

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

June 11, 2014

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

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Commissioner Carol Anest
Chairman Cathleen Hall
Commissioner Kenneth Leggo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski
Commissioner Brian Andrzejewski-A

Commissioners Absent

Commissioner Michael Camillo

Staff Present

Craig Minor, Town Planner

Commissioner Andrzejewski was seated for Commissioner Camillo

II. APPROVAL OF AGENDA

Craig Minor: Madam Chairman, there are two items that I recommend adding. Under nine, petitions for public hearing scheduling, I recommend adding Petition 37-14, Special Exception Section 3.15.3 Outdoor Restaurant Seating at 3260 Berlin Turnpike, Plaza Azteca, Hector Angel applicant, Kleban Newington LLC, owner, Manuel Rubio, 3260 Berlin Turnpike, Newington, CT, contact. This is for a fourth anniversary party that they would like to conduct in July. Either July 20 or 22, and I can give you more detail on it if you do add it to the agenda to discuss. Under Item ten, Town Planners Report, I'd like to add Performance Bond Release for 148 Maple Hill Avenue.

Commissioner Aieta moved to add both items to the agenda. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

III. PUBLIC HEARINGS

- A. **Petition 30-14: Special Exception (Section 3.15.4: Drive through Restaurant at 3120 Berlin Turnpike (Panera). Norr Architects, applicant, Newington VF LLC owner, Bryan Slonski, 325 N. LaSalle Street, Suite 500 Chicago II contact. Continued from May 28, 2014.**

Chairman Hall: If the petitioner is present, come forward please, state your name and address for the record.

Jeff LeBeau: Good evening, my name is Jeff LeBeau, I work as a professional civil engineer for Freeman Companies out of Hartford, 46 John Street, we're also representing Norr Architects out of Illinois, as well as Panera Bread and this is a continuation of our public hearing of a couple of weeks ago. This new site plan that you have in front of you this evening represents some modifications in response to the comments and discussions of last meeting, so we think it's a plan that fits the area, will work well better. I'll just go around and explain what we did, and then be open for comments and questions. We did move the two menu boards to the left, to accommodate another storage for cars, so now we have a total of eight, and Panera typically likes four after the menu board at the pick-up menu, and then try to get as many as we can here. Last time we only had three, and I know that queuing and storage was a concern. Because this is a retrofit, we tried to max this out the best way possible, but we can accommodate eight. Just kind of going around the site, other items that we addressed, we are no longer asking for a waiver of the thirty-five foot front yard setback. We are able to re-locate that, this is a transformer, an electrical transformer, we're still proposing to screen it. We basically moved it to the east and to the north, just outside of that setback. We're still proposing to screen.

Other items that we have added is signage and stripping for parking and circulation to have better traffic flow internally. We proposed reducing the front entry drive, fifteen feet and make this a one way in, and then the lower one to the south, we're proposing fifteen feet as an exit only. We're also encouraging all the drive through traffic, we proposing signage, right turn only, so as they come they are directed to come out the south. We think this does enhance the site, and Panera was agreeable to that. Obviously in between the cars can circulate and park with perpendicular parking as needed. We flipped the handicapped spaces. They were over here to the left, now we put those to the right, closer to the front entrance which makes sense. We're proposing a cross walk here to guide pedestrians into this area and avoid any circulation of pedestrians walking this way. Also in that light, we are proposing a decorative fencing to keep people from coming out this egress and just walking across the drive through, so this also will guide people this way. That covers the basics. Other items, we trimmed back the concrete, the concrete dumpster pad to be flush with the edge here. We weren't allowed, based on the lease agreement to modify any parking, stripping, with the owner, outside of here. If you look at the dashed line, that's Panera's leasable area so we did accommodate all of the comments from last time, into this revised site plan. Other items, we did receive some comments from engineering, I had a phone conversation with John DeMaria, today and there are fourteen comments. They are all relatively benign and some of them are housekeeping items with the drainage calc's and some labeling on the site plans. I think that covers the bases.

Chairman Hall: Okay, before we go to the public, does anybody have a question?

Commissioner Aieta: How do you propose to handle the excess queuing into the parcel that is the driveway on that piece of property?

Jeff LeBeau: Over here?

Commissioner Aieta: Yeah. There's going to be queuing there, no question, three cars in the queue, if that is the case, then you shouldn't even be doing the project if you are only going to have three cars.

Jeff LeBeau: They have four, and then you also have four here as well.

Commissioner Aieta: Basically, one basically in front of the reader board.

Jeff LeBeau: Correct.

Commissioner Aieta: The owner of the property gave you no relief for doing something different?

Jeff LeBeau: Not to my knowledge.

Commissioner Aieta: There is no stripping or anything we could do outside of that line of disturbance?

Jeff LeBeau: I was informed no.

Commissioner Aieta: Do you think three car queuing before the reader board is adequate?

Jeff LeBeau: I honestly can't answer that because I don't know the traffic operations of this type of facility, but.....

Commissioner Aieta: To be successful, they would need more than three queues, other restaurants in the area that have drive throughs, I looked at McDonald's and Burger King and some of the other ones on the turnpike, and they have a lot more area for queuing, and they use it too at peak times.

Jeff LeBeau: I think in the ideal situation more would be provided, but I know that their facilities people, this is, they felt comfortable with it because they provided their base plan to us and we told them at the last meeting what some of the comments were.

Commissioner Aieta: Why I'm actually saying this is that it becomes a hazard for people that are using that roadway for circulation.

Jeff LeBeau: One thing that has to be kept in mind is that I'm told, I can't verify this myself, but I've been told, I know this is a dead end portion of a larger lot, so it doesn't receive that much traffic. I know maybe at peak times during holiday season this gets used, but I'm told very rarely. So it is light traffic here, and obviously people would have to be courteous, be thoughtful if the queuing does back out this way. We can't make modification out there, at least to the best of my knowledge at this point.

Commissioner Aieta: The solution that I can see, would take some work with the owner of the property, to acquire the parking, to make the queuing where the parking is on the north side. Queue in that area.

Jeff LeBeau: Well I do know that I recommended early on in the project, we recommended a side entrance here, not to take up this space, and we were told no, but maybe that was for a zoning reason.

Commissioner Anest: Couple of things, I mean, I've been to the site a couple of times during the day, my concern is with the queuing as well. You're queuing where traffic is coming this way, and you're going this way, so people are pulling out. You've got to remember, the nursery for Wal-Mart is down at that end, and during the day there's a lot, at the north end of Wal-Mart there are a lot of people who park there, so they come from the nursery this way, and you are going to have cars coming this way, and you're going to be trying to come down, and cars are going to be going up, there's no way that that space between the parking and

Panera's lease interest would fit three cars wide. It's not made for three cars. Right there, right in there, so if you have cars queuing up, you have cars going south, a car going north, it's not going to work.

Then my other concern is, and I don't know if the project is going through with Wal-Mart, but we had approved a new building for Wal-Mart with an entrance at both ends. I'm concerned about that too, with traffic. If they make that into a Super Wal-Mart, there is going to be a lot more traffic in that area. I'm not comfortable yet with the safety concerns and the safety concerns with the people who walk in. I was there Saturday night, there was a car show there and there would be no way that (inaudible) would be able to be used, I mean, the place was a madhouse. So, special events on the highway would have to be taken into consideration as well, so I still have issues with it.

Commissioner Aieta: One of the things, maybe you talk with the owner of the property. We have new regulations to reduce some of the parking requirements. I know that that particular parcel is well overparked. I mean they have more parking than they can possibly use. So that could be something. I don't believe that those parking spaces are necessary for him to have for activity on the site. I know it's probably, Panera would like to keep everything on their site, but the site is, just what you said, it's a retrofit, and it doesn't work. If the building was designed from the beginning with a drive through, you could have rearranged the building and the parking and everything to work, so this is an after thought, and it doesn't work. We've looked at it a hundred different ways without acquiring more property to queue, you are queuing into the public right of way. I would have Panera go back to the owner and see if he would give that some consideration.

Jeff LeBeau: I will have them inform the owner and discuss some of the options.

Chairman Hall: Anyone else?

Commissioner Serra: I just want to agree with Frank and Carol. My concern with this, as I'm sure everybody here is the safety issue. I think there are still some concerns with pedestrian traffic. People are going to park on that outside area and walk across. They are going to, because that happens now, when that lot is full, they park there, they're walking over, you've got cars pulling in, cars pulling out, cars queuing, you can't stripe, you can't put a cross walk, it's just a dangerous situation. It's an accident waiting to happen. I just am not comfortable with it either.

Commissioner Sobieski: I agree with everything that has been said, but I'm still concerned with that queuing. I think you need a lot more than three. Especially, you look at any restaurant, as was alluded to before, on the turnpike, you've got cars backed up trying to go through the drive through, so three I don't think is a good number. You need to expand that some way or another.

Chairman Hall: Anyone else at this point? This is a public hearing, so we will hear from the public. Anyone wishing to speak in favor of this proposal? Anyone wishing to speak in opposition? Anyone wishing to speak? Seeing none, at this point, we will continue to leave it open I believe.

Craig Minor: To give them the opportunity to go back and talk to the landlord, is that why you are keeping it open?

Chairman Hall: I think everybody is uncomfortable with that queue.

