

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, DECEMBER 12, 2016 AT 7:30 P.M. IN COUNCIL CHAMBERS, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Earl J. Kurtz III, Chairman; Sean Stollo, Vice Chairman; David Veleber, Secretary.  
Members: S. Woody Dawson, Edward Gaudio, Gil Linder, Vincent Lentini, John Kardaras, Louis Todisco (8:10 p.m.).  
Alternates - Jeff Natale, Jon Fischer  
Absent: S. Woody Dawson and Alternate Jim Jinks.  
Staff: William Voelker, Town Planner

**I. CALL TO ORDER**

Chairman Kurtz called the public hearing to order at 7:31 p.m.

**II. ROLL CALL**

The clerk called the roll.

**III. DETERMINATION OF QUORUM**

Following roll call a quorum was determined to be present.

**IV. PLEDGE OF ALLEGIANCE**

The group Pledged Allegiance to the Flag.

**V. BUSINESS**

Secretary Veleber read the call of public hearing for each application.

- 1. Special Permit Application**  
**James Flood**  
**830 South Main Street**  
**Hair Salon**

**PH 12/12/16**  
**MAD 02/15/17**

Town Planner Voelker read Cheshire Fire Department comments, dated December 8, 2016, into the record.

James Flood, Bovano Plaza owner, 830 South Main Street, explained that the applicant wants to lease property in the Bovano Plaza for a small hair salon. The salon would be about 1200 sq.ft. The salon owner has been in business in Cheshire for 30+ years and wants to move to the 830 South Main Street location.

Mr. Voelker noted that the application includes the staff report and maps of the property.

The issue of adequate parking was raised by Mr. Natale.

Mr. Voelker stated there is enough parking; there is parking in the back of the site; and the peak hours of the salon business will not conflict with parking in the plaza area. There will be an adjustment as to who parks in the front and who parks in the back.

Mr. Flood advised there are two parking lots in the rear of the plaza. The hair salon has 4 staff members, and closes by 6:00 p.m. There will be plenty of parking.

Mr. Voelker read RWA comments dated 12/5/16 into the record.

2. **Waiver Request** **PH 12/12/16**  
**Whitney Watts** **MAD 02/15/17**  
**Tamarack Road**  
**Requesting waiver of Section 5.5.1**  
**The Subdivision Regulations**
  
3. **Waiver Request** **PH 12/12/16**  
**Whitney Watts** **MAD 02/15/17**  
**Tamarack Road**  
**To modify the Town R.O.W.**

Mr. Voelker read comments from the Town Engineering Department dated 11/30/16 and Cheshire Fire Department dated 12/8/16, into the record.

Ryan McEvoy, P.E. Milone and MacBroom, represented the applicant Whitney Watts. He said the applicant is seeking approval of a short section of the driveway to connect to the existing driveway to the cul de sac on Tamarack Road. The applicant owns 44 acres of property in this area with a 50 foot easement access out to Wallingford Road. The address, 825 Wallingford Road, is a different shaped property with the nearest portion of the lot located to the end of the Platts Knoll Subdivision approved by PZC in 1987; and the Watts property pre-existed the creation of the subdivision and the parcel has been in its current state since 1984.

Mr. McEvoy explained the following in his presentation.

With approval of the Platts Knoll subdivision, the cul de sac was constructed and approved as a temporary cul de sac and is shown on the plans. Tamarack Road terminates in the cul de sac with a 50 foot right-of-way extending from the edge of the cul de sac to the Watts property. The 1987 subdivision had discussion about access to what is now the Watts property. The town right-of-way did extend and accepted the roadway in its present form in 1997 upon satisfactory completion of the roadway.

Mr. Watts constructed a home in 2013, and used his driveway as sole access to his house to the existing 50 foot right-of-way to Wallingford Road. On the map Mr. McEvoy pointed out the distance from the current location of the Watts house; the driveway travels north to the subdivision, close to the Tamarack Road cul de sac; and continues to the north to Wallingford Road, about 500 linear feet long.

