

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Regular Meeting

February 27, 2013

Chairman David Pruett called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room L101 at the Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Carol Anest
Vice-Chairman Michele Camerota
Commissioner Michael Camillo
Commissioner Cathleen Hall
Commissioner David Lenares
Chairman David Pruett
Commissioner Stanley Sobieski
Commissioner Frank Aieta-A
Commissioner Audra Ekstrom-A
Commissioner Kenneth Leggo-A

Commissioners Absent

Staff Present

Craig Minor, Town Planner

II. APPROVAL OF AGENDA

Chairman Pruett: Any changes or concerns?

Craig Minor: Yes, I recommend that you delete Public Hearing item III E, that's Petition 08-13 Special Exception for free standing business sign at 1080 Main Street. The applicant did not put the sign up in a timely manner, so I recommend that be removed.

III. PUBLIC HEARING

- A. Petition 38-12: Special Exception (Section 3.15.8: Motor Vehicle Service Use) at 2903 Berlin Turnpike. Wex-Tuck Realty LLC, owner; Bismarck Real Estate Partners Inc., applicant; Jason Mikrut P.E., 54 Tuttle Place, Middletown, CT, contact person. Continued from February 13, 2013.**

Chairman Pruett: Thank you. I see the petitioner is here.

Attorney Knuff: Good evening Mr. Chairman, again for the record, my name is John Knuff, I'm an attorney with offices at 147 North Broad Street in Milford, Connecticut and I'm here on behalf of Bismarck Real Estate Partners proposing a Firestone Complete Care Center on the property located at 2903 Berlin Turnpike. As you have just noted there are three applications before you, Special Permit for auto related use, site plan application and request for approval of location and Jason Mikrut, as last time, our project engineer is with me tonight. There's a couple of outstanding matters from the first hearing that we want to address specifically this evening. I note however first that we received two memos from the Town

Planner, Craig Minor, and I believe that all of his issues have been resolved including the issue of the retaining wall. He does note of course that certain things, particularly the garage doors facing the public street are up to the Commission's discretion of course. So we did some additional exhibits and some additional studies and I think that they tell a very good story in terms of the issues that are raised, particularly by the neighbors. So what I'm going to do is, we have some hard copies of the new slides, I think there is a total of five additional slides, these handouts, we only have two hard copies for the Commission, I will submit these, but this handout includes all of the slides from our last hearing as well as the five new ones for tonight, and then, as Jason takes you through the cross sections that you will see, I'm going to hand out another memo with tabs entitled Bismarck Real Estate Partners that responds specifically to some of the questions that the neighbors brought up.

So with that, the first slide that you will see here is an aerial photograph of the site, with our site plan superimposed on it along with the Bonefish application as well and my guess is that you are probably in a better position to see the distances to the neighbors, but I think it is probably the most important thing to be looking at tonight because it provides the context for just about everything that we are going to be talking about. I think it's worthwhile to note a couple of different things. So I'm going to open to the hard copy of that page. For simplicity's sake, I'm going to be referring to the right side of that photograph as the north, the top being west, so south to the left and east to the bottom.

First thing I think that jumps out to us is that our property is surrounded by existing trees, there is existing commercial property that surrounds this property and in all cases, there is an intervening property, there is another property between our garage bay doors and the public way, in particular you can see in the northeast corner of our building, there's sort of a (inaudible) that juts down, that property is owned by the DOT, and it has substantial vegetation on it, which will also serve to block views of the garage bay doors. When I show a cross section, you will note that we haven't taken credit for any, but there is substantial vegetation on that property, and that property does intercede, or comes between our garage bay doors and the building itself, and the Berlin Turnpike for the majority of our site. In addition you will see that we have culled out the distances to the three nearest property owners, the residential property owners, and we culled out this distance because not only from those homes to our property line, but those homes to the building itself. In one case, we also have culled out the distance, the nearest property which is 2110 Main Street, to the closest garage door, and that is going to be pertinent in a few minutes when we start talking about the impacted (inaudible). As you can see on the far right, all the property that surrounds our parcel is zoned Planned Development, so that is all commercial property. We can't say when or if it will be developed, but certainly that is a possibility that it will be developed. The neighbors had raised the concern about what may happen to those trees, well, as you can see, as far as our application, a substantial number of trees will remain, particularly in between our location and the three nearest neighbors, and in fact, all of the residential neighbors. So again, could that commercial property at some point in the future be developed? Yes it could. Is it part of this application? No. Will those trees remain at least in the near future? Yes they will. But I think the most important thing to take away from this is whether or not that Planned Development property is developed, our impact on the neighbors will be negligible at most because there will always be something intervening, or interceding between our use and those residential neighbors.

It may be a little bit hard to see, but the last thing I want to point out on this aerial photograph is on the western boundary of our site, there is a blue line that depicts a fence and that will be important when you see this cross section and in the northwest corner there is a row of evergreen trees that shields the dumpster location but in addition to the dumpster will also shield any views of our building and of our site to the neighbor who resides at 2110 Main Street. So I think that provides a good context for the Commission, you know, to show that we are sort of isolated, not sort of isolated, we are isolated particularly from the residential area, we are isolated to a certain extent from the Berlin Turnpike because of the DOT parcel

to the east, and I think that will be helpful to you when Jason shows you the cross sections, and as he does that I will hand out the copies of the memo that I prepared.

Jason Mikrut: Thanks John, good evening everyone. I'm a senior project engineer with Vanasse and Brustlin. As John mentioned, I'm going to discuss the cross sections with you. At the last meeting we presented a cross section and a view from the Berlin Turnpike and we received a few comments from the Commission and also from the public. These comments included to add some additional landscaping in the front yard between the Berlin Turnpike and the building, to look at some additional views from different points on the Berlin Turnpike looking at the building, and also from Main Street, what might be seen from some of the adjacent residences. A third comment was also look at what views might be changed from an SUV or a truck, since many of the vehicles out there today are made up of those vehicles. So we have done our homework and we have provided some additional cross sections, actually we addressed the comments as proposed. First of all we have added some significant amount of landscaping in front of the area. We've added two very large trees, they're River Birch Multi Trunk. These trees grow to be very wide and will provide some great screening in this area. So now with the trees that we provided at the front of the site, there's six very large trees in that area that will provide some significant screening. They are about twenty feet, twenty-five feet on center, located throughout that area and they are also going to be supplemented with significant amount of shrubs as well. This is the first view that we have, and you might recognize it. It is the same view that we presented at the last meeting, however we have taken it from the height of an SUV, measured at five feet off the ground rather than three and a half which is the commonly accepted height of a car, so we have gone up a foot and a half to take into account SUVs and trucks that might be traveling along the Berlin Turnpike. So with this view you can see that there is still a significant amount of screening of the bay doors. This white area here represents the ten foot high bay doors, at the front of the building. We have a four foot high vegetative landscape berm, and then in this location there are shrubs that are going to be about four feet high at the time that they are planted. So, in this case, the sight line from a five foot high SUV to the building really just hits the very top of the bay doors. So you are getting a significant amount of screening from this location. Again, just to point out, this location is looking straight on at the building from the Berlin Turnpike, perpendicular to the building bay.

The second view that we provided is looking at the building from the Berlin Turnpike traveling southbound, so we are looking as you are coming down the Berlin Turnpike southbound from a point in this direction, at the building. As John mentioned before, there is DOT property, this triangular piece that is between our site and the Berlin Turnpike. That portion of the property as you can see in the aerial when you look back does have a significant amount of trees on it. There is a tree line that is shown out there, however we didn't take them into account in the sight line that we are providing. We are only showing the proposed trees that we are going to have out there, as well as four foot high white vinyl fence that we are also providing for screening in that area. So, keeping in mind that the existing landscaping is not shown, or the existing vegetation is not shown, if you were to travel, coming any further from the south, we feel that the view of the building is really going to be obscured and there really won't be anything to be seen until you get at least to this point if not further with the vegetation that exists out there today.

The third view that we looked at was traveling northbound on the Berlin Turnpike. Standing down on the northbound side here, or I'm sorry, in a vehicle in this area, looking towards the site, what you would see from there. Again, in this situation, we have a four foot high white vinyl fence as well as the proposed trees in that area, and you can see that the view of the bays is significantly screened and with the trees in that area, you really will not see very much of the bays.

Finally, I know one of the big concerns of the public was the view that you might see from Main Street and from the residences that are in that area. We again took an SUV over in this area and cut a sight line to the building, so looking from here to the residences that were in question, so basically right between those homes there and took a view to the building, so you can see that there is a significant amount of vegetation in that area as well, and you can see in the aerial those trees in that area, so we feel that this building really will be blocked by the existing vegetation, however you know, we all understand that in the winter time when the leaves all fall off and everything, it may not be quite as dense in that area, so we show a sight line of what you would see, even if that vegetation wasn't there, and what you have on the site is, there is a retaining wall and significant grade change as you are looking up at the building. On top of that grade change we are actually providing a retaining wall that is three feet above the grade. That retaining wall is described as force impact for any vehicles in that area and it also is going to provide additional screening from Main Street. On top of that three foot high retaining wall is another four foot high vinyl fence. So you have seven foot high screen there from above grade of the parking lot, so if you cut a sight line from the eye of that SUV you really don't see very much of the bay doors, if anything. What we're showing on that sight line is really right at the top of that ten foot bay door. So those are the sections and the modifications that we have made. We feel that these sections demonstrate that we are properly screening these doors and very little will be seen from all these different angles that we have looked at. With that, I'll turn it back over to John.

Attorney Knuff: I would note Mr. Chairman, in terms of the additional trees that we placed along the Berlin Turnpike, that they are depicted on the cross sections, in the sort of small inset landscape plan. We haven't submitted a separate sheet of the revisions to the landscaping plans, but they are depicted there and we would be happy to provide that to the Commission after tonight. I'm just going to ask Jason, and turn now to more specifically the questions and comments that were raised by the neighbors the last time, and one of the questions that came up was whether the delivery truck that will visit the site approximately once a week for a couple of hours, whether that truck will block any of the required parking spaces, and the answer to that is no. Jason, does the aerial depict that or is there another plan that you can show us?

Jason Mikrut: Site plan okay?

Attorney Knuff: Yeah, that's fine. On the back side of the building, on the top side, there is a loading area in that top point and you can see that there is an area that is kind of yellowed out, directly adjacent to the building which depicts where there is going to be a concrete loading, so what will happen is that the truck will park along side, directly next to the building, and will unload in that back corner. So that will still provide a drive aisle for patrons to get into those parking spaces and won't impede the use of those parking spaces at all. We expect that the delivery truck will come during the day, one time a week and stay for a couple of hours to unload and then depart, and that will be the only time in the week that the truck will be located there.