Craig Minor: I realize that, but if the landlord has said, this is what you have to work with, then maybe the answer is already in front of us, unless Jeff, you think there is some, if it's worth people's time to go back to the landlord and ask him to reconsider.

Jeff LeBeau: In my opinion, I think it's worth keeping open and I can debrief my client and they can talk to Panera and then we can see if this is all they can offer, or if they can accommodate some of these other concerns.

Craig Minor: Okay.

Chairman Hall: I think it's a project that is worth pursuing. I think everybody has that opinion.

Commissioner Aieta: Other than that traffic, that area there, the rest of it is workable.

Chairman Hall: Right, and we appreciate all that you have done to change it up to this point, but there is still that issue. Everybody in agreement with that? The consensus is to leave it open and hope that they can work out a deal with the landlord.

B. Petition 23-14: Special Exception (Section 6.2.4 Free Standing Sign) at 2551 Berlin Turnpike (Cody Plaza) Bianca Sign Inc., applicant 2551 Berlin Turnpike LLC, owner, Paul Bianca, Bianca American Signs Inc., 99 Newington Avenue, New Britain, CT, contact.

Paul Bianca, 382 East Street, New Britain: Basically there is a free standing pylon sign at 2551 Berlin Turnpike. We would like to add something to the top of the sign, a three foot by eight foot section that would accommodate one of the tenants, which there is no space to put on the sign right now. Also we want to get the name of the plaza back up there, Cody Plaza, that was removed for one of the other tenants because there was a lack of space on the sign, so we want to get that back up there. So what we are proposing is that it is not over the height requirement for a pylon sign, and it's not over the square footage, so we are presenting this to the board because it is a free standing sign, and it needs to be approved by the board.

Chairman Hall: Commissioner comments?

Commissioner Aieta: Did the Zoning Enforcement Officer review the square footage and the sign requirements for the rest of the building and the height requirements of the zone, because I don't see the dimensions.

Craig Minor: Right, he did review all of the dimensional requirements with one exception and that was the one he tried to contact you about, I just found out today, the one thing he doesn't know is the height of this sign. Now I know that you said in your application, and you said again tonight that it does not exceed the height requirement, but you haven't specified how high it is from the ground, from the parking lot to the top of the existing sign. That was the one piece of information that we didn't have.

Paul Bianca: It would be eighteen feet.

Craig Minor: So with this three foot addition it would be eighteen feet high? So it's currently fifteen feet high. Okay, fine, in that case, the staff has no objections to it.

Chairman Hall: Any other comments from the Commissioners? Okay, again, this being a public hearing we will open it to the public. Anyone from the public wishing to speak in favor

of this proposal? Anyone wishing to speak in opposition? Anyone one wishing simply to speak. Seeing none, the consensus of the Commission?

Commissioner Aieta moved to move it to Old Business and act on it at the next meeting. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

C. Petition 33-14: Special Exception (Section 3.2.5: convalescent or Nursing Home) at 2125 Main Street, Middlewoods of Newington, owner/applicant; David Lawler, 580 Long Hill Avenue, Shelton, CT, contact.

Jim Swift, 102 Village Drive, Shelton, Connecticut: I'm a licensed professional engineer and landscape architect in Connecticut. This is the Middlewoods facility that it on the corner of Louis Street and Main Street, and it is an existing facility that the Commission just saw recently for expansion of some Alzheimer's units. The application before you tonight is strictly related to parking, we're not here before you for any expansion of the facility itself, no construction of structures or buildings, anything of that nature, increasing in density the project. You can see the site here. What we are proposing to do is to pick up a few more parking spaces. We'd like to add a couple of parking spaces here and here so for a total of four in the front of the building which of course faces the corner of Main Street and Louis Street, and also on the side of the building, we have parallel parking spaces here, what we would like to do is to convert five of those into perpendicular parking spaces and for a net of five there, so we're looking for a net increase, we have 33 spaces on the site right now, and we are looking to increase that to 46. Again, it's not related to any increase in the use of the building, we just feel that we need a little bit more parking. We've been through the construction process, of course we have the successful project across the street which some times sneaks over to our area, so we'd like to improve the parking. A couple of very minor, the parking spaces fit in very well to our existing aisles, there are no aisles that we need to add, these are just parking spaces off of the existing pavement. We do need to relocate just a couple of lamp poles here, and another lamp pole in that location, fairly minor. The other thing that I would like to point out is that there are quite a few trees up in this location of the site, these pine trees are quite a bit bigger, but I'd like to say for the record that all of the pine trees that are located in that corner are to remain, so we will not disturb those. Of course the town does have, in addition now to the standard drainage, the requirements that we are used to, a LID regulation, low impact development. It's fairly easy for us to take care of in this particular area because it's a very limited impervious area that we are adding to, and we propose to do that with a rain garden that would occur in that corner of the site. We have had some preliminary meetings with staff and with the Town Engineer. These areas are very, very small so what we are doing is, we're taking those impervious additional square footage, and adding it to that, so that in balance we are going to accommodate and mitigate for all the increase in flows and all the increase in water quality issues. We do that because this particular rain garden also takes into account quite a bit of the existing driveway so we do balance it out in that way. So again, this seems to be all about the rain garden primarily, what we're going to do is we're going to put a little curb in here, there's very little grading, we're not creating any steep slopes or anything like that, all these pavement areas fall in very nicely to where we're at. This large area, and a good deal of this existing driveway will drain into the rain garden through a grass swale here. In order to make sure that we save these trees, we'll discharge along the curb and down into the rain garden. The rain garden is planted with specific planting materials that accommodate the intention of the LID regulations required. This section down in here, the water flows into the rain garden, it stays in a very low area, it sits there, the plantings that we propose in there are specific to this sort of an application. They perform the biological function of water quality, that sort of thing. The water will sit in here until eventually it seeps out and enough water does fill it up, it builds up

to an elevation and it escapes in an existing outlet structure. So, in a nutshell, that's the proposal that we have, I believe that you are about to read the Town Engineer's letter into the record.....

Craig Minor: Jim, no I wasn't, but if you want to do that....

Jim Swift: Okay, let me just address a few things. We have a letter from the Town Engineer. We did provide full drainage calculations for this, both for storm water runoff volumes and for the LID regulations. He had a few minor comments, mostly technical in nature, making sure that I provided calculations in a form that he is happy with, and I will certainly do that. No problem with satisfying the Town Engineer's requirements there. The only two issues that he had that affect the plan and might interest the Commission; he would like me to show the soil stock pile areas on the plan, which basically are going to be down in this corner, there's really not a significant amount of stockpiling, we're not moving a tremendous amount of soil here, we're basically going to come in and in certain areas we are going to take some of this area that we need to take out to provide the grading and we're just going to remove it from the site, so there's not a lot of stockpiling. The trucks will come in, they'll take that excess material, they'll truck it off site, so that's not that big a concern. Any small stock piles we need we can put in that little corner, and the other one is, he was concerned about a pitch of pavement here that was a little more than five percent and we can easily adjust that. So fairly straight forward project, if the Commission has any questions, I'd be glad to answer them.

Chairman Hall: Does anyone from the Commission have any questions?

Commissioner Sobieski: How close is your last space here to the state road?

Jim Swift: To the state road, it's in excess of the twenty-five feet.

Commissioner Sobieski: I didn't see it on the plans, that's why I was wondering.

Jim Swift: It's about thirty-three feet.

Chairman Hall: Anyone else have a question at this time? Anyone from the public wishing to speak in favor of this proposal. Anyone wishing to speak in opposition to this proposal? Come forward and state your name and address for the record.

Lori Dabowski, 2121 Main Street, Newington: I own the property adjacent to this building. When it was originally proposed as new construction they provided a fence along the existing parking and stated that there would be no additional parking at that time. Now that there is going to be additional parking, I just wish that they would extend that fence to the end of the parking, to the front of the property, to the front of the house. That would be like four sections of fence. Other than that, I have no problem. Thank you.

Chairman Hall: Anyone else wishing to speak in opposition? Anyone wishing just to speak to the proposal. Seeing none.....

Jim Swift: In reply, we will be glad to extend that fence, that's not an issue, we will do that.

Chairman Hall: And there's enough space to do that without being out of code? We don't want to have that issue that's it's too close to the street, okay. Craig, do you have anything to add at this time?

Craig Minor: No, I have the Town Engineer's very general comments, but Mr. Swift summarized, and I have no comments of my own.

Chairman Hall: So what's the pleasure of the Commission?

Commissioner Aieta: Move it to Old Business for the next meeting.

Jim Swift: We don't necessarily have problems with that, but right now we're in the process of completing the construction for things that are going on in here, and this is fairly straight forward, certainly at the Commission's pleasure, what ever the Commission needs to do, and whatever staff is looking to do, but if there is any possible way to get it to Old Business for approval, we agree to any conditions that the Commission might want to come up with tonight, and perhaps.....

Craig Minor: I have no objection to that. I know that the previous application through no fault of the Commission's took a long time to get through the approval process. This one seems to be moving much more quickly, but I, from the staff's point of view, I have no objection to approval with conditions.

Chairman Hall: Right, as long as we have all of that in writing. What's the pleasure of the Commission?