The applicant is seeking approval for a 40 foot gravel driveway section.

The waiver request is due to the fact that the Platts Knoll subdivision has a number of lots off the end of Stuart Drive, 25 lots, that exist beyond the nearest intersection towards Tamarack Road. The Watts parcel has a home, and is in the process of incorporating an in-law apartment...two dwelling units...one for the house and one for the apartment. The applicant is not seeking approval for any new buildings or lots. It is simply to allow Mr. Watts to connect the existing driveway to Tamarack Road.

Mr. McEvoy pointed out that the subdivision regulations have a number of criteria to be considered by the Commission, i.e. safety (addressed by CFD), driveway connection with improved accessibility for emergency apparatus to the Watts home, and closer access to a fire hydrant.

Section 11.1.2 Subdivision Regulations - Mr. McEvoy read an excerpt into the record. The waiver request generates no new building lots, is logical with respect to CFD, and there is no impact on the adjacent properties and the driveway exists within the town right-of-way that abuts the Watts parcel. The activity would be limited to a small section and would be a residential driveway. The regulations require a 3/4th vote of the Commission to grant the waiver.

Section 11.1.1 was read into the record by Mr. McEvoy. He stated the hardship is the unique nature of the Watts property. There is a large rear lot with a town right-of-way and cul de sac in close proximity, without ability to tie into without the waiver granted by the Commission. This is a truly unique parcel, shape, size and isolation of the Watts property makes it unique. The driveway and curb cut on Tamarack Road provides safety and access.

Resubdivision Application - Mr. McEvoy stated this is required because the applicant is seeking an approval to put a driveway in the town right-of-way and this was not clearly intended in the 1987 approval with the Watts property having ability to connect the driveway to this road. Based on State law this is the vehicle by which these matters are approached. It is a resubdivision; there is no creation of new building lots; the driveway will result in additional safety measures and access to the Watts parcel. The Fire Department and Building Department approve of this application, have no issues with it, and IWW does not require an application.

The "hardship" claim was questioned by Mr. Linder, and he asked why the hardship was not cited when the house was constructed.

According to Mr. McEvoy the hardship is the sheer length of the driveway with respect to it as the only available town road, Wallingford Road...it is a 2,500 linear foot driveway. The configuration would alleviate the hardship significantly. The Watts house was constructed in 2013. It is an oversized single family residential lot, but the parcel had the ability to support a single family house. The only option at the time was

construction of the driveway as we see it now, and Mr. Watts is seeking approval for the waiver.

In that regard, Mr. Linder said there could have been a request made in 2013. At that time there was no hardship; there could have been a connection; and now there is a hardship cited.

Mr. McEvoy said the hardship was always there, but at the time of construction the only available option was the driveway where it now is.

Mr. Natale asked about the rationale for having a driveway along a town right-of-way, in the northeast portion of the cul de sac, rather than move it to the northwest without a waiver.

It was stated by Mr. McEvoy that the waiver request is the result of the number of houses already on Tamarack at this time. Any additional dwelling unit constructed along that road requires a waiver. The applicant is not going northwest because of the actual direction of the right-of-way.

If that was done, Mr. Voelker said an easement would be needed because the lot belongs to someone else.

Looking at the property from the cul de sac, Mr. Veleber said there is a brown house to the right, and noted that house is not on the Watts property. He asked if there is any prohibition, if the application is approved, for the owner of the brown house coming out Tamarack Road. Ultimately, there could be two houses using this road. Once the requested driveway is put in, Mr. Veleber asked about any other properties being opened up for use, or the property being subdivided.

Mr. McEvoy said the brown house is a separate rear lot which shares a driveway with Mr. Watts. He pointed out the house on the map, and said access rights would have to be granted to this property owner by Mr. Watts, and then go through the procedure as well. No one has rights to go through the Watts property.