Now some of the other questions that were raised by the public, I would ask you to turn to the packet I just handed out a moment ago. There was a question about the waste that would be generated by the use, initially the comment was about trash, and of course this isn't a use that generates trash the way that a fast food restaurant might, but then it was clarified that there were concerns about tires being carried off the site, and oils, and those sorts of things, if there is an oil change performed, and what this memo does, is from Bridgestone Retail Operations, obviously Firestone is a part of Bridgestone and it sets forth every item that can come off a car. Oils, anti freeze, tires, parts and specifies specifically how those are dealt with in an environmentally friendly manner and also in a manner that complies with state

regulations and state statutes. So Firestone is actually very, very careful about maintaining its environmental record. They do not want to have any issues at any of their stores, throughout the state and these are the procedures that will ensure that there is no negative impact. Behind Tab 2, there is a question regarding diesel engines running, and behind Tab 2 is the state regulation that sets forth the requirements that any diesel truck can only idle for three minutes if it is sitting and unloading. Obviously it doesn't apply if you are sitting at a traffic light for more than three minutes, but if a truck is unloading, it can only idle for three minutes, and then it must be shut off and we are required to follow the state regulations and we will, so the concern regarding diesel engines running is not a concern because they are limited to three minutes.

There was a question regarding noise from the facility and what I've done is behind Tab 3 is provide you, on the Connecticut DEP web site, the DEP largely relies upon local ordinances to regulate noise, and so on the DEP web site they have a noise ordinance for every municipality in the state, including Newington, and behind Tab 3 is the Newington noise ordinance and it is largely similar to most other towns. A couple of things are important here, including the definition of day time hours which run from seven a.m. to ten p.m. That's a relevant defined terms because our operation is open from seven a.m. to seven p.m., so we never get into the night time concerns, we only operate under the day time hours as defined in your noise ordinance. There is also a definition of impulse noise which would apply to the tools that would be used to take a tire off a car. Now if you continue on, you notice that on page 4 there is a limitation for noise which is permitted in a business zone which is us, and which is received in a residential zone, the limitation is 55 decibels. But in addition to that, if you look at C, and turn the page to C-3, it says, No person shall cause or allow the emission of impulse noise in excess of 100 decibel peak sound pressure level at any time, so the relevant criteria in our case, from the tools that would be used is an impulse noise and whether or not that ever exceeds 100 decibels at a residential receptor. What I will show you next, behind the next Tab, is not only does the tool that Firestone uses comply with the impulse noise requirements, but they even comply with the other noise standard which is 55 decibels even though it really doesn't apply to that sort of noise. So if you look behind Tab 4, at the far right hand column, they list non-transit sources and we take indoor and the loudest item there is shop tools and use, and that's approximately 94 and 95 decibels, and we confirmed with Firestone that that is indeed the decibel levels at which their tools operate, and that is measured at three feet away. Now what we have done, and this is where that distance on the aerial photo at 284 feet becomes relevant, is a decibel level of 95 at a distance measurement of three feet once that is extrapolated to 284 feet away, so that is assuming that that tool is being used at the bay door itself. Not with the bay door closed, and not where all that work would actually be taking place, because we wanted to be as conservative as possible, and that point our decibel level, at the very bottom, was 55.22. Now what is important is, is that that calculation, first of all whether or not we comply with 55 dB for these tools is not relevant because it's an impulse noise, but even if it were, it meets the criteria, only .22 dB over, but it doesn't take into account the fact that the trees are there, that it is going to be inside a building, doesn't take into account the fence, so it's an extremely, extremely conservative measurement so that we can give the Commission and the neighbors comfort that the tools that will be utilized will not impart any sort of negative impact to anybody, even the closest.

There was also a question from one of the neighbors along Main Street about the impact of this traffic to their homes on Main Street. As I noted last week, our traffic is very, very small as compared to other permitted uses in the zone, and the other permitted uses include restaurants, fast food such as Krispy Kreme, any type of retail store would be permitted on the site, including a drug store, a bank, a dry cleaner, and this use is really going to be below any of those uses in terms of the amount of traffic they generate, and also significantly below what has previously been permitted on the site when it was a Krispy Kreme. Nevertheless,

what we have done in the report behind Tab 5 is just to provide some type of context . VHB did a summary of the traffic counts that take place on Main Street and what you see is a weekday, p.m. peak hour is 1,131 cars travel on Main Street and during a Saturday mid-day peak hours, 955 cars travel up and down Main Street. We will be contributing 29 cars in that overall, approximately 1,000 cars, so less than, and I think that 23 of the 29 cars are assigned to Main Street, so at most we will be contributing two percent of the cars that travel on Main Street during the peak hours. So, while I understand that there is concern by the neighbors about the amount of traffic on Main Street, our contribution to that is fairly small. Next there was a question regarding the interpretation of the regulations and the man made things that we are adding to the site, including the fence and the berm and the landscaping, those sort of things can be the basis on which you can grant the waiver for the garage bay doors facing the street, and I was here for most of those sessions of public hearing, but nevertheless we went through all of the minutes of the public hearings and I found no discussion specifically regarding that is has to be something inherent to the property that gives rise to that waiver. Even if you took that view, I think there is sufficient evidence to still grant the waiver based upon the surrounding property and the topography and the existing vegetation but I don't think that is a proper interpretation. I don't recall that being considered by the Commission, and I think the combination of the existing condition of the property, the topography, the existing trees, and all of the things that we are doing, the fence, the landscaping, the berm, is sufficient basis for granting the waiver. That concludes our responses to the neighbors and I think all of the Commission questions. If you have any, I'll be happy to respond of course.

Chairman Pruet: I'm curious, does Firestone keep the bay doors open when they are operating, or is there no set procedure, or

Attorney Knuff: It's, the building will not be air conditioned, so it is possible on a particularly hot day that the doors can be open, but even if the bay garage doors will be open, there's still going to be some attenuated sound by the doors itself.

Chairman Pruet: Okay, I'll go over to our Town Planner, Mr. Minor for staff comments or concerns.

Craig Minor: Actually the applicant addressed most of the comments in my report to the Commission. The outstanding issue though which the applicant addressed, is the visibility of the bay doors, and the zoning regulations give the Commission the authority to waive that, so if the Chairman would like, I can address that.

I have a memo that I prepared for the Commission, and I will give you a copy tonight. Chairman Pruet asked me to comment on the TPZ's legal authority to approve Firestone Complete Auto Care's request for overhead service doors facing the Berlin Turnpike. My comments are as follows:

Section 6.11.7 of the Zoning Regulations reads as follows:

"Overhead service doors shall not be permitted on the public street side of an auto-related use or a motor vehicle service use. The Commission reserves the right to alter this requirement for a corner lot or when, in its opinion, the natural, topographical, or manmade utilities of the site clearly indicate that the requirement is inappropriate. Such action shall require a two-thirds vote of the Commission."

The site in question is a corner lot, and the site development plan includes a landscaped berm between the front of the building and the street. The building contains overhead service

doors, but the applicants feel that the landscaped berm constitutes "manmade utilities of the site" and is therefore eligible for approval.

There are several key phrases in this regulation:

- (1) "natural, topographic, or manmade utilities" this language was copied verbatim from the buffer regulations (6.10.5 C) when the auto related uses regulation was changed last year. The TPZ's intent was to use a phrase that already exists, and which covers a wide range of possible mitigating circumstances.
- (2) "clearly indicate" again, this language was taken from the buffer regulations. In my opinion it refers to no reasonable doubt that the prohibition is unnecessary. If the TPZ has any doubt that the berm and landscaping will completely screen the service bays, in my opinion the request for overhead doors should be denied.
- (3) "in its opinion" the applicants must demonstrate to your satisfaction that, in their case, this prohibition is unnecessary. Only TPZ can say whether the applicant's have met this burden or not.
- (4) "is appropriate" This begs the question of why TPZ adopted this prohibition in the first place. There is nothing inherently bad with overhead service doors. The intent of the regulation was to spare motorists the unattractive sight of partially disassembled cars being worked on in these garage service bays when the doors are open. If the view of the service bays can be blocked some other way, there is no need to prohibit the overhead doors. In such cases the prohibition could reasonably be considered "inappropriate."

If, based on the record (i.e. the site plans and the cross-section drawings submitted by Firestone that demonstrate what can be seen from the Berlin Turnpike), TPZ is satisfied that the service bays won't be visible from the street, TPZ may approve the request to "alter this requirement" When the time comes to vote on the site plan approval application I recommend this approval be done in the form of a separate "finding" with its own motion, second, discussion, and vote.

So Mr. Chairman, that's really the only concern that I have with the application at this point is the discussion as to whether the garage bays would be visible from the street, and that's a judgment call that the Commission will make after reviewing all the information.

Chairman Pruet: Okay. Commissioner comments? We can start with Mr. Minor's memorandum to this and then any questions for the applicant.

Commissioner Sobieski: On item four, I agree with the Commission that our intent was that overhead doors be blocked from the public view and if a man made berm can do this, I find it acceptable.

Chairman Pruet: Okay, Anybody else.

Commissioner Camerota: I agree with number four, but for a different reason. As I sat here during discussions of whether or not to bring back the auto related uses and a lot of our concerns were keeping, you know, we did a lot of work on the Berlin Turnpike to make it look good, we feel like our section of the Berlin Turnpike exceeds the sections of other towns, and I think our intent really was to keep that attractiveness of the Berlin Turnpike, so I think that, while we didn't want to prohibit overhead doors completely, we did recognize that some times

they are an eye sore, so I think that if they can be blocked appropriately, either by the position of the building or man made devices or whatever, that that would be appropriate, of course we would have to take each application on it's own merit.

Commissioner Anest: Just want to concur with Michele that during our discussions, our intent I believe was to isolate the doors from the public, from the street view and if a man made berm or something can block that view then we can consider the application, and like Michele said, I believe our intent was to be able to block the view from the street.

Commissioner Hall: I just have a question as to why we are considering this a corner lot? I can see Urgent Care and Bonefish being one parcel, being the corner, but isn't this a separate parcel?

Craig Minor: You're right. It's not a corner lot. The regulations just say a corner lot or....

Commissioner Hall: But you, in your response said that you consider this a corner lot.

Craig Minor: I was mistaken, I was, in my mind merging it.

Commissioner Lenares: After hearing some of the deliberations of the Commissioners I would have to agree that the element of not having a door being viewed, now I'm not saying our regulations are perfect by any means, I always question them sometimes along the way, but if the regulations are saying that the overhead doors shouldn't be viewed and this berm per se, as the attorney and the drawings show that that kind of does its job. I mean, I would almost be, not that I am because I am viewing it as, on it's own merits as she stated, but the doors in the back would almost be a bigger concern than the doors in the front, but I don't think you are going to be able to see the doors in the back anyway through the trees, so if it's just the doors in the front that you are concerned with, if the berm is there and the sight lines are what they are saying from the three and a half feet versus the five feet, a regular car versus an SUV, it kind of does its job, and as Michele said, if we were going to hold tight and protect our end of the turnpike, and the best we can get, then I think this would be okay. And there are other factors obviously that would have to fit for this application to be okayed at some point, but concerning the doors, it's fine.