Commissioner Aieta: If the rest of the Commissioners are agreeable, we could close the hearing and move it to Old Business tonight and act on it as long as the Planner can come up with a motion with the appropriate conditions.

Jim Swift: That's fine.

Chairman Hall: I don't think we would be changing anything the next time. All right, we'll see if we can accommodate that for you. We'll have Craig, quick like a bunny, start writing, but just make sure that all of those conditions are in there.

D. Petition 35-14: Special Exception (Section 6.2.4: Free Standing Sign) at Constitution Plaza. Val Ginn applicant, Town of Newington, owner, Val Ginn, 56 Farmingdale Road, Wethersfield, CT, contact.

Chairman Hall: For the record, it's Constitution Square. It says plaza, you read it right, but it is square. Come forward and state your name and address for the record. Good evening.

Val Ginn, 56 Farmingdale Road, Wethersfield: Good evening all. I'm here to ask the Zoning Commission to please give me permission to put up signs for the Farmer's Market. We were given a grant of \$650.00 from the Connecticut Central Health District. Each surrounding area, including Newington received a \$650.00 grant, so I'd like to use that to promote the Farmer's Market because this is the sixth year that it's being held and believe it or not, people still don't know it exists. So I want to just make sure that, these signs that will be put up by, on Cedar Street, and one by Constitution Square that Craig and I discussed, is visible....

Craig Minor: Market Square.

Val Ginn: Market Square, I can't keep up with this town, but that's why I'm here, for permission for the signage and I think Craig, you saw the signs, and you and I spoke about that. If you have any questions for me, I'd be happy to answer them.

Commissioner Anest: Craig, at the last meeting I had asked for information regarding who authorizes, puts signs up?

Craig Minor: Right. Well, the Town Manager did sign the application but he wanted me to make clear that it signed it only to let the process move forward. He was not making a

statement whether he thought it was good or bad, he was allowing it to move forward. The questions as to who owns the signs, in the sense, that question is an open one, and if the Commission were to approve this, I would recommend it be with the stipulation that some decision be made as to who the responsible party is for those signs, such as the EDC or the Town Council and get their approval before Ms. Ginn be allowed to actually hang up the signs.

Commissioner Anest: My other question is, where the signs are going to be hung up, is there any sight line obstruction. If you are pulling out onto Market Square, that one sign, it's difficult enough to get out with the cars.....

Craig Minor: Right, I know that you brought that up last time also, that would also be a condition of approval, that the staff verify that in fact, it is not hindering the sight lines.

Commissioner Leggo: I just wanted to clarify, in our packets the map that is shown, the arrows where the two signs are located is incorrect to where it is actually being worded as placed. It's showing an arrow on East Cedar Street.

Chairman Hall: I think it's on the Esther Eddy property, isn't it?

Commissioner Leggo: The picture shows on the next page shows that it's over there, but the map shows different, that's all.

Craig Minor: It will be where the existing sign is. If the existing sign is not as I put the arrow, then.....

Chairman Hall: I think it's closer to the one way street.

Craig Minor: They both say one way which is how I got confused.

Chairman Hall: The one that is more east, where it hooks up with main loop.

Craig Minor: Right, okay,

Commissioner Anest: Like where the flea market sign is?

Val Ginn: It's the driveway going towards the Hidden Vine.

Commissioner Anest: Where Newington bicycle is.

Val Ginn: Right.

Chairman Hall: Then that is correct.

Commissioner Anest: Then the other question is, going west there is no left turn into that one way. Across from Center Court. I'm talking about on East Cedar, you're going west on East Cedar, where Newington Bicycle is, across from Center Court, there's a no left turn into that,

and it's the sign that, I mean, if that is where the sign is going, and we approve it, I would ask that you not have an arrow for people going west to turn into that. Going east you can do it, but not going west.

Chairman Hall: That could be a problem.

Craig Minor: Okay, I wasn't aware of that.

Commissioner Aieta: Are these the only two signs for Cedar Street and Market Square? Are there any on Constance Leigh, on that driveway?

Chairman Hall: There's a huge sign that lists everybody, but it doesn't say Constitution Square.

Commissioner Sobieski: You could put the sign for westbound, and nothing eastbound.

Chairman Hall: You'd have it blank on one side.

Val Ginn: If that's needed for approval, I'll have the sign people just do one side, okay?

Commissioner Leggo: I'm still confused. I'm looking at the picture, and the bottom sign, that's down near the bank, that's all the way down the other end, that's not what we are talking about.

Commissioner Anest: But there's not a sign there.

Chairman Hall: I don't remember a sign either.

Val Ginn: I think I know where you are talking, there is a sign there when you are going, like you are taking a right going into the Farmer's Market itself, off Constance Leigh. There is a sign that says, Constitution Square. You're right, there is a sign there.

Commissioner Leggo: And that's the picture that we have in our package.

Val Ginn: I don't know, Craig?

Craig Minor: I think I see what everyone is saying, The second sign, I think what that was meant to do is give us the photograph of the existing sign with her sign photoshopped into it. I guess your vendor did this, your sign vendor?

Val Ginn: Yes.

Craig Minor: I think he took a photograph of the wrong existing sign and photoshopped in the new board, which is the confusion that Ken has.

Chairman Hall: Well, where is that one then.

Craig Minor: It's on the entrance where the bike shop is.

Commissioner Anest: The picture is incorrect.

Commissioner Leggo: That's where I'm getting confused.

Commissioner Serra: This is just so you would have an idea of what the sign would look like.

Val Ginn: Right.

Commissioner Leggo: So the map itself is correct with the arrows.

Chairman Hall: Theoretically. At least we are assuming that.

Val Ginn: And as far as the sign staying there for the whole season, we have copy signs, it's got these little clips so it can be taken down so it's only seasonal.

Commissioner Anest: I'm not concerned about that, I'm concerned about who has the authority to okay putting something on the sign.

Chairman Hall: We think it's owned by the town.

Commissioner Aieta: When are you starting the market and when.....

Val Ginn: The 25th.

Commissioner Aieta: Of this month.

Val Ginn: I'm cutting it close here.

Commissioner Aieta: We still have questions.....

Chairman Hall: Unless we have conditions and if she meets the conditions with administration.....

Commissioner Aieta: They might as well have the signs up before they start.

Chairman Hall: Ideally they should have it up the week before.

Val Ginn: Well, I already have a banner going up on Market Square for the Farmer's Market.

Commissioner Aieta: These will be good to let the people know how to get in and out of there. Could you come up with a motion that certain things happen before.....

Craig Minor: I have a draft motion ready.

Chairman Hall: Well, this is still a public hearing so we still have to hear from the public, but is there anyone else on the Commission that has a question for Val at this time.

Val Ginn: Thank you.

Chairman Hall: Anyone wishing to speak in favor of this proposal? Anyone wishing to speak in opposition? Anyone wishing to speak? Seeing none, so Craig, if you can put that together too.

IV. **PUBLIC PARTICIPATION** (For items not listed on the Agenda, speakers limited to two minutes.)

Amanda Robestelli Price, 23 Chapman St. I'm here on behalf of our family business, Fun Squared in Newington. We are seeking to hold a flea market in our parking lot on Sunday mornings during the summer months. A flea market would provide needed income to our business and our location would be ideal for a shopping and selling locally. When we first approached the Town our impression was that getting a permit would be an easy process. However it has turned out to take more money, resources and time than (inaudible). Though there are flea markets in town that are run by charitable organizations, we are told that there are a lack of regulations that address for profit flea markets make ours different. We find this perplexing. After lengthy discussions, it was recommended that our \$100.00 application not be presented to this Commission and instead we pay an additional \$500.00 to write regulations for our flea market, a process that would take two or three more months, long enough for us to miss the opportunity this summer. We want to feel helped and supported by our Town of Newington, instead we are feeling lost, confused and overwhelmed and would really like your assistance to move this process forward in a timely fashion. Thank you for listening and considering our case.

Chairman Hall: Thank you.

Craig Minor: That is essentially correct. When Ms. Price approached me recently, I knew that the P & Z had recently approved other flea markets, so I suggested that she submit the application to get it on the agenda since time is of the essence. As I did more research, I realized that flea markets that the town has approved in the past were all for non-profits, under a section of the Zoning Regulations that allows non-profits and government to conduct pretty much any type of activity that they want, but there is nothing in the regulations that provides the mechanism for the town, TP&Z to approve a flea market which is a rather complicated operation. It's not as simple as you might think at first. There's issues of traffic, there's issues of parking overlap, there's issues of time of it, it's not a bad thing at all, and many towns do have regulations for flea markets, but Newington isn't one of them, and as you all know, the zoning regulations don't allow it, that means it's prohibited, so unfortunately and it took me a while to gather all this information, oh, because there was a flea market that had been approved by the town for the Kiwanis Club, but there was also a flea market back where the old drive-in theater was, so I had to find out how that was able to be approved, and I found out that that was Kiwanis as well. I did contact Ms. Price and say, well the regulations don't allow it, but here's the mechanism for amending the regulations and said I would be happy to work with her in drafting the regulations, and I would go to other towns and see how they regulate flea markets. Unfortunately the application fee for a zoning amendment is \$500.00, so that's the status.