It was made clear by Mr. McEvoy that this is solely a driveway. For Mr. Watts to have a development of his property would require additional subdivision applications, IWW applications, and possibly Town Council approval. The subject application is very targeted for this driveway only, seeking a waiver to allow for access on Tamarack Road.

With approval and construction of the driveway, Mr. Watts will continue to maintain his driveway to Wallingford Road. He has access rights, if granted, to two town right-of-ways which would maintain his access to them. A corner lot is not even included in the maximum number of lots allowed on a cul de sac.

Mr. Veleber asked about this becoming a town road, and what happens to the Watts driveway.

The only person able to extend the road is Mr. Watts and/or his family. Mr. McEvoy said they would have to make provisions for continued access to the property. Right now, any access into his lot requires his approval, and he would have to find out how to maintain emergency access to their home.

Mr. Gaudio asked why this is considered a cul de sac.

In response, Mr. Voelker said it is not a typical cul de sac, but was designed and dedicated as a temporary cul de sac. This is a very typical set up, with a portion of the paved area on someone else's front lawn, with the front lawn to be restored.

Mr. McEvoy pointed out that the language in the subdivision regulations has a maximum number of lots in a cul de sac, approved in 1987, before the Platts Knoll subdivision was approved. There is no mention in the minutes about waivers for the maximum number of lots. Because it is a temporary cul de sac and configuration of the roadway, someone believed it was appropriate or allowable without special waivers. At this point, it is what it is.

Chairman Kurtz stated that with this application it does allow Mr. Watts to come back in two years from now for another house.

In that regard, Mr. McEvoy said the only way Mr. Watts can subdivide his parcel would be to extend the roadway and provide frontage for new lots along his property...either by extending the road from Wallingford Road or Tamarack Road. The Watts lot was approved before much of the rear lot language was adopted. The nature of the approval and right-of-way extended to his property, Mr. McEvoy said the intent was clear at the time, that the temporary nature of the cul de sac would extend in the future. The subject application is simply to get a driveway and nothing more.

Mr. Linder asked if the subdivision has an HOA for the existing development.

Mr. McEvoy is unaware of an HOA, and has not seen any activity for an HOA.

A question was asked by Mr. Linder about residents having any other rights not under an HOA.

Mr. McEvoy said the roadway is owned by the Town, and people just become residents on the street.

It was stated by Mr. Strollo that in the past other zoning boards looked at the maps and wanted to continue the roads onwards, and now PZC is running into these issues.

#### PUBLIC COMMENTS AND QUESTIONS

Gil Mor, 871 Wallingford Road, said his property is served by the driveway. This is a difficult situation for the family with two children, and is a major task driving to

Wallingford Road, especially in winter. He has concerns that access from the road will be limited to the cars and family accessing from their home. That entrance may become a public entrance going to other roads of the property...i.e. hunters and opening the door for development of the area. This is wetlands which will have a major impact on the town and entire area because of contamination of the water. The members of the community need assurance that this will be limited and not opened to other areas.

Mr. McEvoy responded, stating, that Mr. Watts is not suggesting there may not be a future development...and this would be a totally separate application and decision. The subject application is to get a driveway on his property. Future development is not part of this application.

For clarity, Chairman Kurtz said in the future for development of this property, Mr. Watts would need to continue either the Town road from Wallingford Road or Tamarack Road...and not off the existing driveway.

Mr. Mor asked if this access facilitates future plans and he wants affirmation on this issue.

If the approval is granted for the driveway, Mr. McEvoy said it does not open the door for any future development of the property. The applicant would have to go through the same levels of applications, review, etc. of any future development. The subject application has no bearing on future development of the Watts property.

Mr. Voelker said the circumstances do not change. If he does not build this driveway, Mr. Watts has the same rights under the regulations, and could come back to the Commission. We do not know this now. Even if the subject application was never submitted, Mr. Watts still retains the right to apply to develop his property. This could mean coming in from Wallingford Road, or some convoluted geometry coming from Tamarack Road, which would be difficult. If the Commission does not approve the subject application, it does not stop development of the property.