Commissioner Hall: Would this berm be similar to what is on Richard Street that blocks Target? Because Target is quite a high elevation, yet when you are driving down Richard Street, you hardly know that Target is there, and if you look, it's because there is a berm and they have actually planted trees across the top, I don't think the trees survived, at this point, when you see Target, you pretty much see kind of a red stripe and a little bit of the roof line, so if they're talking about something like that, I think it can be accomplished. My other question is, are we concerned about the doors being closed or open, that we don't want to have doors on the public side. I think we're talking about open doors with activity inside that, A, we don't want to be distracting to drivers, and B, we just don't want to have that kind of a sight as you are driving down the highway, so it would have to block right to the top of the doors to serve the purpose. Also, don't they make architectural doors that don't look like doors that could actually look like siding, so that you could have the look of the side of the building versus the normal door that has glass across the top, I know they like that for light, but with this roof line, I would think sky lights would be able to be instituted in order to give them some light. So you would have an architectural door, and sky lights and have a pretty nice looking building. Just a thought.

Chairman Pruet: Very good. Anybody else?

Commissioner Sobieski: If I remember correctly, when the State built that building on the Berlin Turnpike, Planning and Zoning made them put the berm up high enough so you couldn't see the garage and the motor pools. I could be wrong but that had to be high enough to cover that.

Commissioner Aieta: It was.

Commissioner Sobieski: It should be high enough to cover all of the doors.

Chairman Pruett: And Cathy is correct too on the Target application, I was in on that too, that was designed for that so it obstructed the view of the public especially as the tractor trailers came in.

Commissioner Hall: That's where they pointed out, nobody would ever know that they were there.

Chairman Pruett: Anybody else? Any concerns to the petitioners, any concerns?

Commissioner Aieta: For the engineer, could you show me how you propose the delivery truck to enter and exit this site and how he would negotiate the turn into the driveway?

Jason Mikrut: Looking at the site plan, no trucks are allowed access from the Berlin Turnpike, so all trucks need to access the site from Main Street. The truck will come in from Main Street through the Bonefish site, will pull forward into this driveout here, and then back into the loading area which John had discussed before which is located in the northwest corner of the building. This obviously requires an access easement from the Bonefish property, this has already been discussed with the owner, and is something that has been agreed to.

Commissioner Aieta: What are the, in the entrance, there are the green island, and there is something sticking off of it. What is that?

Jason Mikrut: This is a landscape.....

Commissioner Aieta: What is the line?

Jason Mikrut: Oh, I'm sorry, this is a stop bar. We worked very much back and forth with staff you know, to try to make this intersection a lot more user friendly. We reduced the end of that one way lane on the Berlin Turnpike, we've made this narrower so that motorists coming in this direction can't make the mistake of going out onto the Berlin Turnpike, also added signs to try to keep motorists from going in that direction, a bull nose here so that motorists coming along cannot turn onto the Berlin Turnpike, and also some striping as noted in Craig's staff report to kind of guide motorists in that area, so that stop bar is just another source of traffic control in that area.

Commissioner Aieta: And a 52 foot tractor trailer can negotiate that turn without going into the parking spaces?

Jason Mikrut: It's a WB65 which is a full 53 foot tractor trailer. The trailer does come over some of these spaces here.

Commissioner Aieta: What happens if there are cars there?

Jason Mikrut: Well most of the deliveries that take place for Firestone will happen earlier in the day. Bonefish doesn't operate at that point. They operate in the evening, and I believe at times for lunch. So this is something that will be worked out, that those spaces will be unoccupied at times for delivery trucks...

Commissioner Aieta: How do you propose to do that?

Jason Mikrut: As part of the access this is something that will be negotiated with the owners.

Commissioner Anest: I have the same question that you did, I would like to know when the truck is going to deliver. If it's in the morning, it's not going to be a problem, but if it's going to be at lunch time or when people are sitting there having a late lunch, you are going to have issues if that truck is backing.....

Attorney Knuff: If I can interject, Bonefish does not serve lunch.

Commissioner Anest: They don't?

Attorney Knuff: They only serve dinners.

Commissioner Anest: Okay, and the employees won't be parking there.

Attorney Knuff: If an employee or manager or staff happened to be there, in the middle of the day, there would be no reason for them to park so remotely, they could park next to the building.

Commissioner Aieta: That's for the record, that you know that Bonefish definitely won't be open for lunch.

Attorney Knuff: Yes.

Commissioner Aieta: Let the record show that because that was not the understanding that we had as a Commission. We thought it was going to be open for lunch, at least I did. So that answers that question, now I've got a couple of other things. On the, could you just show me the proposed snow storage on the site?

Jason Mikrut: Snow storage is proposed throughout the site where ever we have open areas, mainly along the frontage here....

Commissioner Aieta: That's where your berm is going to be.

Jason Mikrut: Yes, the berm begins a few feet off of the curb there, so we have a little bit of area for snow storage there, also along the other landscape areas that we have on the site, and then over on the corner here. So with those areas disbursed around the site, there will be areas for now.

Commissioner Aieta: One other question through the Chairman to the Town Planner. Did we get a report from the Chief of Police?

Craig Minor: Yes.

Commissioner Aieta: An actual written report from the Chief?

Craig Minor: An e-mail, I'll pull it out and read it.

Commissioner Aieta: Would you please?

Craig Minor: Yes.

Chairman Pruet: While he's doing that, one item that I brought to your attention last meeting, was the sliver factor for the right hand turn from Main Street and I don't think that was addressed this evening.

Attorney Knuff: I apologize, and I think the issue is, it may lead to driver confusion. As we indicated, very few cars are going to be visiting our site, about 29 during the peak hours, and if you were to do a sliver widening such that someone might be tempted to pull around someone who is taking a right, you may have a condition where they are crossing the double line, the fact that it is a free right hand turn, there is no signal, there's no reason why anyone would be blocked pulling into that access drive. There is more than sufficient queuing or stacking even if there are a couple of cars waiting for whatever reason to pull into the Bonefish or the Firestone parking lot, there is sufficient stacking capacity in that driveway, so there would be no instance where cars waiting to get into the site would be backed out onto Main Street, so since it's a free movement, we really didn't see the need for any sliver widening to facilitate it any more.

Commissioner Lenares: John, I have a question. Between our meetings, some one asked me a question and I really couldn't answer it, and it's probably a simple answer for you, but I was wondering myself, why is there no exit onto the Berlin Turnpike? Is there a state rule, regulation, is it personal choice?

Jason Mikrut: It's actually a non-access highway line. So it is designated by the state that there will not be access onto it.

Commissioner Lenares: Thanks.

Craig Minor: I have an e-mail dated Friday, December 21st, 2012 from Chief Richard Mulhall to me, it's one sentence. "I've looked over the plans, sorry, subject Review of 2903 Berlin Turnpike-Firestone. I've looked over the plans and do not see any issues with the traffic flow or parking." Chief Richard Mulhall, Newington Police Department.

Commissioner Aieta: I remember when we had the discussion about the Bonefish, the Chief had concerns about the traffic on Main Street and I find it strange that they add a building and that he has no comment at this point. Be that as it may. One other thing that I would like to say for the Commissioners, I think you should consider putting a condition on this if it does get approved, that the garage doors be kept closed, not be open while they are working on the cars, particularly in the back.

Commissioner Ekstrom: The garage doors, do they have to be opened fully, or can they be opened partially?

Attorney Knuff: What is the opening Jason?

Jason Mikrut: Ten feet on all the doors, except there is one higher door on the backside.

Attorney Knuff: I think, as has been noted, the building will not be air conditioned because the size and the volume is, it would be tremendously costly and not to mention not really environmentally friendly to air condition a space such as this. So, on particularly warm days the doors could be open. I think the number of days out of the year is probably less than ten, but it is possible that if someone is working on the cars and the door can be opened. I think we have demonstrated even in that condition, they will be adequately screened, even if you are sitting at a traffic light, but certainly as you travel down the road at forty or fifty miles an hour it's not going to, that view is not going to be seen by motorists. I think the building itself is particularly attractive for any use, but particularly for an auto use, as we demonstrated last time, the architecture wraps around all four sides of the building, there is no back side, I think they have done a tremendous job, not only in terms of architecture but the landscaping too to enhance the appearance of the site.

Chairman Pruett: Also I would like to have you research the possibility of what Commissioner Hall said about the doors, if there was some type of architectural design that could accommodate that, where it doesn't look like a garage door, I'd like to have you pursue that. Anybody else? Okay, this is a public hearing, gentlemen, you can have a seat, we're going to bring the public up. Anybody from the public wishing to speak in favor of this petition? You can come forward and state your name. Seeing none, I do have a letter that I was asked to enter into the record. It's to the Town Planning and Zoning Commission re: The proposed Firestone Tire and Auto Care Center. " I am writing to you and the members of the TPZ in support of the proposed Firestone Tire and Auto Center on the Berlin Turnpike.

I have lived, worked and been a part of the Berlin Turnpike my entire life. I was president of the Berlin Turnpike Businessmen's Association for many years back when the turnpike was mostly small family owned and operated businesses.

I understand why in past years, the TPZ was concerned about auto-related business on the turnpike. There were auto-related businesses such as A & A Auto Service and Center Garage which, in reality, were junk yards. Today's auto-related businesses do not resemble the auto-related businesses of years ago. The Firestone store being proposed is an attractive, nicely landscaped property.

There is a Firestone Tire and Auto Care Center located in the business district of downtown Glastonbury. Quite honestly, if the Firestone store is of good enough quality for Glastonbury's downtown business district, it certainly should be good enough for Newington's Berlin Turnpike.

In closing I strongly urge the Newington TPZ to continue with its pro-business philosophy and approve the proposed Firestone store on the Berlin Turnpike.

Signed, Fred Callahan, 99 Cedarwood Lane, Newington

If there is no other further public comment for this petition, is there anyone who wishes to speak against the petition.

Dr. Colleen Bietliz, 2110 Main Street: Yes, actually I asked Mr. Minor if I could do a presentation for you guys. Good evening Mr. Chair and the rest of the Committee, I appreciate you letting me speak to you this evening. Really what I wanted to address is Newington's Plan for Conservation and Development which actually many of you helped to create. I have the names here of the participants at the last meeting. The purpose of this plan is to serve as Newington's official guide for future development and related activities. On page 38 you have a specific section here towards the Berlin Turnpike District area, which

states that you want to eliminate uses that are not compatible with retail business, for example, discourage auto related uses. And number sixteen, you have, to improve traffic movement and safety.

Traffic issues I told you I would look into at the last meeting. There have been ten traffic accidents just between the Berlin Turnpike and Louis Street in the last three years according to Lisa Balducci, your Records Supervisor at the Newington Police Department, which I will address later.