Chairman Hall: Okay, we usually don't respond to public participation, however this is a topic that maybe we want to bring up at some point to see if we even want to pursue the type of process. You know, do we want flea markets in town, and if we allow one, how many, I think there is a bigger picture. It's not just okay, one person, we certainly aren't going to give permission for one person to do something, but regardless, we have nothing in our regulations, but maybe there is something that we should, if we decide, put on for discussion at some point, but I don't think tonight is necessarily the night.

Craig Minor: And the Commission can certainly direct me, the Commission can initiate it, as you have in the past when you have noticed that there is a deficiency in your zoning regulations, you have directed the staff to produce an amendment, and then it's your application.

Chairman Hall: Right, if we see that it is a deficiency. I think that is the larger picture, we have to decide whether we want the whole concept of just general flea markets in town.

Commissioner Anest: I would like to see this be discussed at our next meeting.

Chairman Hall: So we will put it on the agenda for discussion.

Commissioner Anest: Can we ask what the location would be?

Amanda Price: Yes, it's at 56 Costello Road.

Chairman Hall: That's a pretty long street, is it right at the corner, or.....

Chairman Hall: Is it where Goodwill is, or where the bowling alley is?

Amanda Price: It's the bowling alley

Chairman Hall: Oh, it is the bowling alley.

Amanda Price: Yes, our official name is Fun Squared.

Chairman Hall: T-Bowl, and then isn't there a laser quest or something with it.

Amanda Price: Yes, thank you.

Chairman Hall: So we will put that on the next time for discussion?
Anyone else from the public wishing to speak on items not listed on the agenda?

V. REMARKS BY COMMISSIONERS

None

VI. MINUTES

A. May 28, 2014 Regular Meeting

Commissioner Leggo moved to accept the minutes of the May 28, 2014 Regular meeting. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

B. May 28, 2014 Special Meeting

Commissioner Sobieski moved to accept the minutes of the May 28, 2014 Special Meeting. The motion was seconded by Commissioner Serra. The vote was unanimously in favor of the motion, with six voting YEA.

VII. NEW BUSINESS

A. Petition 18-14: Site Plan Approval (Commercial Building at 2272 Berlin Turnpike, Parth Patel, applicant Seva Sadan LLC, owner, Parth Patel, 58 Meadow Lane, Berlin CT contact.

Alan Bongiovanni: Good evening Madam Chair, Members of the Committee, my name is Alan Bongiovanni representing Dr. Patel on the application before you. This is our third meeting on this. There was one outstanding item that we needed to address and that was the issue of parking within the thirty-five foot setback. As I stated at the last meeting, we

would remove it from the plan, this plan is full sized and shows it, and I've made copies of the reduced ones, just to save on paper for all of the Commissioners. What our intention is, is again to have it approved as we have modified the plans, we would, at the next Zoning Board of Appeals meeting ask for a variance to put those spaces back in because we feel that it is imperative to have parking in front of the building. The way the plan is presented we do meet the required parking of five and a half spaces per thousand, we're required to have 104

spaces and we just meet that requirement without any deferred spaces that we talked about earlier, so it does meet your regulations as presented. We will go to the Zoning Board of Appeals to hopefully put these spaces back in and if you are so inclined to approve it that way, we would hope that it could be approved at staff level since you have seen it, the engineering has been done, if the ZBA grants a variance hopefully we would not have to come back. With that, if you have any questions, I'd be happy to answer them.

Chairman Hall: Anyone from the Commission have any questions?

Commissioner Aieta: I have no objection to it being approved and then you go to ZBA and get the approval for it, you don't have to come back here, as long as it's in the motion.

Chairman Hall: Worse case scenario, this is what they are going to end up with, so....

Craig Minor: Well, I just have a little bit of a logistics problem with doing it that way, because then the plan that will, if ZBA grants the request, we want to file the mylar showing the new parking and that new plan will need the Chairman's signature and the Chairman wouldn't have been authorized by the Commission to sign it, so I think you are going to have to come back for a meeting, but I don't see why it would take more than one meeting.

Commissioner Anest: But when other applicants go to ZBA they don't come back to us to revise their plans.

Craig Minor: Yeah they do. Because ZBA with a magic wand just makes them compliant with the zoning regulations. They still have to get the site plan approved, showing whatever it is they got a waiver from.

Commissioner Aieta: And it all has to do with the Chairman signing the mylar?

Craig Minor: Yes.

Commissioner Aieta: What is the problem with that, she signs them all the time.

Craig Minor: Because what's the date of the plans that she is going to sign, say in August, what date were those plans approved?

Commissioner Aieta: The date that he gets the approval from the ZBA.

Craig Minor: That's not the date that this Commission approved it, which is what the endorsement block shows.

Chairman Hall: When do they meet? The second....

Alan Bongiovanni: The 7th because it's the beginning of July, it's actually on the 7th.

Chairman Hall: There is no guarantee that they will give you the approval that night, necessarily. But if they meet on a Tuesday and we meet on a Wednesday, the next night you could just come here and have everything and I could sign it by the end of the night. Would that work?

Alan Bongiovanni: That's fine. We just don't want to stop the process.

Chairman Hall: Because your meeting is before ours, isn't it?

Alan Bongiovanni: I think it's a Monday or a Tuesday. The 7th is a Monday, special meeting.

Chairman Hall: Special meeting, okay. All right, we'll meet the 8th, so if you know then, if not it will be the 22nd.

Commissioner Anest: Do they vote on it the same night, the ZBA?

Alan Bongiovanni: Something like this, I think they would.

Chairman Hall: Let's put it this way, we'll do the best we can timing wise to get you going. All right, so at this point, we'll move it to Old Business.

Commissioner Anest: Do we have time?

Craig Minor: Sixty-five days from the date of receipt. We can ask for an extension if we need it.

Alan Bongiovanni: We could be pushing the time on this.

Craig Minor: Then let's ask you for an extension to postpone a decision until the June 25th meeting.

Alan Bongiovanni: I would just as soon as, so Dr. Patel can complete his financing, you approve it the way it is, hopefully tonight. I'll come back for a modification for the additional parking. I've got to come back anyway, so I'll just come back for a modification.

Chairman Hall: So we will move this to Old Business and act on it tonight. We'll just add one more thing. Might as well get rid of it.

B. Petition 22-14: TPZ Approval (Section 3.23.1: Accessory Outside Use) for Fireworks Tent Sale at 2985 Berlin Turnpike (Turnpike Plaza) TNT Fireworks, applicant, Brixmor Property Group, owner, Brian Kearney, 93 Chambrook Road, Stratford CT, contact.

Brian Kearney 93 Chambrook Road, Stratford, Connecticut: Good evening Commissioners, Madam Chairman, Staff. I'm here for the Fireworks tent sale at 2985 Berlin Turnpike. This is a continuation from the last meeting, so what I've done, per your recommendations moved the proposed site from its original location using your recommendations, closer to the Dick's parking lot on the opposite side of the entrance. On the map there, I left the original spot which is number one on there for a reference, and then what I did, I moved it the opposite side of the entrance road and gave you two proposed sites. You guys wanted some options. Site number two and site number three on the opposite side of the road there are closer to Dick's. If anyone has any questions?

Commissioner Anest: Did you take into consideration moving it even more north? Down near Price Chopper?

Brian Kearney: I did, and my thought was that if we had to move it any further north it wouldn't be worth our while.

Commissioner Anest: Because of exposure?

Brian Kearney: Correct.

Commissioner Aieta: The problem that we have is that where you are putting your tent, it's too close to where Dick's is having their tent sale. You would be taking up basically those two aisles, four, five aisles of parking and it would be disruptive. That's the reason as a Commissioner I would like to see this at the north end of the site. I mean, it's going to be overwhelming.

Brian Kearney: I was under the impression that Dick's 30 x 30 tent was going to be at the closest section of the building.

Commissioner Leggo: They are showing it about five spaces away from your number two location.

Brian Kearney: Towards Dick's?

Chairman Hall: Right.

Commissioner Anest: And then I'm concerned with the Yogurt Place and like that. In the summertime people park over there, the overflow and safety and maybe we can come up with a solution where you can get visibility.

Brian Kearney: If we were to reduce our footprint because I think it is important to get that exposure there, if we were to reduce our footprint from five to maybe three, take up those three spots in either of section two or three of the proposed spots, would that change the Commission's thought on it, or is it still too close to where they're proposed tent will be?

Commissioner Aieta: What if you moved into the north end of the plaza and we allowed you to have a visible sign somewhere on the property?

Brian Kearney: That would be agreeable. Definitely.

Chairman Hall: Describe what you are talking about.

Commissioner Aieta: Some type, the sign that they would normally put on the tent, if they could put it somewhere, maybe on the, how long is it, a month?

Brian Kearney: Couple of weeks.

Commissioner Aieta: Even if they put it up near the turnpike, as a temporary sign so that people know that they are in the plaza. But they wouldn't be here, they'd be at the other end of the lot, or you could put it up where, maybe where the pylon sign is now, put a temporary sign up there that has Fireworks, and people would know that it is in that plaza.

Commissioner Anest: Then you could keep your same size tent too.

Commissioner Aieta: You'd have better visibility with the sign.

Brian Kearney: That would definitely help.

Commissioner Anest: And it would be temporary.

Brian Kearney: Two weeks.