Diane Colechia, 647 Tamarack Road, a 16 year resident of the subdivision, said the cul de sac adds value to the Platts Knoll homes. She read a statement into the record citing facts about the Watts application having a negative impact on the City of Meriden public utilities responsible for the water shed, feeder stream, and reservoir which transverse the Watts property. It is less than a year since the neighborhood had strong opposition to the Watts effort to develop the property and piggy back on the Apex Development subdivision application. The Commission approved the Apex development as submitted. She said Mr. Watts is applying for a driveway on Tamarack Road and could go through the cul de sac, clear, and destroy the wetlands, and has built a home with two units. The Watts property has a history of unsuccessful attempts at development through the wetlands. People have been told the number of homes or units on Tamarack Road exceed the regulations with regard to cul de sacs. At the October 2015 public hearing, Mrs. Watts stated they were told they could not put a

driveway on Tamarack due to the number of established, pre-existing homes. The Commission was told by Mr. Colechia that the Watts have created a number of gravel roads throughout their property, at the end of Tamarack. They are parking and storing expensive commercial construction vehicles and equipment in a residential zone; employees park their cars and drive construction vehicles off the Watt property; and employees will use the Watts driveway on Tamarack for easy access to the construction vehicles developing a significant increase in traffic. The application for a driveway on Tamarack will be a gateway to further destroy the eco system to the homes. Ms. Colechia requested the Commission not grant the application, and said the driveway to the Watts home should remain on Wallingford Road.

Dr. Jennifer Murray, 837 Wallingford Road, asked about a temporary cul de sac in existence for many years.

Town Planner Voelker said it is temporary because it may be extended sometime in the future. The paved portion exists, a portion is on someone's private property, and there is an additional 50 foot right-of-way to the end of the property line. When originally designed, the intention is to extend the cul de sac. This is all shown on the subdivision maps, so anyone purchasing can see what they are purchasing.

Dr. Murray expressed her strong opposition to the Watts application. She said the Watts are aggressive developers in Town, worked hard to get access to the back 40 acres, and knew the property when they bought it...and now claim hardship. If granted, the Watts will have easier access to the back 40 acres, and this is their goal. She has lived for the last three years watching construction vehicles back and forth on the property, and storage of commercial vehicles, misusing the property already. Dr. Murray said the Watts have a history of accommodations from the Town...for the house built behind their house, calling it a condominium, and they are not accountable for following the rules.

Seetha Rama, 657 Tamarack Road, supports the comments of the neighbors, and asked the Commission to not grant this driveway access. He lives next to the driveway to Wallingford Road since 2001, in a quiet neighborhood. Knowing the history of this developer he thinks there is a different idea to all this...he wants access granted, and there will be trucks and business going through there, destroying a quiet neighborhood. Two acres of Mr. Rama's land has wetlands behind it, and it was to be quiet. The Watts plan looks like a business development to him, and asked that the application not be granted.

Sara Buell, 634 Tamarack Road, read an opposition statement into the record from Ralph and Lauren Carbone, 635 Tamarack Road. Ms. Buell said she and her husband are opposed to the application. She commented on the Watts family wanting the waiver to build a driveway by using the cul de sac on Tamarack, when the road is already over the number of homes (16) allowed. The Watts knew all this when they purchased the property and built their home. If the waiver is granted, she asked what will stop them from building another house or two. She does not believe the Watts own

the 50 foot right-of-way; they are given an easement from the other piece of property with the shared driveway. If they don't have the frontage, she questioned why future houses need frontage...the Watts would just give them use of their driveway. Since the Watts currently share a driveway with the red house, this would be three houses. Mr. Watts is trying to build on their 44 acres, were told they cannot until now, because of the wetlands and cul de sac. Ms. Buell said the waiver should not be granted because the Watts are now suing the Town over the Apex Development rejection in 2015 by the Commission. With regard to fire trucks, Ms. Buell said there is a fire hydrant between the last two houses on Tamarack - 655 and 657; fire hoses can be connected without the new driveway to the Watts house; and a fire truck cannot go up this little driveway taking a left hand turn to the Watts house. It was stated by Ms. Buell that the Watts are already breaking codes by construction vehicles in and out of their property, and the driveway would bring more construction vehicles through Tamarack. She is against approving this application and asked the Commission to vote against it.