Page 32, you have as your general goals to protect and conserve the quality of existing housing from neglect and incompatible neighborhood uses, and most importantly this investment, and to maintain quality neighborhoods, avoiding the intrusion of non-residential traffic and plan with sufficient buffers adjacent to commercial uses. On your overall density to protect neighborhoods, you have item three, protect neighborhood properties from commercial encroachment, buffer residential and number five, specifically, you have review standards for buffer to strengthen where needed which is along the Berlin Turnpike, where single family uses abut commercial zones, which particularly takes my (inaudible.) This is a view from my kitchen window, and this is where the building for Bonefish Grill is, and as you can see, on the left in yellow is some type of front end loader and the blue is some type of port-a-potty. So, there aren't huge evergreen trees here, there's no big trees to block the view, and I have to say the Firestone's location will be closer to our home than Bonefish Grill is.

Page 18 Section 3 says to provide residents with a sense of space and relief from intensive development. The hours of operation which were brought up before I have listed there because it was supposed to be not a problem with three businesses, but all three businesses will be open during evening rush hour, Monday through Friday between four p.m. and six p.m. All business are open seven days a week, giving residents no break from traffic congestion. So the green arrow is where ten accidents occurred, the last three years, in red I have where the assisted living is which if you had, number one there were ten accidents, but yet there was no business at this area and you are not going to have just one business now, not two businesses there, now you are planning on putting three businesses, and they are all going to exit in the same area, and you are telling me that that is not going to cause any type of traffic issues, or safety concerns.

I read the noise ordinances and it's important to note that article three says that excessive noise must be controlled by the Town of Newington to protect, preserve, and promote the public health safety and welfare of your citizens. So, in summary Newington's official policy which was created by many of you, says the Planning Committee will eliminate uses which are not compatible with retail business sector which includes auto related uses. That you will address the balance which must be maintained between traffic and (inaudible) and improve traffic movement and safety, improve residential properties from commercial encroachment, buffer residential properties from non-residential uses in transition areas with landscape buffers, that you will protect us from excessive noise and provide residents with a sense of space and relief from intensive development. I hope that the plan that was put in place is not empty words because I feel that the addition of this property, you'll be negating every single one of them. Thank you.

Chairman Pruet: Thank you.

Craig Minor: Dr. Berlitz, can you upload that to me, at your convenience for the record.

Dr. Berlitz: Absolutely.

Craig Minor: Thank you.

Chairman Pruet: Anybody else from the public wishing to speak against this petition? State your name and address for the record please.

Lori Grabowski, 2107 Main Street: It's funny, but I found the same thing that Colleen did, the same information. The things that are presented on paper at this meeting is not actually what happens when these building are built. Let me tell you, because I lived through Krispy Kreme. They had all these studies, all these things, we weren't going to hear anything, we weren't going to see anything, none of that panned out. Why are we giving them a special exception to do this? If they can't do it according to your regulations, why are you giving them a special exception? I don't understand that. So people are not going to see this building because they are going to put up trees, fences, they may grow, they may not grow, the fence may fall down, it may not, but this store is open at seven a.m. on Saturday morning, and I'm going to hear it, because I hear everything, and I'm going to hear this. Now, he said from his study that the decibels are going to be low enough where I would not hear this with my windows open. So, every Saturday morning at 7:15, am I going to be calling the Police Department because I hear this building going, zzzzm, zzzzm, zzzzm, because you have one bay operating an air gun, the second bay operating an air gun, the third bay operating an air gun I assume, did you ever try to get a lug nut off and it doesn't come off? How long does that air gun run? Did you ever listen to that? It's loud and it's noisy. I don't want to hear that Saturday morning at seven a.m. at my house. I don't want to hear it Sunday morning at nine a.m. at my house. My other concern is the water run-off. I went across the street today and looked at this discharge pond that they are proposing for the wetlands that are already there. Now during storms this water already goes over Main Street in that low lying area where (inaudible) gets caught. You are going to be putting more water into that low land. The house that's 2115, for sale now by the State of Connecticut, that water is going over to where the septic system is already, and then who owns that backup. I'm just letting you know. What is going to happen to that property when somebody buys it. I just want to reiterate, eliminate or regulate by special exception those uses which are not compatible in neighborhoods. Use zoning regulations to assure that open space buffers increase between residential and commercial land use. It's your responsibility to protect me. Thank you.

Chairman Pruet: Thank you. Anyone else from the public wishing to speak at this time?

Robert Amenta, I'm the property owner and business owner at 3455 Berlin Turnpike. I oppose the Bismarck application as a result of the regulations on which it is based. In 2007 deleted auto uses in all zones except the Industrial Zone. The result of this was to immediately make a large number of existing auto use properties non-conforming. It was nothing that we the property owners or business did to render ourselves non-conforming. It was a simple act of removing auto uses from the regulations. By becoming non-conforming our businesses have been detrimentally affected. We cannot increase the footprint of our buildings, financing can be difficult if not impossible to obtain due to being a non-conforming property, the current and future value of our businesses and sites have been negatively affected and there are several more negative issues that we face being non-conforming. This past summer the Commission decided to re-introduce auto uses into the regulations for the BT Zone. This was accomplished by crafting a tailored regulation that accommodated the Bismarck application with complete disregard to all of the non-conforming issues created by the 2007 removal of auto uses. The Commission had the opportunity to level the playing field by writing the regulations in a manner that would remove the non-conformance they had created in 2007. The Commission chose a different course, allowing new auto uses, but relegating existing uses to continue to be non-conforming. That is bad land use policy and patently unfair. The fact that I and many other auto use owners have been placed in non-conforming conditions since 2007 has us upset. To add to our displeasure is the fact that the new regulations were crafted without any regard to rectifying our positions in such a form that

it is difficult to discern what uses are or are not allowed. This has us feeling that the Commission has turned a deaf ear to our concerns. These are concerns of tax payers and employers, that have operated in this town for years and years. If our concerns are not resolved now, at a time when auto uses have been brought to the forefront we're wondering when, if, and how long it will take. Thank you.

Chairman Pruett: Thank you. Any further public?

Laura Bielitz: 2110 Main Street, Newington: I just wanted to say two things. One of them Lori already brought up, that they mentioned that none of the adjacent areas were zoned for private properties, and she mentioned that the house that is now for sale which is right next to ours, is, that is not precluded from the private property, and secondly is, they talk a lot about how things would look from the Berlin Turnpike and Main Street, there is still another direction that Colleen brought up, where the trees are very scarce, most of them are dead, and you can see directly from our house, and actually the houses behind us too from that development, you can see directly to the Bonefish and the proposed site. I would like to suggest that there be some type of shrubbery or something added in the back direction as well, to help enforce, they are talking about all the trees and the foliage that is there, well, it's not really there. It's dead branches, so if they are going to use that as eliminating some site, then it needs to be around the entire area. Thank you.

Chairman Pruett: Further remarks from the public? The applicant has a five minute total time to rebut.

Attorney Knuff: Thank you Mr. Chairman. In regards to the Plan of Conservation and Development, I think the position that Dr. Bielitz is taking is that even though this is a commercially zoned site, and even though the surrounding properties are commercially zoned, it should never be developed because that is essentially what her position is. The fact is, it's the Planned Development District, the property that is closest to the Bielitz property is also commercially zoned and to comply with her interpretation of your Plan of Conservation and Development would be to say, don't do anything with it. Leave it fallow. Never develop it. The fact of the matter is, as I have indicated, just about every other permitted use in this zone would have a far more detrimental impact on her property than our use would. We have provided landscaping, substantial evergreens, in that corner so that directly benefits her and really no one else. In terms of whether this regulation is in keeping with the terms of Conservation and Development, that is really the subject of an appeal, but it should be noted that during the course of that public hearing your Town Planner had determined, and there was a memo, in the record of that application for the change, that determined it was consistent with the Plan of Conservation and Development because of the extra caution that you instituted in the auto related use. In terms of noise, we demonstrated, in the most conservative fashion possible, that we will not violate the noise ordinance. You have an ordinance, we will comply. I can't imagine circumstances under which we wouldn't comply but I think we have demonstrated that there will not be a problem, that we will comply with the ordinance. In terms of run-off, we have an approval from Wetlands, the engineer of the site will provide underground detention, so there is sufficient underground storage for any storm water. There has been no question or issue raised by your own town engineer or by the Wetland Commission that raises any concerns in terms of drainage. In terms of the house that is located along Main Street that is owned by the DOT, there is a deed restriction that prohibits its use as residential, that is commercial property, it will never be used as a residence ever again, it is also subject to commercial development, and in every instance of every neighbor that we are closest to, there is an intervening commercial property that under the Plan of Conservation and Development and under your regulations can be developed. I don't think it's reasonable to read your Plan of Conservation and Development to say that no

development should occur. Clearly, that is not what the regulations restrict us to. In terms of the comment, one of the plaintiffs in the appeal, as I noted his comments are the subject of the appeal of the regulation change, but it should be noted that even if there are other existing auto related uses in the town, they are going to become more conforming. It doesn't render them non-conforming. Right now they have a non-conforming, prior to the regulation change occurring, they had a completely non-conforming use. They are non-conforming as to a number of other requirements as well, and now at least they conform, it's a use that is now permitted under your regulations, and I believe at the January meeting where it was determined that in most cases existing auto related uses can take advantage of these new regulations, and I also note that there are only two competing businesses that spoke during that public hearing. Modern Tire, and I believe Mr. Pane, the former Commission member, I believe from what I understand has an interest in an auto related use, those were the only two business owners who spoke in opposition to the plan. Certainly they had their opportunity during that public hearing to convey their desire or suggestion as to how that regulation could be modified to suit their interest. I mean, I don't think that you have to be particularly insightful to see that maybe their real interest is maintaining the monopoly as opposed to their concerns about non-conforming.

I know that you have asked us to respond to Commissioner Hall's request for the doors, and certainly we can do that. I don't know that I'm tremendously optimistic about that, but certainly we can look at that. I mean, the fact is, if the doors are blocked by the vegetation and the plants, the doors are blocked whether they are open or closed by the vegetation and the fence. We can take a look at whether there is another type of door that can be substituted for what we are proposing, I will speak to our architects and our engineer. I'd be happy to answer any of your questions.

Chairman Pruet: At this time, the opposition has a total of five minutes to rebut the petitioner?

Dr. Colleen Bielitz, 2110 Main Street: Once again, I really have nothing against John's proposal for Firestone. The problem is that I feel that commercial property is encroaching on our area and I mean, if they want to put up trees and walls so we won't see them, and really the onus is on the Commission to also make sure that there is some type of buffer there, then so be it. It's just that I don't want to be looking at you know, an eight foot tall vinyl fence or whatever it may be, you know, that's the whole thing. I don't want an eyesore, I've already got the noise, if it's fifty-five decibels that's still noise, so when you are sitting outside in the summer, I really don't want to hear air guns going off, whether they be intermittent or long standing, but the noise is an issue, and the last thing is, it's the safety of everyone who travels. If you think about it, the main time when there is 1,100 and some people traveling down Main Street, you're adding twenty-nine extra people during peak time from that one business, and then you have the other two businesses that are going to be there, I mean, it ends up being a problem. If you have ten accidents in a short little space there, when there are no businesses, just wait until you get three businesses there. So those are really my concerns. As a property owner I feel that I have the right to speak to you who are supposed to be guardians and protectors of this area. I have really nothing against John or Firestone, I'm all for businesses in Newington, it's just that I have those concerns. Thank you.