Commissioner Anest: And we're asking you to relocate.

Chairman Hall: Now would you still allow a sign on the tent itself?

Commissioner Aieta: For two weeks I wouldn't have a problem with that as long as he moved it to the north end of the parking lot, that's the main concern is to get him far away from the Dick's operation as possible. I mean it's only for two weeks, I wouldn't have a problem with a sign on your tent and one up on the turnpike.

Chairman Hall: On the sign, not in the ground.

Commissioner Leggo: On the pylon. I want to agree with Frank, I think that's a good solution because we're offering the ability to know that they are in there, but we're making it a lot safer.

Commissioner Aieta: This isn't normal that we allow people to do temporary signs like that, particularly on the Berlin Turnpike, but we're asking you to move your operation where it won't be visible to any traffic, so we would do this as something out of the ordinary for you to get the exposure.

Brian Kearney: Appreciate it.

Chairman Hall: Any other comments? And also, just make sure that there are no signs in the ground because TNT is the one that in the past, unfortunately you seem to make them overnight or something, so if we are going to do this, you really have to be good about these signs.

Brian Kearney: I appreciate that.

Commissioner Aieta: When do you propose to start?

Brian Kearney: The original proposed start date is June 20th. So with time being the essence,

Chairman Hall: That's a week from Friday.

Commissioner Anest: Our next meeting is the 22nd.

Chairman Hall: Is that the consensus, that we move this to Old Business and vote on it tonight? Okay, thank you.

Brian Kearney: Thank you.

C. Petition 31-14: Site Plan Approval (Drive through Restaurant) at 3120 Berlin Turnpike (Panera) Norr Architects, applicant; Newington VF LLC, owner, Bryan Slonski, 325 LaSalle Street Suite 500 Chicago, IL, contact.

Jeff LeBeau: With me also is Rachael Turner-Mock with Norr so she may be able to answer some other questions that you have, she has the direct contact with Panera Bread. We would like to ask the Commission to keep this open until the next meeting. We all know what the concerns are and the issues, and really this is an owner-Panera discussion that we have to have, but we would really like to keep it open and I think Craig can vouch that we have satisfied the Town Engineer's comments with drainage and site plan, there are some housekeeping items.

Craig Minor: Well, again, you have an e-mail that was from the engineer. There are some slight issues but he doesn't feel that those are obstacles to action by the Commission.

Commissioner Aieta: It's a really moot site plan until we get some kind of answer as to the queuing. We'll keep it open and hopefully the owner and Panera can come to some kind of agreement if you can do that, until you get a better operation, better site, something that is going to work. You really have to try to push to acquire a little more space there.

Jeff LeBeau: Right. Just for a recap for me, and to just further focus and clarify, we know the issue is queuing, as well as safety, the pedestrians parking here and crossing. I think that is an easier issue to kind of mitigate. What's the Commission's thoughts, where would they like to see this queuing, out this way?

Commissioner Aieta: Basically in the parking spots.

Jeff LeBeau: Eliminate some parking for storage.

Commissioner Anest: And then you would have to change it from.....

Jeff LeBeau: Right, you would have to have a different route to get folks in.

Commissioner Aieta: You would only need people to do that when it's queued to the maximum where they have to, when there's two or three cars there at all periods, they wouldn't have to queue into that area, they would just drive right in.

Jeff LeBeau: All right, so have like additional queuing storage during the peak times.

Commissioner Aieta: You could do that with stripping, signage and other stuff to make people aware of how the operation works.

Jeff LeBeau: Okay, so we need to get a little creative in here as far as, we just want to have informed discussions with the owner and Panera to clarify that.

Commissioner Leggo: Just the human factor, there would have to be a sign and a rerouting for all of the time, or people will act like it's never needed, will stay there to take a left, and then we've got our traffic issues. You'd have to have a no left turn and use it that way all of the time.

Jeff LeBeau: Okay, clearer markings and signage to direct that way. Is there any minimum number that you guys, in your mind, are basing this on? Is there a number that you feel, okay, that's the minimum that we could accept? Obviously we will try to maximize it, but, is it ten, is it seven?

Commissioner Aieta: We don't have the expertise to say that. It's this or that without traffic studies and engineering considerations. Unless the staff can come up with, but basically you

are the experts in it, come back and tell us what, you're saying three and we know three does not work. We may not be the experts, but we know enough to know that three is not correct.

Chairman Hall: We also live here and we know the site. Probably Panera in Illinois doesn't.....

Rachael Turner-Mock: Oh no, it's a franchisee. All of their locations are here in Connecticut, so they are very familiar.

Commissioner Anest: What do they have in Wethersfield with their queue?

Rachael Turner-Mock: I want to say it wouldn't be more than ten, but it's probably more like eight or nine, but I'll check.

Chairman Hall: But it's not three.

Rachael Turner-Mock: That's from here to here, the whole, we can use that information when we come back, for their directors in the area, what their standard is.

Commissioner Serra: I just want to reiterate. I think what you have to understand is that our concern is the safety of the traffic flow, the safety of the pedestrians, you know, we're not here to say, it's got to be ten, it's got to be fifteen, we want to have what is going to be safe and what is going to work for the public and for our residents, that's what we're looking for.

Chairman Hall: Anyone else? Okay, so if we can solve this issue.....

Jeff LeBeau: Thank you very much.

Chairman Hall: Thank you.

D. Petition 32-14: Site Plan Approval (Building Addition) at 218-240 Hartford Avenue (Data-Mail) Data-Mail Inc., applicant, Mandell Properties LLC, owner, James McClosky, 218 Hartford Avenue, Newington, CT, contact.

Alan Bongiovanni: Thank you again, Madam Chairman, Members of the Commission, staff, for the record my name is Alan Bongiovanni representing Data-Mail, Inc., At the last meeting we made a presentation, they are proposing to add a 13,144 square foot addition to the southeast corner of the building, just off of Hartford Avenue. Since the last meeting staff and engineering have reviewed it, Mr. Greenlaw had a few technical comments. One of the things is making sure our calculations for the LID are compatible with what they want. It's something new, as we all know, so we are kind of working through that, but just some minor calculations and things that were necessary. There is a discussion between the Fire Marshal and the architect about separation from the property line. As Craig and I had a conversation earlier, that's really a building department issue I think and from a planning perspective what we have presented is what we are asking for and we think it meets or exceeds all your regulations, so thank you for your time.

Commissioner Aieta: We might as well move it to Old Business along with everything else.

Chairman Hall: Craig, do you have anything to add at this point.

Craig Minor: No, as Mr. Bongiovanni said, the Town Engineer again, that memo that you have has what he considers minor issues, none of which are deal breakers so staff has no objection to this moving forward.

Chairman Hall: Okay, does anyone else have anything?

E. Petition 36-14: Site Plan Modification (Tent Sale) at 2985 Berlin Turnpike (Dick's Sporting Goods) Dick's Sporting Goods, applicant Brixmor Property Group, owner, Tanya Atkielski, 2985 Berlin Turnpike, Newington, CT contact.

Brent Atkins: Good evening, speaking on behalf of Dick's Sporting Goods at 2985 Berlin Turnpike. Just a follow up from the meeting two weeks ago, requesting a tent, 20 x 60 for a clearance sale that we are going to be holding.

Chairman Hall: This is the approximate spot, so it is not all the way to the entrance, to the end of the parking lot, it's maybe five or six spaces in and then you take up another.....

Brent Atkins: It should go to the median, half way out.

Craig Minor: Okay, I don't know what you mean by median.

Chairman Hall: There is a concrete median that usually has a tree or something in it.

Craig Minor: Which is not shown on the sketch.

Chairman Hall: They are big ovals.

Craig Minor: So this tent will then take up two, four, six, eight, ten, twelve, fourteen, maybe sixteen spaces?

Brent Atkins: Roughly, yes.

Commissioner Anest: So the tent will be rectangular.

Brent Atkins: Correct.

Commissioner Leggo: I just want to reconfirm, last meeting we talked about the fact that it is going to encompass the parking spaces and not extend out into the travel aisle.

Brent Atkins: It will be flush so not to impede the traffic.

Commissioner Anest: Is the tent going to be open on all four sides?

Brent Atkins: As of now, no.

Commissioner Anest: So is it going to be open on the east and west side?

Brent Atkins: North and south. It will be in between the aisles, they don't want them walking into the aisles where traffic is. It's going to be at the entrance so they can walk directly into the store and pay, or from the back. From the south end.....

Commissioner Anest: So you are going to go east to west so you will be facing the store.

Brent Atkins: I'm sorry, yes, so the only bit of traffic that they will have to cross will be as if they are coming from their car heading into the building.

Chairman Hall: So that would be the short side, you would walk in, you walk through it, not from the side but from the end.

Brent Atkins: Not that there isn't enough under Old Business, but we were planning on starting the 27th, we, as of now have about 20,000 products that we are expecting to take from the Albany, the metro district and our own, and obviously the sooner we can start, it will make our lives a little easier.

Craig Minor: The draft that I had prepared only had the condition that they get the owner's approval which was not previously submitted. That was the only condition that I had.

Commissioner Aieta: Did you get that?

Craig Minor: No, no, remember, they have to pay before the owner will sign off on it.