Barbara Hekeler, 620 Windsor Court, read an e-mail in opposition to the Watts applications from Mr. and Mrs. Dandrow. Last year the Watts wanted to piggy back on the Apex Development and could not because of Philson Court and Tamarack Road cul de sac. It was made clear by the Commission that this could never be done, and now we are here again. Ms. Hekeler recognizes that the Watts are developers and know the inner workings of development and finding loop holes for future long term development. It is her understanding the Watts were granted application permission for a Christmas tree farm on their property...and she asked where the access would come from with sales of trees. Regarding hardship, she expressed respect for the Fire and Police Departments, but was unsure where the relationship is, and finds it hard to understand why there is now a hardship for the Watts. There is a shared driveway for Wallingford Road with the red house in the back, and it was never deemed a hardship for the red house property owners. If there is a hardship, she asked why a certificate of occupancy was granted if it was deemed a safety concern. Ms. Hekeler commented on the application for an additional in-law dwelling being set up when there is a hardship. She is not comfortable with the Fire Department's position on the application. Ms. Hekeler mentioned Tamarack being a full cul de sac, and this is misrepresented last year and at this application. No one has mentioned Tudor, just Stuart...Tudor has several homes...and the subdivision is at maximum for the number of homes for this particular part of the cul de sac. The only access out of the cul de sac sits at Tudor and Tamarack. She also commented her concerns on the commercial trucks in and out of the Watts property, noise and concern for the alleged burning of garbage, filling in of the wetlands, lots of backhoe and dirt movement. Ms. Hekeler has other concerns that this is the ultimate goal of development of the Watts property, which was made clear last, with lots perceived without disrupting the aquifer and wetlands. She does not want to see property values decrease in value. Ms. Hekeler asked that the public hearing be left open due to the information presented by neighbors, and stated she is in opposition to the approval of the applications.

Dr. Jen Murray talked about the tree farm and her understanding that the Watts, in the original permit to build their home, did not put in that they would be clear cutting all the

section where the tree farm is located. The tree cutting went right up to the water company property; this was brought to the town and investigated; and the town retroactively granted the Watts permission for the tree farm. She said the pattern of the Watts is to work hard to bend the rules to suit them.

William Donahue, 618 Windsor Court, has 300 feet of back yard that abuts the Watts property. His major concern is the commercial trucks, dump trucks, pay loaders, etc. steel pallets piled 20 feet high, cars parked there when employees go to work, and early morning dump trucks starting up and warming up. There were trees with leaves, and now without leaves he can see the parking area in his back yard.

Chairman Kurtz stated that the commercial use is not permitted in a residential neighborhood.

Town Planner Voelker informed the Commission and the public that he had two conversations with the Watts family and informed them that to conduct dispatch on the property is not a valid use of the property. A written notice will be given to the Watts; if they continue the invalid use there will be a cease and desist order issued; and if it continues they will be taken to court. The Watts have been informed this is an illegal activity. Mr. Voelker re-emphasized that no one can dispatch or assemble construction activities on the property that is not directly accessible to their individual use of the property as a single family home.

Mr. McEvoy explained the construction activity is associated with the in-law apartment work going on now. The personal vehicle of Mr. Watts is a diesel truck, and he has been made aware of the prohibition of construction activity other than ways for what is permitted to be done.

It was noted by Mr. Voelker that the in-law apartment is interior work in an existing single family home. He questioned how long Mr. Watt needs and expects this equipment on the property. The neighbors can see what is going on and should inform the Planning Department. Following conclusion of the activity with the in-law apartment, the activity must stop. There must be reasonable and customary use, and dispatcher construction activity on residential property is not permitted.