Chairman Pruet: Thank you.

Attorney Knuff: Thirty seconds. By the way, Dr. Bielitz and I exchanged e-mails last night, and we had a very pleasant exchange, and I would be happy once we close to show her more specifically the landscaping that is going to directly benefit her. She mentioned that commercial is encroaching. The fact is, commercial property has encroached. It's directly next to her property, and as I indicated, before the only alternative as she suggested is, don't

do anything. I suggest that, in terms of impacts on neighbors, this is about the most innocuous type of use, of all the different types of uses that are permitted in the zone and that's not only from an impact on life because, let's face it, we are going to be closing at seven o'clock at night. There are a whole host of uses that are permitted by your regulations that would operate far deeper into the night than seven p.m. In terms of impact on traffic, there is virtually no use that would generate less traffic than our use. Two percent of the traffic that travels on Main Street, so we will be happy to come back next time and we will deal with that one remaining issue, but I just wanted to respond to Dr. Bielitz.

Chairman Pruet: Thank you very much. I think the consensus, we are going to keep this petition open. We had some concerns to further address.

Commissioner Hall: I just have one question. It came out twice that Firestone is going to be open on Sunday? I didn't have that impression before. Are they going to be open on Sunday?

Commissioner Aieta: Seven days a week.

Commissioner Hall: That's what it says here, but is that true?

Jason Mikrut: Sunday, nine to six.

B. Petition 05-13: Special Exception (Section 3.17.8: Motor Vehicle Service Use) at 476 Fenn Road. Khalid Mahmood, 153 Mansion Road, Cheshire, CT 06410, owner/applicant/contact.

Chairman Pruet: I see the petitioner is here. If you could just step up to the, or seat yourself there, give us your name and address for the record.

Mahmood Khalid: My first name is Mahmood, last name is Khalid, 476 Fenn Road, Newington.

Chairman Pruet: If you can just tell us about your type of business.

Mahmood Khalid: I want to open a gas station with convenience store.

Chairman Pruet: Can you elaborate, hours or....

Mahmood Khalid: I will do it in the morning, 5:00 o'clock to 10: 00 o'clock.

Chairman Pruet: How many days a week?

Mahmood Khalid: Seven days a week.

Chairman Pruet: Okay, convenience store, selling gasoline, no operations on vehicles, no mechanical work.....

Mahmood Khalid: No sir.

Chairman Pruet: That's succinctly put for your position. Comments from our staff.

Craig Minor: Well, as Mr. Khalid said, this was a gas station before, and in my comments to you I went into some detail as to whether they really need to come before you for approval

because it's, there's been no, in zoning terminology there has been no break in service, it's probably been vacant for many years, but the owner never intended to abandon the gas station use. But because it's going to be a convenience store style gas station, which all gas stations are now days, it does need your approval, but having said that, there is nothing on the site plan and there is a copy of the site plan in front of most of you, there's nothing to prevent my recommendation that it be approved, there's adequate parking, it's an existing business, they did submit a floor plan so you can see how they will be converting the bays to retail space, but there is enough parking for a retail building of this size. That's all I have to say about it.

Chairman Pruett: Commissioner comments on this petition? I think everyone knows where it is, it's near Eagle Drive on Fenn Road, it's been abandoned I'd say fifteen years.

Commissioner Hall: Can they keep the gas prices the way they were, posted \$2.15.

Mahmood Khalid: The name of the gas station is The Gas Man, there is nothing cheaper in the state right now. I own five gas stations, I have cheaper, if you go to the west side, you can see the Gas Man always the cheaper gas.

Chairman Pruett: Further Commissioner comments before I turn it over to the public? If you will take a seat, I'm going to open it up to the public. This is a public hearing, anyone from the public wishing to speak in favor of this petition? Anybody from the public wishing to speak against this petition? What's the pleasure of the Commission on this petition? Close it and move it to our next meeting? Is that the consensus. Sir, we are going to close this for public participation and we're going to entertain it at our next meeting.

Mahmood Khalid: Thank you.

Chairman Pruett: Thank you.

C. Petition 06-13: Special Exception (Section 3.15.3: Outside Restaurant Seating) at 3260 Berlin Turnpike ("Plaza Azteca Restaurant") Hector Angel, owner; Manuel Rubio, applicant/contact.

Chairman Pruett: Have a seat sir, state your name and address for the record, just give us a brief outline of your petition.

Manuel Rubio: Thank you so much. I'm the marketing director for Plaza Azteca at 3260 Berlin Turnpike, and to give you the whole idea, it's pretty much the same as we did last year, I don't know if all you people were here, but it's pretty much to put an extension, a fence around the entrance on the right side for Cinco de Mayo is the biggest celebration for a Mexican Restaurant. Every year we have a lot of people, a lot of people go out and eat so in order for us to serve the people better, last year what we did, we used part of the landscaped area, we put a small metal fence, to accommodate people, to keep them rotated and it's bigger and useful, pretty much to use the space. Last year the three main concerns that you guys had was the landscape, how damaging it would be, and what we did was replace it. To have our landscape company to replace the damaged grass for a new one; the security was a concern and what we did, we hired a private security company and also we spoke with the Police Department to get people, to get police officers at the location, and we're going to do it again. The third one was the parking lot and since we have good relationship with Lowes, they agree to write a letter for us in case you guys want it, that's what we did last year as well, they write a letter that we can use part of their parking space, so the fence is metal, about four feet tall, and we rent it from a certified company as well.

Chairman Pruet: Very good. Comments from our Town Planner on this petition?

Craig Minor: Yes, and Mr. Rubio touched on it, the only concern that I have was with the police, and I contacted the Chief and he said that there was a noise issue last year, but he was in general satisfied with the project. He did say, he said that you did hire an off duty policeman last year, and he recommended that if approved this year that that be a condition of approval also.

Chairman Pruet: Commissioner comments?

Commissioner Camerota: I thought last year you said something about having a grill out there and serving food. Did you, and are you going to do that this year?

Manuel Rubio: What we are going to do, and we went to the Health Department to apply, we're going to do it on the patio, I mean, we aren't going to grill anything. I mean, we have our special containers for food, already pre-cooked at the location, we're just going to put it outside to tell people, as I said, to rotate them. We have special containers, we have the water for cleaning their hands and everything, we have our staff working and this is just to sell the rice and beans, burritos, pre-made at our location.

Commissioner Camerota: Thank you.

Chairman Pruet: Additional Commissioner comments?

Commissioner Aieta: I remember that they came in last year, and they met all the conditions, I didn't know that there was a noise complaint. I find that hard to believe seeing that there is not a residence within a thousand miles of the place, but apparently, I don't know who could have complained about noise, but, I thought they did a good job. I had concerns about the vegetation being trampled, I went by when it was over last year, they restored it to it's original condition, I would recommend that you let them do it again.

Chairman Pruet: I concur with that too, it was a very successful endeavor, and we were glad to accommodate you last year. Again, this is a public hearing, if you can just take a seat. Anyone from the public wishing to speak in favor of this petition? Anybody wish to speak against this petition.

Commissioner Anest: I'll make a recommendation that we close it and move it to Old Business for our next meeting.

Chairman Pruet: Or, moving it for tonight. Do we have a motion for that?

Craig Minor: I have a draft motion prepared.

Chairman Pruet: Would you like to have it tonight, or sit on it until next meeting.

Commissioner Anest: If it's not a rush for them, because it isn't until May, we can do it at the next meeting.

Chairman Pruet: Okay sir, we are going to close this and move it to our next meeting, and we will hear it at that time.

D. Petition 07-13 Special Exception (Section 3.15.3: Outside Restaurant Seating) at 3384 Berlin Turnpike, 2601 Berlin Turnpike, and 548 Cedar Street (Dunkin Donuts) Cary Gagnon, owner/applicant; Anja Skehan, 66 Cedar Street #300B Newington, CT, contact.

Chairman Pruitt: Good evening Mr. Gagnon.

Cary Gagnon: Good evening, Ladies and Gentlemen of the Commission. I'm not a doctor and I'm not an attorney, so I don't know if I can do that, but I'll do the best I can. Basically we put in our applications and then I have some pictures of some tables that I would like to show you, three tables in each location. 3384 Berlin Turnpike a little bit different table, would be this style, so it is right up against the windows of the restaurant. There is a seven foot sidewalk there, that's where I would put the three tables. So that would seat six people.

Commissioner Aieta: Is that the Rizzo site?

Cary Gagnon: It is. There is a seven foot sidewalk there. We used to have newspaper boxes, and we asked them to put new boxes in, they were rusty, so we ended up taking them out. There is a seven foot sidewalk there, sixteen feet long, plenty of room. There is parking there, car bumpers. The car bumpers are two feet away from the sidewalk, we can move them back three feet if the Commission would like. Plenty of room, those spaces are very long. I came in here today asking for locations that I thought I could get approved, not the ones that I couldn't. I think my guests, and some of you are my guests from what I see on the table, would appreciate sitting outside. This is another table on Cedar Street, and in front of 2601 Berlin Turnpike, same tables.....

Craig Minor: Mr. Gagnon, excuse me, you'll be able to leave them for the record, right, the ones that you are displaying?

Cary Gagnon: Yeah.

Craig Minor: Thank you.

Cary Gagnon: I scribbled on a couple of them, so, these tables I would like to do on the Berlin Turnpike just to mix it up a little bit, but plenty of room there also. I'm planning on doing either pavers or a concrete slab and it's going to have 36 inches around it, handicapped accessible. I have a picture of a handicapped table to show you. These are the pavers that we would use, the big square block ones, or concrete. With concrete what I would do is a broom concrete so that the broom marks are in there, and we would seal it, because as you well know, dropped food can stain concrete, so we would seal it to be able to power wash it in the spring. As you well know, some of you who know me, I've been in business 23 years in town, and I power wash all my buildings several times a year.

Commissioner Aieta: That one you are putting in front on the Berlin Turnpike side. You are actually going to make a patio there?

Cary Gagnon: I am, handicapped accessible.

Chairman Pruet: How many tables will be handicapped accessible?

Cary Gagnon: One table.

Chairman Pruet: One at....

Cary Gagnon: One out of three.

Commissioner Anest: Will the tables be similar to the ones at Wendy's, those kind of tables?

Cary Gagnon: Yes.

Commissioner Anest: With the umbrellas?

Cary Gagnon: Yes. This is a location in New Britain that I did.

Commissioner Aieta: The one on Cedar Street, you are putting them in the landscaped area? Are you going to pave that also?

Cary Gagnon: I am. There's mulch there now. All those plants died on me last year, so before spring....

Commissioner Anest: Craig, the one down by Rizzo, I'm just concerned with the cars parking, and somebody like, I'm just concerned about the safety of that one.

Craig Minor: The car stops that Mr. Gagnon mentioned would be one possibility, another possibility, it's more aggressive but certainly safer would be bollards, we could ask him to put a bollard at the end of those three or four parking spaces. A fence would also be a possibility, but I think bollards, bollards would definitely do the job. Might be overkill, but it would definitely do the job.

Commissioner Anest: But eye appeal.....

Commissioner Aieta: You'd have to move them back probably a foot.

Cary Gagnon: Can I rebuttal? So, I mean, I was up at 4:30 this morning, so I'm getting a little punchy but I've got to tell you that the sidewalk is seven foot wide, and in that location the table that I'm going to put there, I think it's thirty inches, it's going to go right up against the building, so it's going to leave like four feet, and the car bumpers are like two feet away from that, so there is always the possibility that somebody could, I mean, I had a lady end up in my dining room one time, but she hit the gas instead of the brake, so there is always a possibility, but these tables are very well built.

Commissioner Anest: I'm just concerned like if kids are hanging out by the tables, and horsing around and car.....

Cary Gagnon: The way I look at it, the car bumper would be at least six feet away from the table.

Commissioner Anest: Okay.

Commissioner Lenares: Mr. Gagnon, the bumpers that you are talking about, they are already there.

Cary Gagnon: They are. They are two feet away from the sidewalk now, and if the Commission wishes, we can move them back a little.

Commissioner Lenares: There's two feet of space to the sidewalk, and then there is four feet or three feet to the table.

Cary Gagnon: Almost four feet.

Commissioner Lenares: That's a pretty good distance.

Commissioner Aieta: And you've got the overhang of the car.

Commissioner Lenares: If the car is going to go into the building.....

Commissioner Aieta: No, I'm saying over hang. Did you consider maybe doing something on the south side of the building? You know what I'm saying, the south side of the building instead of right in front?

Cary Gagnon: You mean like on Acorn side?

Commissioner Aieta: No, the south side.

Cary Gagnon: You mean on the lawn?

Commissioner Aieta: On the Town Fair side. Your building is.....

Cary Gagnon: This is Town Fair side.

Commissioner Aieta: The south side of your building. What is there, parking right against the building.

Cary Gagnon: No, that's where the five feet of concrete is.

Craig Minor: We're talking about the 3384 Berlin Turnpike store right?

Commissioner Aieta: I'm trying to see what is there.

Cary Gagnon: So that is the south side.....

Commissioner Anest: You are talking about the other side.....

Commissioner Aieta: No, the south side would be the side, the south side of the building.

Commissioner Anest: That's where it is.

Commissioner Lenares: That's what he's proposing.

Cary Gagnon: The south side of my space.

Commissioner Aieta: Okay, I'm sorry, I misunderstood what you said. That is a good idea. I thought you had it in the front of the building the way that you explained. Thank you.

Cary Gagnon: I did consider doing something on the grassy area, but it's too far for people to walk with the traffic going on the rear parking lot. That's going to be the least expensive. Those tables when assembled are like a thousand dollars apiece. I'm proposing to spend \$13,000 in ads and tables to offer this to my guests.

Commissioner Hall: Are these tables concrete based? Or resin? They look like concrete.

Cary Gagnon: These are concrete based and the square ones that I'm proposing are also concrete.

Commissioner Hall: Well, they are pretty solid.

Cary Gagnon: They are, and I have some, the tables, the smaller ones are the least expensive ones and they are \$765.00 and we were talking about the weight of them. This one is one of the smaller tables, 820 pounds, and we are going to try to fasten them to the concrete. If somebody is going to take a table, well.....

Commissioner Hall: It isn't that, I was just concerned about wind or whatever, or when the car hits it. They are going to do more damage to the car than the table.

Cary Gagnon: There are less expensive tables out there, and I looked at them all, but unfortunately as a franchisee, I'm an employee and need to follow.....

Chairman Pruett: Any other Commissioner comments? Again, this is a public hearing. You can have a seat over there Mr. Gagnon, in the audience, anyone from the public wishing to speak in favor of this petition? Anyone wishing to speak against this petition. Any further comments Mr. Minor?

Craig Minor: My main thing was my confusion over the 3384 site and whether there is a grass strip there or whether it's sidewalk, and as Mr. Gagnon said, it is sidewalk even though the approved site plan from some twenty-three years ago shows that is supposed to be grass, it probably has been sidewalk for many years. So that question has been cleared up. We talked about safety, a couple of the sites, I think the Commission should suggest either bollards or a fence to protect the customer's. Let's see, we talked about 3384, and use of tire stops, the 2601 Berlin Turnpike site, a car coming into the handicapped parking space would be perpendicular to the tables, but I think we should discuss safety provisions for those customers, either a fence or a bollard, and then the 548 Cedar Street. Those tables will be about five feet away from the flow of traffic, but possibly a fence would be appropriate there also, similar to the one that was required at the Starbucks new restaurant down at the gateway project. I'm just suggesting it for the Commission's consideration, I'm stopping short of recommending it, but I am suggesting that you at least consider it and discuss it with the applicant. Those are my only comments.

Commissioner Anest: 2601 Berlin Turnpike, where the handicapped is, there's a sidewalk right, and then there is the grassy area.....

Cory Gagnon: Yes, and if you look at it closely, they will hit the building before they hit the parking.

Commissioner Anest: And then you are going to put the patio area beyond the sidewalk, or is the sidewalk going.....

Cory Gagnon: There's a sidewalk and the parking lot, five foot wide.....

Commissioner Camerota: But not facing the Berlin Turnpike.

Cory Gagnon: No.

Commissioner Anest: But that's where you are proposing, where the grassy area is. To put the patio, so there will be a sidewalk.

Cory Gagnon: I'm going to start the patio right from the existing sidewalk.

Commissioner Anest: So the sidewalk won't be part of the patio, there's going to be that buffer between.....

Cory Gagnon: And there is a car bumper there also.

Chairman Pruet: Do you have any comments about the safety concerns at the other two locations.

Cory Gagnon: The Berlin Turnpike, 3348 I'm confident, and I'm the one who gets sued if something happens, so I'm confident that the car bumpers will work there, 2601 Berlin

Turnpike I'm comfortable with that because of the angle of the parking space, 548 Cedar Street, the traffic does flow there, it's a mulched area right now, and I think that if you guys wanted something there, I don't think bollards would be attractive looking, but I think if you wanted like a post every four or five feet with a chain, so if there is somebody there, they know they are in an area, or a double chain, something like that I wouldn't be opposed to doing. So, you know, you cement those into the ground, they're cast iron, and, it wouldn't stop a car but it might stop somebody and I absolutely wouldn't be opposed to doing that.

Chairman Pruet: I think that would be a recommendation.

Commissioner Aieta: I would be, I don't think fencing in these areas would be attractive, I think it would distract, so less would be better in this instance.

Cory Gagnon: So I'll give you an example, I've got Wethersfield, next to Carmen Anthony's and they wanted bollards, and then they came back to me and said, please, no bollards because of the flow of traffic in that one store, you probably all know where it is, the way it flows, cars are pulling out and around to get back onto the highway and there is just no way we're going to use them.

Chairman Pruet: What's the pleasure of the Commission?
We'll close it, move it forward and give the Planner an idea of how we can address the concern on Cedar Street. I like the idea of the chain fence there so nobody could drift off onto an oncoming path.

Cory Gagnon: Mr. Commissioner, any, would anybody be opposed to voting on it tonight?

Chairman Pruet: No, we're going to think about it. Thank you.

- E. Petition 08-13: Special Exception (Section 6.2.4 : Freestanding Business Sign) at 1095 Main Street, New Center Corp., owner, Sign Pro Inc., applicant; Kyle Niles 168 Stanely Street, New Britain, CT, contact.**

Removed from Agenda – No proper notification (sign)

- IV. PUBLIC PARTICIPATION** (for items not listed on the Agenda; each speaker limited to two minutes.)

None.

V. **REMARKS BY COMMISSIONERS**

None

VI. **MINUTES**

February 13, 2013

Commissioner Sobieski moved to accept the minutes of the February 13, 2013 Regular Meeting. The motion was seconded by Commissioner Camerota. The vote was unanimously in favor of the motion with six voting YES.

VII. **NEW BUSINESS**

- A. **Petition 39-12 Site Plan Approval (Firestone Complete Auto Care) at 2903 Berlin Turnpike. Wex-Tuck Realty LLC, owner, Bismarck Real Estate Partners, Inc., applicant; Jason Mikrut P.E. 54 Tuttle Place, Middletown, CT contact person.**
- B. **Petition 40-12: DMV Location Approval (Firestone Complete Auto Care) at 2903 Berlin Turnpike. Wex-Tuck Realty LLC, owner; Bismarck Real Estate Partners Inc., applicant; Jason Mikrut P.E. 54 Tuttle Place, Middletown, CT, contact person.**

Discussed Under Public Hearing

Audience: The Farmington Bank Sign that was listed on the agenda?

Chairman Pruet: I don't know if you, were you here at the beginning of the meeting? Oh, okay, because the

Craig Minor: The sign that was supposed to be up ten days before the meeting wasn't put up. I'm sorry sir, I don't know you, but I sent an e-mail to the point of contact last week about that.

Audience: I came down and paid my fees and picked up the sign.

Craig Minor: But that was already about a week late, so it will be on the agenda in two weeks.

Audience: That's going to stop it.

Craig Minor: I'm afraid so.

Commissioner Aieta: What happens is that if there was an appeal, they could, that could be the basis of an appeal, that it wasn't noticed the proper amount of time. That's why we have to restrict the time periods.

Audience: When is your next meeting?

Chairman Pruet: March 13th.

VIII. OLD BUSINESS

None.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING: (March 13 and March 27)

- A. Petition 09-13: Special Exception (Section 6.2.4 Freestanding Business Sign) at 2909 Berlin Turnpike ("Bonefish Grill") Bonefish Grill, applicant; Wex-Tuck Realty II LLC, owner, Darcy Roy/National sign, 7 Burning Tree Lane, Wallingford, CT, contact.

Craig Minor: Bonefish would like to have a free standing business sign. Actually what they want to do is take the existing pylon where the Krispy Kreme sign was, keep that same stand, and just put a different sign on it, and it will be for them and there will be a space on the sign for the Urgent Care business.

Commissioner Aieta: Did Firestone show us a sign yet? They having a pylon sign?

Craig Minor: They have not, they indicate one on their site plan, but they have not applied for a special exception for a free standing sign, so they will have to come back and get that from you at some point.

X. TOWN PLANNER REPORT

A. Staff Report

Craig Minor: The first item, Zoning Enforcement Issues raised at previous meetings, nothing new to report on them, they're still cooking.
Item 2, Old Performance Bonds held by the Town: In your package are four pages, a four page list of development bonds, now the list that I inherited when I got here had dollar amounts in a lot of these columns, but I've gone through the files and brought them up to date and found that in many cases such as number one, Big Sky Fitness Center, the bond that had been in place there was released back in 2010, so we changed that to a zero. So as you can see, there are a lot of zero's here whereas there were dollar amounts when I first came here, but they have all been reduced to zero, but there are a number of items, and I'll go to number four first, we've been holding \$2500.00 in cash of Mr. Anthony Gallichio's because back in 1995 when, and I don't know if he is still the owner, but he was back then, what was then the Foreplay Sports Bar, they did some site plan improvements but they didn't finish them, and there is actually a rather thick file of complaints from citizens that there was something wrong with the property and Ed brought it before you, and your parents, and the Commission's decision at that time was to take no action until the issue was resolved, but it's now been, 35 years or so.

Commissioner Aieta: It's not going to get resolved for \$2500.00. It's going to be a lot more of today's dollars to do the work, so at this point, we should clean these up by taking the money. Take the money, you can't do any work with it, \$2500.00 isn't going to get you anything.

Chairman Pruet: What about having them comply with.....

Commissioner Aieta: You could try to make them comply, but the \$2500 isn't going to get you anywhere. I would say, to close some of these out, we should have the Town take the money, put it in the general fund, or where ever it goes, and close these out. Some of these, I mean, that one is 1995.

Craig Minor: I would want to talk to the town attorney first to make sure that the Town is on solid grounds keeping that cash before you actually.....

Commissioner Aieta: Or you could send them a letter saying that we have the \$2500, comply, if he doesn't, I don't know how you go on forever, you might as well close them out. Then you have another one from '91.

Craig Minor: I think it was a grading issue. The 1991 item, actually there is hope for that one, I'll talk to that in a minute. What I will do is I will go out and actually visit these either for the next meeting or the meeting thereafter, and be able to tell you exactly what is outstanding and whether we should just take the money and put it in general fund, or contact the current owner and tell the current owner, we have \$2500 sitting in the bank. If you would like to take that money and use it to make repairs that the previous owner, if in fact it's not Mr. Gallichio anymore.....

Commissioner Aieta: It's still the same.

Craig Minor: Oh, it is the same owner? Well.....

Commissioner Hall: Well, they keep changing the footprint and adding and subtracting....

Craig Minor: Can't you just say no, because they are in violation...

Commissioner Hall: They just do.

Commissioner Anest: We've just recently started getting these reports so the Commission didn't know that there was an outstanding issue, maybe we should check that.

Commissioner Aieta: I suggest that you take off the ones with the zeros, consolidate and then come back when you are finished talking to all these people and then let's see what we can eliminate and get off the list.

Craig Minor: Now some of these I actually am working with the owners on. For example, number twelve, Occhialini Court, actually we do have some leverage on them, believe it or not it turns out that there is an error with their survey, and so which Mr. Bongiovanni was the surveyor, not that it was his fault, but he was the surveyor at the time, and he's still around so, and Mr. Occhialini has told us, okay, work with Alan, do what you have to do to fix the survey, so there is a light at the end of the tunnel for that one.

Commissioner Hall: How about number nine, that's going to auction on March 21st.

Craig Minor: Oh, that one.

Commissioner Aieta: And that Malcolm Arnold.....

Commissioner Hall: I think he died.

Commissioner Aieta: No, he's still alive, but he went through bankruptcy, he's out of there.

Craig Minor: The reason the column says full name of depositor was, I got an FOI request from someone who wanted to know the name of the depositor of all these bonds, and I didn't know, so that took a fair amount of research, so that is who is was that actually deposited it.

Commissioner Hall: Yeah, back then.

Craig Minor: Yes, back then. Who owns that money now, hard to say. But that is what we are going to have to do, I mean, \$7,700.00, that's a lot of money and I'm sure before the TPZ decides, okay, we'll just keep it and put it in the general fund, I definitely want to talk to the Town Attorney before just keeping it.

Commissioner Anest: You have thirty days after March 22nd before the title changes.

Craig Minor: Well, I'm not sure, and I understand Mr. Arnold is dead, but....

Commissioner Anest: No, no, no, he's not dead, he's just not involved any more.

Commissioner Anest: Does this run with the land?

Craig Minor: I don't think so.

Commissioner Anest: Or does it run with the.....

Craig Minor: I think it runs with the name of the depositor. Again, this is where I would like to talk to the Town Attorney about this. This is unchartered waters here for me, usually you don't have bonds that stick around that long.

Chairman Pruett: My main concern is if there was something that had to be complied with, say for safety reasons or drainage reasons, that type of thing, you know what I mean?

Craig Minor: I doubt that any of these are really safety issues.

Commissioner Aieta: What is Target on for \$10,000.00?

Craig Minor: Which one?

Commissioner Aieta: Target, number twenty-nine. We have to know what is outstanding.

Commissioner Hall: I bet that was landscaping.

Craig Minor: I don't know.

Commissioner Aieta: You think it was landscaping? Maybe we could get them to put the trees back. Ten grand, we could do a lot of landscaping for that.

Commissioner Hall: What about fourteen, thirty thousand.

Craig Minor: It is possible that some of these have in fact been released and our records, the records that I have been able to find so far, don't clearly say. That's a Pat Snow project and I don't believe that he has left \$30,000.00 on the table, so that probably is gone, but I haven't confirmed that definitely. Now, Three Angels Church, I think that is actually present, because I have talked to Art about the project over the last year or so, and that money in fact might still be there.

Commissioner Aieta: It's still there. We never released that, and they haven't done, that was landscaping, finishing the landscaping, and they haven't finished. But isn't there a time period on that?

Craig Minor: Well, yes, the time period is that at some point we could then after giving them fair warning, use their money and go on site and do the work ourselves.

Commissioner Aieta: Can I ask you a question as to what the regulations say as far as the time period is? Six months?

Craig Minor: Well, that would depend on the approval. Sometimes the approval will have the agreement that they have a certain amount of time, or they might have come back to you after it was approved and asked for more time, so I'd have to do a fair amount of research. This came in in 2010, Three Angels Church.

Commissioner Anest: I thought you meant the other ones.....

Craig Minor: No, they're way past the period, we have every right to do whatever we think is right, but I still want to talk to the Town Attorney.

Chairman Pruet: Basically is there like five years to complete a project?

Craig Minor: Yes. It's different with subdivisions than it is with site plans. Subdivisions is definitely five years, at which point the town can take the money and finish the job, but if it's a private site however, I have no problem with talking developer's money to finish a town road, that's easy, I sleep at night, no problem with that, but taking the developers money to then finish a parking lot at the back of the shopping center on his property, that gets a little strange.

Commissioner Anest: Has anybody, any of these owners, are there notes in the file that they contacted the town planners office wondering where their twenty thousand dollars is?

Craig Minor: No. But that FOI request that I got, I figured it out the other day, she is working for one of those companies that makes money finding lost money for developers. That's why she wanted to know the name of the depositor. In fact, I also found out that Zag Machine, she, or her company was a client or debtor of Zag Machine, but Zag Machine, I forget right now what it was, there was definitely something that they didn't do that they were supposed to do....

Commissioner Aieta: They abandoned, the building is abandoned. It's in the Industrial Park and it's in tremendous disrepair.

Chairman Pruet: Which one is that Frank?

Commissioner Aieta: Zags, you know which one it is, they haven't paid taxes on it either, the second building in on Progress.

Craig Minor: Yeah, 39 Progress, we have \$4200.00 cash.

Commissioner Anest: What's Moreco?

Craig Minor: That's a good one. I did a word search for Moreco, in my PC and nothing came up so I asked the Finance Department because they are the ones that are telling us that we're holding \$3338.00 who Moreco is, and Lisa Redeckie wrote back and said she doesn't know. Fuss and O'Neil is somehow associated with that, and there were a bunch of payments made to Fuss and O'Neil that brought it down to \$3338.00. She thought it might have been a public works project. So I asked Chris Greenlaw, he's a little busy the last

couple of day, I haven't heard back from him on this one, I wrote Ed Meehan and asked him if he knew who it was, but the name didn't strike a bell with him either, that's why it's a question mark. I don't know what Moreco was and who this money belongs to.

Commissioner Aieta: And the guys who were in here tonight, they are number twenty-seven. IHop restaurant, they've got \$5700.00.

Craig Minor: Right, someone just told me the other day that that's the Plaza Azteca building, I didn't realize that.

Commissioner Hall: IHop is still there. He's HOPS.

Craig Minor: Oh, it's not the same building?

Commissioner Hall: No, two different buildings. So that has to be landscaping that they might have shared.

Craig Minor: But again, that's almost twelve years. So anyway, as I keep saying, it's still a work in progress, but it's interesting.

Commissioner Hall: Which on is Newington Professional Center? Is that the Zeldes building?

Craig Minor: I'm not sure.

Chairman Pruett: Yeah, the Zeldes building, they are still working on that.

Commissioner Aieta: Well I say we get the \$10,000.00 from Target and find out what that one is and maybe get some landscaping on Richard Street.

Chairman Pruett: To replace those trees that are all dead.

Commissioner Aieta: I'll bet you they don't even know that they have the ten grand there.

Chairman Pruett: Probably not.

Craig Minor: Or it may not really, no, that was from the Finance Department, that is money, actual cash in the bank that Target has forgotten about. It's just ten thousand dollars.

Chairman Pruett: Yeah, chicken feed.

Commissioner Aieta: Keep working on them Craig, when you get more information bring them back and we'll look at them again.

Commissioner Hall: You know what that might have been for, remember that whole controversy with the tree, that was on, that old I don't think it's a Sycamore, but whatever, they were all panicky about the construction was going to kill that tree....

Commissioner Aieta: Where's that?

Commissioner Hall: As you come in the entrance, you know how they had to make the entrance go this way, there was a tree there, they had to go around the tree. That's why that entrance goes on a curve instead of going in straight, so they wouldn't kill the tree. That may

be what it is, they kept that in case the tree died, and they would have to replant a tree, unless it is the stuff on the berm, but anyway, there was a big deal about that. Who owned the property next to them at that point, it wasn't Arrow Machine.

Commissioner Aieta: Where's this?

Commissioner Hall: Richard Street, traffic light...

Commissioner Aieta: Caval Tool.

Commissioner Anest: No, no, H.O. Penn.

Commissioner Hall: No, it's before H.O. Penn.

Commissioner Hall: Caval was originally, then MTU, they're gone....

Commissioner Camillo: Wasn't there a house up there that had a fire or something.

Commissioner Hall: Well, they all got taken down when they put up Target.

Commissioner Aieta: I remember that it was Caval Tool, and then it changed hands like fifteen times.

Chairman Pruet: Anything else on your report Craig?

Craig Minor: Well, let me just run through, Modern Tire, the Chairman and I talked to Attorney Bradley and he's willing to come to your next meeting to give you an update on the status of that, and that would be the 13th, which would be the day before or the day after his brief needs to be filed.

Chairman Pruet: The day before.

Craig Minor: All right, and he'll probably talk to you and give you his opinion on Modern Tire's brief which I'm sure he has read.

Number Four, Newington Walk: Well, still nothing new to report, Conservation, they are going to have to vote on it tomorrow night, that is their absolute deadline to make a decision, I don't know any more than you folks do.

Commissioner Hall: What happened last night? Not a quorum, or....

Commissioner Anest: They met.

Craig Minor: They just didn't vote. Were you here until 10:30?

Norine Addis: Ten.

Commissioner Lenares: Can I ask why they didn't vote?

Norine Addis: They were going over the conditions.

Commissioner Lenares: Between now and Thursday, did they not have the conditions prior to the meeting?

Norine Addis: They had some of them, they didn't have all of them.

Commissioner Aieta: There's probably going to be a laundry list of them. It's almost like when it gets that many conditions, that something is wrong, they should be incorporated in the plan and so that there is not a thousand conditions.

Commissioner Hall: That is one of their options.

Craig Minor: Number Five, Newington Junction: I have not heard from the consultant since my last report.

Number Six, Low Impact Development: We got the statements of qualifications from the consultants, we had five. Some were better than others. Some were excellent. In fact, the Committee, Cathy is on the Committee, we're meeting tomorrow morning in fact, or tomorrow afternoon.

Commissioner Hall: It's Friday at 2:00.

Craig Minor: Today isn't Thursday, okay Friday at 2:00, and hopefully we will be cooking on that, but we did get some very good presentations, so I'm confident that we will hire someone that will do a good job for us. Firms that have both expertise in the actual technical writing of low impact development techniques, but also planners who understand the process of the document regulations that impact developers abilities and rights.

Commissioner Aieta: I would think that would be something that a developer would try to embrace, because I can see savings by implementing that instead of putting in huge retention ponds, it's almost like a blessing for a developer to have for a problem site. I can see where you can save a lot of money implementing that.

Craig Minor: That's all I have. On the table is the latest version, and still a work in progress of the Zoning Enforcement Officer's report. Hopefully this format is easier for you to use, it was definitely developed with the idea of it being user friendly for you folks. It clearly says whether the issue was a neighbor complaint versus ZEO complaint, that's clear making that distinction. There's a third category which is called like inspection or something like that, and that would be if Art is out inspecting a property at the request of the owner for some reason, a statement that the property is compliant or something like that.

Commissioner Aieta: I would ask you to have the Zoning Enforcement Officer look at the Becker's truck at Beckers. I don't believe it is registered and that would be a starting point. They took the A-frames off and they put the billboard truck. I think the A-frames were in the state right of way.

Commissioner Anest: They were, but they also got a temporary sign permit, I don't know what period of time it covered.

Craig Minor: I think it's expired which is why Becker's now has the U-Haul truck with the big sign on it.

Commissioner Anest: I've seen that truck before.

Commissioner Aieta: Yeah, it's like it's recycled. They use it all over the place and just keep changing the signs.

Craig Minor: We had a meeting of the sign sub-committee this afternoon and made a lot of progress and this was a topic that Commissioners Aieta brought up, the issue of mobile signs, mobile billboards. It's complicated. I would have told you last week that mobile signs, there is just no way you can get around them, if the truck is registered, if it's in a parking place, and if the sign is part of the truck, we can't touch them, that's been the Town Attorney's recommendation for years, but I just found out that there is a town, Canton, that is looking into adopting zoning regulations to regulate these signs, and their attorney, Mark Branse is a well known land use attorney, and if Mikey likes it and Mikey doesn't like anything, then maybe there is a way that we can regulate the signs, anyway, that is an issue that your subcommittee is working on, getting on all of these mobile signs. So, take a look through the report at your leisure and if you see anything, any changes you would like, let me know and I'll pass them along to the staff.

XI. COMMUNICATIONS

None

XII. PUBLIC PARTICIPATION (for items not listed on the agenda, each speaker limited to two minutes.)

None

XIII. REMARKS BY COMMISSIONERS

Commissioner Anest: Craig, can we get, I know that the Council had a report on the blight, can you get an update on that, just a follow-up?

Craig Minor: Sure.

Commissioner Aieta: Did they implement it?

Craig Minor: Oh yes, it's been on the books for months.

Commissioner Anest: Jamie is handling the complaints, and I think it would be nice for the Commission to know what results.....

Chairman Pruett: She records all the complaints, I think.

Craig Minor: Yes, she's the point of contact. They come into her, she logs them in, gets a handle on them, and then the one's that need to be followed up on, she passes on to Art who will actually go out and investigate.

Commissioner Anest: And who is on that committee?

Craig Minor: Well, there was like a task force of mainly town officials, but we haven't met in several months, because I think there really wasn't anything more for us to do.

Commissioner Anest: Not a task force, but if someone questioned.....

Commissioner Aieta: Like an appeal?

Commissioner Anest: Yes, do you know who the members are on that?

Craig Minor: No, but I can find out for you.

Commissioner Aieta: How are those appointed?

Craig Minor: By the Town Manager.

Commissioner Aieta: By the Town Manager.

Craig Minor: Yes.

Commissioner Lenares: I just want to touch on something that was brought up earlier, under Public Participation I think, the gentleman from Modern Tire, and he spoke about the chronological order of what happened with this Commission reinstating the regulations of

auto related uses, and I think that I spoke out about it, initially that I didn't like the fact that it was taken out prior. And the reason being was that they felt that we had enough of that type of use, and so we decided to put it back in and during the meetings that, between many months ago and now, we've heard from the Modern Tire gentleman, as well as Mr. Pane about some of the things that we put back are not perfect. They're one hundred percent right. They are two prominent business owners in the town, they have been in town many years and they are well respected, and they are right about what they said in terms of the things that we changed back maybe didn't make them one hundred percent conforming, and it was our duty as we were outspoken about, which he did not say, and that's why I'm speaking now, that we were willing to review these changes that we made, and bring them back, and make them, let's say perfect for all the businesses to be called conforming. But what he failed to mention, and it kind of made us look a little bad, not that I took offense, but I just want the people at home, or the people who read the minutes to realize that it didn't really go just like that. They found some flaws in what we did, and they are one hundred percent right, and I could not agree with Mr. Pane or Mr. Amenta more, that these things need to be addressed, and I think we publicly said that they need to be addressed, we need to fix them, they are business owners in our town, and we need to protect them. But what he didn't really say, which made us look a little bit bad is that unfortunately, they filed a law suit which is their right to do so, but which inhibits us from acting, so I just want to let the public know, and I don't know if there are any new Commissioners that are here now, that it's not that we put these things back into the regulations and just let them hang there, but rather because our hands got tied a little bit, we couldn't do work further than we wanted to. I couldn't agree more, I think they are right, some of the stuff that they brought to our attention, and I just want to let the public know that we were willing to go forward, sit down as a Commission, say, hey, maybe we didn't do the whole job that we should have. It's too bad that they're not here now, I'd love for them to hear this, I hope they read the minutes and they do, but just to let the public know, because this is in litigation, we can't act on it. But I hope that everyone would agree with me that it was our intention to do that and to make it right by the business owners and to protect them. Just to let everybody know, that's how it kind of went down and hopefully it will get straightened out one day and everyone is conforming and happy and the regulation is perfect.

Chairman Pruet: Just to add to that, those comments were on the record, and I so stated that and they are in the minutes, that it was our intent to review any discrepancy, we would be happy to look forward to that, and that was back in September or so. Thank you for your comments.

Commissioner Lenares: And I only say that because I feel bad because Domenic Pane, he was a Commissioner here, he owns a ton of property in town, businesses, we should be

protecting him, Modern Tire, long standing, well respected business in the town, we should be protecting him as well. We understand that they had some squawks about what the regulation was re-instated, you know, it's our duty to go back and fix it for these types of people because they are you know, tax payers and they are businesses within our town. It's just unfortunate that he didn't further explain that because of the litigation, our hands are tied, so just that's why we aren't doing right by these people right away, and I hope that we get the chance to do that some day.

Chairman Pruet: And also too, we did look at the non-conforming issue, and did straighten out one aspect of it with the public input with that rebuilding the footprint, with the fifty percent ruling, we corrected that.
You had some interesting comments about the non-conforming, could you just paraphrase that?

Craig Minor: Well I was curious myself whether the, to use an example, the Modern Tire store on the Berlin Turnpike, how non-conforming is it under the new regulations, because that has been a big part of their complaint, was that the Commission didn't go far enough to make that business conforming, and I made a chart, and I haven't looked at it for a month or so, but as I recall, they are conforming under all of the new regulations in every way, except for the garage door. And Attorney Knuff, he phrased it very well, and I'll have to say this myself from now on, all of these uses, they are no longer non-conforming. They may have some non-conforming location issue, or non-conforming size issue, which is what we call bulk requirements, which is kind of a separate section of zoning law than the use itself. All of the uses, they are all conforming now after we adopted the regulations.

Commissioner Aieta: I don't think they understand that.

Craig Minor: You're right, I don't think they do either.

Commissioner Aieta: I really don't believe that they understand that they are now conforming but that they might have deficiencies in their site that make them, I wouldn't want to say, non-conforming, but....

Craig Minor: Mitigating a building permit or site plan approval to enlarge the building.

Commissioner Aieta: But they are conforming. How do we get that out to them?

Chairman Pruet: I just want to make sure, maybe Jack, what we just talked about, I want to make sure that the comments are in there about that.

Craig Minor: I did tell Jack this....

Commissioner Aieta: Well, he should be using that as a basis of his brief.

Chairman Pruet: I'm sure he is.

Commissioner Camerota: I think we did discuss that with him, I know I said that.

Commissioner Anest: And we made these people, from '07 to '12, where were they in 07 when they were truly non-conforming?

Chairman Pruet: Is that legal non-conforming?

Craig Minor: Well the phrase, legal non-conforming is actually redundant.

Commissioner Anest: We have housing that is non-conforming in town.

Commissioner Hall: We have the whole north end of town.

Commissioner Anest: My house is non-conforming and I got a mortgage.

Chairman Pruet: Anymore Commissioner comments?

Commissioner Leggo: Yes. I just wanted to thank everybody here on the Commission for making me want to feel welcome.

Chairman Pruet: Okay, very good. Welcome again.

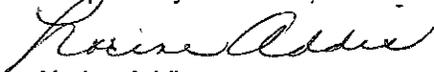
XIV. CLOSING REMARKS BY THE CHAIRMAN

Chairman Pruet: Just to paraphrase what Mr. Minor said, I did talk to Mr. Bradley, he will be coming to our next meeting. We will have an executive session at 6:15 and he will go over the brief with us, and also answer any questions at that time that you may have, so put that on your calendar. Also too, just for information, the two million dollar grant for clean-up of National Welding will be announced tomorrow, and everything looks good, but I'm a doubting Thomas, I want to see something in writing, or what ever, so tomorrow should be hopefully very important for us that will start the project to clean up National Welding, so that will be very good for the Town of Newington.

XV. ADJOURNMENT

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Camerota. The meeting was adjourned at 9:15 p.m.

Respectfully submitted,



Norine Addis,
Recording Secretary