Brent Atkins: There is a fee and before we commit to that fee we will have to get your blessing before we commit ourselves to anything like that, but as far as talking it out, that's hashed out, it just hasn't happened.

Craig Minor: Right, that was the condition that I drafted.

Commissioner Aieta: Move it to Old Business

Chairman Hall: Move it to Old Business and act on it tonight.

Brent Atkins: I appreciate that. Thank you.

F. Conservation Easement at "Packard's Way" Donna DiMauro, owner/contact.

Donna DiMauro, Maple Hill Avenue, developer of Packard's Way: I'm here again in regards to the conservation easement on my property, Packard's Way. I'm asking the Commission to honor the conservation easement that I have.

Craig Minor: At the meeting last week I was asked to get a legal opinion from the Town Attorney on the definition of clear cutting. I spoke to the Town Attorney, and this is just verbally, this is not in writing, he advised me that although you could look up the phrase clear cutting in the dictionary, it's not as if it's a term that is completely self-contained, it depends on the circumstances what clear cutting means. So what the Attorney and I talked about was since it was the Commission that approved the Certificate of Action which uses the phrase clear cutting, that the Commission should decide what is or is not clear cutting. So what I'm suggesting tonight that we discuss that when the lot is sold and the new owner comes in and submits a building permit that either, and I'll go out on a limb here, that either I will look at it, and I will say, this is not clear cutting, but if I'm not sure about it, or feel that it is, I'll refer it to the Commission to make a final decision as to whether it is or is not clear cutting. Which I think is a good compromise because that then puts it back on the Commission's purview because it was the Commission initially, I know none of you ladies and gentlemen, but it was the Commission that created the conservation area in the first place, so it seems reasonable that the Commission would then make the judgment call as to whether a particular cutting of trees is consistent with that decision of ten years ago.

Chairman Hall: First of all, how many lots will this effect?

Craig Minor: One, well, one more. I believe Mr. Petruzzi is satisfied with the agreement that he negotiated with you, I believe it is satisfied with that, so, I think this really only affects the unsold lot.

Commissioner Aieta: I'd like to hear from Mr. Petruzzi first, if you don't mind, if he is satisfied or not.

Steve Petruzzi, 29 Packards Way, Newington, CT: As far as me being satisfied, no. Hardly. Basically there are two documents that were approved and filed through the Town of Newington. First one, was the Certificate of Action dated May 1, 2007 and the other was the revised Conservation Easement that Mr. Minor and Attorney Richard Kuzmak out of Hartford drew up, put it into effect by having it approved and filed on February 20 of this year, which is very specific, very specific in regarding to the grading and/or clear cutting, and you will have to excuse me Mr. Minor, but the words clear cutting are in the Newington Conservation Commission, very, very specific, Section Two, which states exactly and grammatically what the words clear cutting, as it pertains to Lots 7 and 8. There is no gray area on this whatsoever, if again, it was filed and approved and I'm not even sure why this is even being discussed folks, to be honest with you. I mean, these are filed, approved and filed documents, they are legal documents. They don't say anything about selective cutting, they don't say anything about, you cannot take any trees out of that area whatsoever, it states emphatically in this Certificate of Action which you folks were given copies of at the last meeting. That there is no grading or clear cutting. Period. End of Story. Ed Meehan drew up that document, he had multiple, multiple conversations with the developer Ms. DiMauro, several years ago, when this project was getting itself off the ground. But then, Mr. Miner, you will have to excuse me, when you got together with Attorney Kuzmak, you actually had an opportunity at that time, you had it, and you didn't take it. In that document it does not state anything whatsoever, and again folks, you were given copies of that revised Conservation Easement at the last meeting, and again it is very specific. At the point of where I come into this, I felt very, almost held hostage if you will, because basically a deal was made that if I wanted to take down four trees that were to be an endangerment to the property, and to the house because the house is very close to the Conservation Easement, that I would have to put up two rows of trees, or I would not get the c.o. and further more, I would have to provide a bond and that, I went ahead and on April 24th, I put in the two rows of trees, because I didn't want to get into a situation when the building process is going to be overwhelming towards the end and things are getting very hectic, to be worrying about the fall and what have you, if we get a cold spell, these trees die, and again, not having water at that point, so I just decided, let's take care of it now. Therefore, I did, but as far as me being satisfied, hardly. That's basically it. I would like this Commission just to basically take a look at the two documents and again, if we're not going to abide by the documents, okay, we're not going to abide by them. But these were set in place by folks that we trust. I think they should be abided by, very simple, I don't believe there is one bit of gray area in this whatsoever. I only wish that Mr. Meehan could be with us this evening, because I am as sure as the day is long, that he would shed the light of exactly because I think Mr. Minor would like to talk about the word intent, the intent didn't mean anything. The Certificate of Action that he put into place, that he had approved and filed dated May 1, 2007 spoke for itself.

Chairman Hall: Thank you.

Commissioner Aieta: We have to come to a conclusion on this. It's taking up a lot of time, and we have the two documents that are filed, we have to abide by the documents that are in place. The word clear-cut, I discussed it with Carol, we're clear on what the definition of clear

cutting is. My definition and hers are exactly the same. I don't see where we have to encumber these property owners that to have to come back and have someone say whether they can cut a tree or prune or do something on the property that they own. I'm in favor of just abiding by the two documents that are in place and let the people do what they want with the property up to the point where they don't clear cut. It's as simple as that. If this was my

problem, I would take the same action as the people who have come here tonight. Let's get this off the table and let these people enjoy their property.

Commissioner Anest: I just want to concur with Frank because we did speak earlier. If the intent of the Commission was the tree preservation easement, then in the tree preservation easement it should set forth what trees can be cut down, it gives you a plan of the trees, the diameter, all of it. This does not, this is just strictly a conservation easement. A conservation easement isn't only for trees. It's land. So, I agree, I think if clear cutting is down to the stumps, every tree. That's not what they want to do, they want to take down a couple of trees, they should just be allowed, like Frank said, to enjoy their land and as long as they are abiding by the Certificate of Action, and the conservation easement I think we should all abide by that.

Commissioner Leggo: Everything that I have gone and checked out and read, same thing, clear cutting means everything. That's the only thing I found. I understand the word intent, but the definition of the word means taking all of the trees down, so, I'm agreeing, that's everything that I have found and it's and the word is in the paperwork and it's legal and the word is what it is. Clear cutting is every tree.

Commissioner Aieta: I took the information that was e-mailed to us from the Town Planner, all the minutes and read all of it. This is the conclusion that I came to, let's abide by what is filed and let's move on and let the people do as they wish.

Chairman Hall: There are two lots, one has already been dealt with, that's Mr. Petruzzi's, and the second one, do you have a buyer for that one yet?

Donna DiMauro: Yes.

Chairman Hall: I assume that the buyer will have a copy of all of this as well. That this is not just going to be a round the table with you, because it is imperative that they have that.

Commissioner Serra: I just want to say, I agree with everyone's comments. We have to abide by the documents that were filed, the agreements that were made, they should have the right to do what they want to do with their property under the current agreement, so I'm all for this also.

Donna DiMauro: Make a request that the residents of Vincent Drive whose properties about these two lots be notified of that so they won't be alarmed when they see a tree cut down.

Chairman Hall: They can be sent a copy of the minutes and also a copy of the agreement. Anybody who is near it should have a copy.

Commissioner Anest: I think they should have a copy of the Certificate of Action, the conservation easement and the minutes.

Commissioner Aieta: To the property owners that abut this, these two lots, these properties in the back, whatever abutting properties there are, send them that information so they are understanding of the action that this Commission is taking.

Chairman Hall: Well, at least they will have received it, and I think we need to send it Certified Mail, just don't send it because again, we have no knowledge of delivery.

Commissioner Aieta: Is there action that needs to be taken on this?

Craig Minor: No, I understand the will of the Commission. That's fine.

G. Petition 34-14: Site Plan Approval (Additional Parking) at 2125 Main Street, Middlewoods of Newington, owner/applicant, David Lawler, 580 Long Hill Avenue, Shelton CT, contact.

Jim Swift: Again, I'd like to move that the presentation for the public hearing be on the record for the site plan, and if anyone has any questions I'd be glad to answer them.

Chairman Hall: Anybody have anything? I think we pretty much discussed this to the max as well. So the will of the Commission is.....

Commissioner Aieta: Move this to Old Business and act on it tonight. The motion was seconded by Commissioner Sobieski.

To expedite the process, can we have like Carol read the motions and then ask for a second so that we can get this thing moving right along?

Chairman Hall: We'll have the secretary proxy do it.
Are you prepared for all of this, or would you like a recess?

Craig Minor: I will definitely need a recess because some of these I have, some of these I don't have, and some I need to modify, so yes, I would appreciate a recess, but before we do, would you recap which ones you would like to act on tonight?

Not Panera, not the sign at Cody Plaza, but yes Petition 18, yes the Fireworks, TNT, not Panera, yes Data-Mail, yes Dick's, and yes, site plan for Middlewoods.

Commissioner Aieta Moved to have a recess to allow the Planner to prepare the motions. The motion was seconded by Commissioner Sobieski. The meeting was recessed at 8:35 p.m.

Chairman Hall called the meeting back to order at 9:17 p.m on a motion from Commissioner Aieta and seconded by Commissioner Serra.

VIII. OLD BUSINESS

Chairman Hall: I'm going to have the secretary read the motions, and then we will have our discussions and vote.

Petition 18-14

**Site Plan Approval (Commercial Building) at 2272 Berlin Turnpike
Parth Patel, applicant, Seva Sadan LLC, owner, Parth Patel, 58 Meadow Lane, Berlin, CT contact.**

Commissioner Anest moved to approve, with conditions, Petition 18-14: (Commercial Building) at 2272 Berlin Turnpike, Parth Patel, applicant Seva Sadan LLC, owner, Parth Patel, 58 Meadow Lane, Berlin, CT contact.”

CONDITIONS:

1. Subject to verification from town staff that the proposed drainage design complies with the zoning regulations.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 22-14

TPZ Approval (Section 3.23.1: Accessory Outside Use) for Fireworks Tent Sale 2985 Berlin Turnpike (Turnpike Plaza) TNT Fireworks, applicant, Brixmor Property Group, owner, Brian Kearney, 93 Chambrook Road, Stratford, CT, contact.

Commissioner Anest moved to approve, with conditions, Petition 22-14: TPZ Approval (Section 3.23.1: Accessory Outside Use) for Fireworks Tent Sale at 2985 Berlin Turnpike (Turnpike Plaza) TNT Fireworks, applicant, Brixmor Property Group, owner, Brian Kearney, 93 Chambrook Road, Stratford, CT, contact.

CONDITIONS:

1. The tent shall be located on the northern portion of the property lot, Louis Street end, in the single row of parking spaces. .
2. Prior to use of the tent, the applicant shall obtain approvals from the Newington Fire Marshal and Building Department.
3. The applicant may place a temporary sign on the on the existing pylon sign on the Berlin Turnpike, subject to owner approval.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 32-14

Site Plan Approval (Building Addition) at 218-240 Hartford Avenue (Data Mail) Data-Mail Inc., applicant, Mandell Properties LLC, owner, James McCoskey, 218 Hartford Avenue, Newington, CT, contact.

Commissioner Anest moved to approve, with conditions, Petition 32-14: Site Plan Approval (Building Addition) at 218-240 Hartford Avenue (Data Mail) Data-Mail Inc., applicant, Mandell Properties LLC, owner, James McCoskey, 218 Hartford Avenue, Newington, CT, contact.

CONDITIONS:

1. Subject to verification from town staff that the proposed drainage design complies with the zoning regulations.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 33-14

Special Exception Section 3.2.5: Convalescent or Nursing Home

2125 Main Street (Middlewoods of Newington)

Middlewoods of Newington, owner/applicant

David Lawler, 580 Long Hill Avenue, Shelton CT, contact.

Commissioner Anest moved to approve, with conditions, Petition 33-14: Special Exception Section 3.2.5: Convalescent or Nursing Home) at 2125 Main Street (Middlewoods of Newington) owner/applicant David Lawler, 580 Long Hill Avenue, Shelton CT, contact.

CONDITIONS:

1. The existing fence on the north side of the property shall be extended eastward to a point opposite the southeast corner of the house at 2121 Main Street.
2. The site plan shall be revised as needed to satisfy the Town Engineer's concerns.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 34-14:

Site Plan Approval (Additional Parking)

2125 Main Street (Middlewoods of Newington)

Middlewoods of Newington, owner/applicant David Lawler, 580 Long Hill Avenue, Shelton CT, contact

Commissioner Anest moved to approve Petition 34-14: Site Plan Approval (Additional Parking) 2125 Main Street (Middlewoods of Newington owner/applicant David Lawler, 580 Long Hill Avenue, Shelton CT, contact.

CONDITIONS:

1. Subject to verification from town staff that the proposed drainage design complies with the zoning regulations.
2. The existing fence on the north side of the property shall be extended eastward to a point at the southeast corner of the house at 2121 Main Street.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 35-14

Special Exception (Section 6.2.4: Free-Standing Sign)

Constitution Square

Val Ginn, 56 Farmingdale Road, Wethersfield CT, applicant/contact.

Commissioner Anest moved to approve Petition 35-14 Special Exception (Section 6.2.4: Free-Standing Sign) at Constitution Square, Val Ginn, 56 Farmingdale Road, Wethersfield CT, applicant/contact Town of Newington, owner.

CONDITIONS:

1. Subject to verification by town staff that the sight lines are not impacted.

2. The applicant shall obtain permission from the party responsible for the existing sign.
3. The sign on East Cedar Street shall be one-sided, visible to east-bound traffic only.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Petition 36-14

Site Plan Modification (Tent Sale) at 2985 Berlin Turnpike (Dick's Sporting Goods) Dick's Sporting Goods, applicant; Tanya Atkielski, 2985 Berlin Turnpike, Newington, CT, contact.

Commissioner Anest moved to approve Petition 36-14: Site Plan Modification (Tent Sale) at 2985 Berlin Turnpike (Dick's Sporting Goods) Dick's Sporting Goods, applicant; Brixmor Property Group, owner, Tanya Atkielski, 2985 Berlin Turnpike, Newington, CT, contact.

CONDITIONS:

1. The applicant shall submit written permission from the property owner for this event.
2. Prior to the use of the tent, the applicant shall obtain approval from the Newington Fire Marshal and the Building Department.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

Chairman Hall: Thank you Carol, and thank you Craig for putting these together under pressure tonight.

Craig Minor: Thank you, and I only overlooked one thing, and I won't tell you what it was. In hindsight I would have referenced the date of the plan that Mr. Bongiovanni brought tonight, but it will be obvious in the record that it would be tonight's plan that you would approve, not the original one.

Commissioner Aieta: Well let the record show that the comments that the Planner made pertain to that site plan.

Chairman Hall: The site plan of June 11th, I think it's still June 11th. June 11, 2014.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

Chairman Hall: We have the stand alone paper that we had on the table tonight. We started talking about that, it's Plaza Azteca. Trust me, there will be more.

Craig Minor: Do you want to have this scheduled for your next meeting? June 25th.

X. TOWN PLANNER REPORTS

- A. Town Planner Report for June 11, 2014

Craig Minor: Zoning Enforcement Issues raised at the last meeting, none; Old Performance Bonds held by the town, here's one item, this one from Maple Hill Avenue bond which

hopefully you will release tonight, so that's one off the list. I had a visit from the homeowner on Rockledge Drive. He is trying to negotiate with his neighbor to acquire a sliver of land from his neighbor so that on paper his existing driveway which is too close to the neighbor will no longer be too close to his neighbor, and they are negotiating over the price, but they are working in good faith. That's all I have under performance bonds. This is actually on your agenda as Item b under Town Planner report, so I can come back to it. Newington Junction TOD planning; The consultants final report which contains most of the information that was presented at the May 1st meeting has been distributed to the members of the Newington Junction planning committee. The next meeting of the committee has not as of this writing been scheduled. I contacted Councilman Borjeson who is the Chairman of this committee, and I told him it was the request of some members of the committee to have a follow-up meeting, and he replied, yes. He didn't tell me when, but he agreed there should be a meeting.

Commissioner Anest: Are we going to get copies of that report?

Craig Minor: Let me, Yes.

Commissioner Anest: Thank you.

Craig Minor: Revision to sign regulations, the committee did meet today and came to the conclusion of the amendments that they recommend, so it will be on the agenda for discussion at your next meeting. It will be a New Business item at your next meeting, with the draft. Modern Tire, there has been some movement on this, and I think I understand what it is, and as I say, Modern Tire's appeal of the court's December 2013 rejection of their request to be allowed to be able to appeal the site plan approval has been dismissed. This is separate from the Court's earlier decision which invalidated portions of the new auto zoning regulations. Is that your understanding? Okay, so this is of course good news for Firestone.

Commissioner Aieta: How does that affect Firestone?

Craig Minor: I don't know.

Commissioner Aieta: We should find out because it's still, it was still upheld, the judges, the McKinsey case, so there are things in the site plan that they'll not meeting the regulations because of the judges decision, so they will have to come back.

Craig Minor: I will ask the Town Attorney to give you an opinion on that.

Chairman Hall: The performance bond?

Craig Minor: This was a subdivision that was approved by TPZ back in 2003. The house was built, most of the work was done, but not all of it, so Mr. Snow posted a \$5,000 bond back in 2003 which he forgot about, but it was on the books, so I contacted him about this last year. Some of the work still hadn't been done, there was some grading, that the ZEO didn't feel was correct, so Mr. Snow fixed that over the winter, and by then it was early spring and Art wasn't able to confirm that other things were done, but since then, Art has gone out and confirmed that yes, everything that was supposed to be done has now been done and I recommend that the bond be released. There is a draft motion attached with my memo.

Chairman Hall: Anybody have any objection to this?

**148 Maple Hill Avenue
Performance Bond Release**

Commissioner Aieta moved to release in full, the Performance Bond at 148 Maple Hill Avenue in the amount of \$5,000.00.

FINDINGS:

1. A special exception was approved by the TPZ on March 13, 2003 to create the rear lot at 148 Maple Hill Avenue.
2. A \$5,000 cash bond was posted by the developer in September 2003 to ensure the completion of several items including the installation of sidewalks, grading and lawn establishment.
3. The Zoning Enforcement Officer inspected the site on May 27, 2014 and found the remaining items to be complete.