Whitney Watts, 825 Wallingford Road, said his every day car is a diesel truck. He has trucks coming to work on the property for the in-law apartment and general maintenance, mowing, etc. He brought a backhoe to plow out snow; other equipment and crews were there for work around the trees; he does not keep equipment at the property but at the job site or work yard.

It was restated by Mr. Voelker that Mr. Watts cannot casually leave equipment on the residential property; workers cannot come in pickup trucks, and dispatch from the property.

In the Fire Department memo, Mr. McEvoy said the memo prefers the shorter distance for emergency purposes, and this waiver would enhance access to the home. Regarding wetlands and environmental concerns, this is a narrowly construed and proposed to conduct this limited 40 foot section of the driveway. IWW had no issue with the application. Future development has no bearing on the proposal before the Commission. To extend the roadway, Mr. McEvoy said it would require coming back to the Commission. The application is to provide emergency access to the house. As a practical matter when Mr. Watts drives down the road, right by the cul de sac, and it is another 50 feet to Wallingford Road. There are no safety impacts as evidenced by the Fire Department comments; there are no new building lots; and Mr. Watts would still maintain his access out to Wallingford Road.

Mr. Linder asked about the width of the driveway and the curb cuts.

The driveway width is 12 feet and Mr. McEvoy said there is a few more feet for curb cuts.

With regard to the tree farm on the property, Mr. Veleber asked where it is located, and if customers would come out to Wallingford or Tamarack.

On the plans, Mr. McEvoy noted the trees are more to the eastern side. 500 trees were planted; it would be about 100 trees per year; there is no long term plan to harvest them, and there is no impact on Wallingford or Tamarack Road. The tree farm is a normal use on a residential property.

Mr. Natale commented on the initial statement that Mr. Watts would be the only one using the new driveway. Now, we have construction people using it, and a tree farm with customers using it. He asked if there is more the Commission should know about regarding use of the driveway.

In response, Mr. McEvoy stated the applicant is seeking what is allowed for a residential driveway, and the property will not be a construction yard. He further stated a tree farm is an agricultural use allowed in a residential zone, and this farm is in its infancy. Right now there would, theoretically, be access to take the trees out through Wallingford Road. With the driveway on Tamarack they could use this road as well.

Mr. Natale raised his point that, initially, when Mr. McEvoy gave his presentation, there was no mention of the tree farm. He asked, again, if there is anything else going on that is planned for use of the property.

Mr. McEvoy said there are no plans, to his knowledge.

Mr. Linder concurred with Mr. Natale's comments. The presentation was made, there is a position paper from the Town Planner, and then we find out about a tree farm which is a key point to be considered by the Commission. He expressed disappointment that this did not come up during Mr. McEvoy's presentation.

William Donahue talked about the part of the discussions on the fire hydrant being 1,500 feet away from the Watts property, with the Fire Department stating this is a safety concern. He informed the Commission that his house is adjacent to the Watts house. There is a fire hydrant in front of his house; it is no more than 300 feet from the Watts garage; and he questioned why the Fire Department did not see this fire hydrant.

The Commission was told by Mr. McEvoy that Mr. Watts is willing to restrict use of the proposed driveway by the tree farm.

Chairman Kurtz said he would speak with the Fire Department staff, and get a correct answer from the department.

Ms. Buell asked the Commission to address the garbage cans from the Watts property on the Tamarack Road cul de sac. The cans are put out hoping the trash people will pick them up...but they do not...and this needs to be addressed.

Mr. Voelker informed the neighborhood residents that they can file a complaint with the Public Works Department as this matter falls within their jurisdiction.

Chairman Kurtz continued the public hearing to January 9, 2017.

## **VI. ADJOURNMENT**

MOTION by Mr. Veleber; seconded by Mr. Kardaras.

MOVED to adjourn the public hearing at 8:50 p.m.

VOTE           The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk