. No changes (s) shall be made to lot lines or other approved subdivision features, including but not limited to grades, easements, drainage, fire water supply, or driveway cuts or locations, without prior approval of the Commission.
2. No building permits shall be issued, nor shall lots be offered for sale, in Barn Brook Estates Resubdivision Phase III until the performance bond in a form acceptable to the Town Land Use Attorney, in the amount of: (a) \$586,633.50 and (b) the 10% maintenance bond in the amount of \$58,663.35 that will be held for a year as set forth below, in all a total of \$645,296.85 in the aggregate (the "Bond Amount"), has been filed with the First Selectmen's Office. The estimate of quantities in the bond estimate may change based on field conditions, unforeseen issues and any possible re-work required. Once the road is roughed in, drainage and catch basins are installed and the first (binder) course of asphalt is laid down, two thirds (2/3) of the Bond Amount (\$430,197.90) will be released. Once the second course of asphalt is laid, the shoulders are raked out and

dressed, any required guide rail and pond fencing is installed, the 14 monuments and 13 pins are set, and the as-built survey has been provided, the remaining one-third (1/3) of the Bond Amount less the 10% maintenance bond amount (\$156,435.60) will be released. Notwithstanding the foregoing, a ten percent (10%) maintenance bond (\$58,663.35) shall remain in place for a period of one year from the date the bond release is recommended by the Town Engineer. In addition, the Applicant will cause any silt that may have accumulated in the retention basins for Phase II and III to be removed at the time Applicant requests acceptance of the road by the Town.

3. Unless the Commission revokes it earlier or specifically approves an extension, this approval shall expire on May 18, 2027.
4. Failure of the applicant to complete all approved resubdivision work and improvements prior to May 18, 2027, or prior to an extended deadline approved by the Commission, may, as allowed by law, result in the Town's calling the bond or other security to complete whatever work is incomplete.
5. It is a condition of this approval that:
  - a) guide rails for proposed Farview Drive shall be required as directed by the Town Engineer. This is a determination that will be made in the field as proposed Farview Drive is constructed after the road is "roughed in" and a determination is made that road changes, such as improvements to the road shoulders, would be insufficient to avoid the need for guide rails. The necessity for guide rails shall be made by the Town Engineer in consultation with the Applicant and the Applicant's engineer. The need for guide rails is a safety issue given the grades associated with the proposed road.
  - b) safety fencing 4' in height be installed around the portions of the retention basin as shown on the approved plans or any portion of the retention basin where the entry to the basin is not a gradual decline.
  - c) the Town will maintain the Phase II and Phase III detention systems once construction of the systems is complete. To defray the cost of this maintenance incurred by the Town, within 30 days of the later of (i) the expiration of any appeal period from the vote to approve this Amended Resolution of Approval without an appeal being taken, or if an appeal is taken, within 30 days of the final resolution of said appeal by the court of last resort, or (ii) the approval of the settlement of this appeal by the Superior

Court, the Applicant shall deposit the sum of \$15,000 into a segregated account available to the Town of New Fairfield to use to pay the future maintenance expenses incurred by the Town for the Phase II and Phase III detention systems.

6. Consistent with Subdivision Regulation section 6.13 all inspections by the Town Engineer shall be at the cost of the Applicant. All inspections shall be in compliance with section 6.13.

With respect to the foregoing amended approval resolution for the Barn Brook Estates Subdivision,

For the Planning Commission:

Signed: \_\_\_\_\_

Printed: Cynthia Ross-Zwieg

Chairman, New Fairfield Planning Commission

Dated: May 17, 2022

Accepted by the Applicant:

Applicant:

Signed: \_\_\_\_\_

Printed:

Dated: May 17, 2022