The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YEA.

XI. COMMUNICATIONS

None

XII. PUBLIC PARTICIPATION (for items not listed on the Agenda, speakers limited to two minutes.

John Bachand, 56 Maple Hill Avenue: I know the address looks familiar but it's not about the part that was on the agenda earlier. This is my on-going issue, if you look at page 2, you see the red boxes there. This is the actual Certificate of Action. I'm pretty steamed, because from what I saw here tonight, about how everyone came out in defense of the actual wording and the letter of the Certificate of Action which I have been screaming about for two years now, as the parts that affected me, has not been adhered to, and it's just gone under the bridge for two years now. Number 7, add a double catch basin at the perimeter. It was not put at the perimeter. I don't have a big problem with that, it was set back from the perimeter, but where it says a fifteen inch stub to the property to the north, now the property to the north is my property. It's not two feet from the property line, it's not the property line, it's to the property to the north. That did not happen, and as far as I know, there is no plan. Go down to the second box here, subdivision approval will not become effective until these items are done. Craig can verify this, but some of these items were not done properly and for different ways how this was going to be corrected, the improvements were never put on the plan from number 7, that was never shown on the plan, and it was never put into the land records. I don't want just an "as built" in the town building department or engineering, I want it in the land records, that's what the law specified, and that is what is specified here. That protects me. I've gone through a nightmare this spring with the drainage. You've seen the videos. I lost use of part of my property for probably up to three weeks this year. I lost one tree, one tree is leaning, not totally, one tree was uprooted because the ground is so soft there, so my property is being used as a retention basin for this project. There's wording in the plan, right on the plan sheets that says, I have a right to drain to the south and the developer feels that I do not have that right. I want that wording and those plans in the land records. I don't just want them, Craig mentioned something about, the engineer mentioned something about there would be an "as built" filed in engineering. That's not good enough for me. I want it in

the land records where it was supposed to be and that protects me in perpetually.. We don't put our mortgages in the engineering, we put important documents in the land records and that what it calls for here. As I said, the developer was here, arguing her point and I fully support them, the language was clear, and they won their case I think, but you can't be selective in which language you want and which language you don't want. So, like I said, I'm a little bit steamed about this because I've been going back and forth for two years. You can check the records and the minutes of that meeting where the Town Planner spoke about the meetings with the Town Engineer, and how they talked about how my water drains in that direction, and they have to accommodate that, so right now there is nothing on file, that stub has never been brought to my property, and so I thought this was the right time to bring it up. Hopefully I got your attention time because it seems like I didn't before.

Craig Minor: Mr. Bachand is correct, the mylar that was filed back in 2007 whatever, does not show the catch basin that it was supposed to show. It was an oversight by the.....

John Bachand: The catch basin is there, excuse me Craig, the catch basin is there, it doesn't show the stub.

Craig Minor: Okay, well.....

John Bachand: It doesn't show it at the perimeter, but it's signed off on ten feet from the perimeter.

Craig Minor: It's between lots seven and nine which is, it's physically between lots seven and nine which is where it's supposed to be. It's shown on the plan between lots seven and nine, where it's supposed to be, what doesn't show on the plan is the 15 inch pipe stub to the property to the north, Mr. Bachand's property. That's correct, it does not show on the plan. Now my understanding and I will ask the Town Engineer to confirm that, is when the developer's contractor installed this double catch basin last fall, whenever, her contractor did, my understanding, did in fact install the stub to the edge of the property as she was required to do, but Mr. Bachand is correct that that doesn't show on the plan on file. And it's also true that last year when this came up, I informed the Commission that, not to be flippant about it, that it's not really a problem because before the town will accept the road, the developer will have to submit an as built showing everything that is actually in the ground. In this case, literally in the ground, showing that 15 inch stub and if the as built doesn't show the stub, then the town won't accept the road. So the developer is still very much on the hook, not only to install this stub, but to prove that the stub is there by submitting a mylar. Mr. Bachand's concern, and he's correct that that mylar will simply reside in the Town Engineer's office, it wouldn't, well the as built would not normally be filed on the land records, it could be, but his point is, would a title searcher necessarily look for a revised plan out of the blue, hopefully, but title searchers miss things, I'm sorry, I shouldn't say that in the present company, but his concern is that it's not on the actual approved signed by the Chairman mylar. I think the recourse, I think that fact that the mylar will be submitted, and could be recorded, we could just make that happen, should satisfy all concerns.

Commissioner Anest: It says to be recorded on the Newington Land Records.

Craig Minor: Well yes, that's because the subdivision map itself is to be recorded. This is footprint, this footnote, that's generic. That's by state law, all subdivisions have to be filed with the town clerk. That goes without saying, it's just listed here as a heads up to the developer, and that's boilerplate. Mr. Bachand's concern though is if she does submit a revised plan showing the stub that that plan would not necessarily get recorded, but we can make it, we can make it happen, we can record that mylar. I've been reluctant to recommend

that you have the developer do this now because my understanding is that she doesn't have an engineer under contract at the moment, and for her to hire an engineer just to do this, and if I were an engineer I certainly wouldn't be willing to just revise the original plans that Nafis did eight years ago, I wouldn't do that if I was an engineer, so it would probably be a rather expensive item for her to do what should be a pretty simple thing. Which is why I'm saying, let's just wait until the as built gets submitted because she is going to have to bear the

expense of that, and that as built will show the stub that Mr. Bachand wants surety that is there.

Commissioner Anest: Is the stub there?

John Bachand: Not on my property.

Craig Minor: Well no, it stops short of your property, it's like an inch.....

John Bachand: We're talking about actual wording, precise wording and that's what, and they hammered you on, and I won't repeat it because it was on the agenda, they hammered you on the wording there, and it says, to the property to the north. What else can that mean? It doesn't mean to someone else's property. It says to the property to the north. It doesn't say to the property line, it doesn't say two feet from the property line, and now when I want to do a dash to that pipe, you said I would have to get permission from that property owner.

Craig Minor: No, no, at the moment you will have to, because at the moment the pipe still belongs to the developer but once it is turned over to the Town, then it's a town structure and then you just need to get permission from the town, the engineering department.

John Bachand: Let's look at the wording, to the property to the north. What does that mean? Can it mean anything else but to the property to the north? That's why I saying. I sat here and heard them parse over the wording and the exact phrase, and that's where I am, you supported her on that, I don't know how you can be selective.

Commissioner Aieta: You say you have a drainage problem. There is a stub, either there is or there isn't a stub that goes to the property line, do you plan on using that stub to drain your property?

John Bachand: We talked about options of doing that.

Commissioner Aieta: That's the recourse you have to drain, that's your right to drain. I mean, it's cut and dried to me, I mean, if the stub is to your property you could do and put, connect and drain your property.

John Bachand: It's not on my property.

Commissioner Aieta: It's at the property line.

John Bachand: It's two feet from the property line, or whatever it is, but it definitely didn't come on my property because no one informed me that any pipe was coming on my property. I'm just saying, we were talking about concise wording and so and now here we are shying away from it again.

Commissioner Aieta: They won't let you to connect to, the property owner.....

John Bachand: They told me I have to get permission from her right now.

Craig Minor: Because right now it still belongs to her.

Commissioner Aieta: Why can't you get permission? She won't give you permission?

John Bachand: I don't think so.

Chairman Hall: Have you asked?

John Bachand: She blocked, she claims that my water doesn't have any right to flow in that direction.

Chairman Hall: Have you asked her?

John Bachand: No.

Commissioner Aieta: Well, I suggest that you ask her and then come back to the Commission if she refuses and then we will get into a different situation, but right now you have the right to tie in and that would alleviate the problem that you had this spring. If it was me, I would have already been connected to that pipe. I wouldn't let that water stand on my property an extra day.

John Bachand: The thing is, the water can flow over the surface to the catch basin just fine, but it was blocked also, so we had an idea of an under drain that might even help reduce some burden on the town system with sediment in the catch basin, and I thought that Craig thought that it might be a good idea, and was going to talk to the engineer about it, but my water is blocked at the surface level too, I can't drain into the catch basin, or it's draining very slowly. It's retaining it for up to twenty-four hours instead of letting it flow freely like it always flowed before so, but again, I think that wording is pretty concise, it says, to the property to the north. And I'm the property to the north.

Chairman Hall: So there is a stub that faces north to your property.

Craig Minor: Yes, it stops short a foot or two, or an inch, but it stops short of going over the property line.

John Bachand: And if you read it, it says, to the property to the north. It doesn't say close to the property to the north.....

Commissioner Anest: Where do you want it to stop?

John Bachand: Somewhere on my property where I don't have to go to another private property owner and ask for permission.

Commissioner Anest: They would have to ask for an easement from you.

John Bachand: Whatever they have to do.

Commissioner Aieta: When they put it in, they didn't have the right to go onto your property and put the pipe on your property. They have to stop it short of the property line, and it's up to you to get permission from her to go on her property and dig it up and do whatever to make the connection to that pipe.

John Bachand: So that's your interpretation of the wording, so I mean, I've heard other interpretations of other wording in here that was more to the point of the actual wording so to me, that's my issue. I sat through that and listened to that, and I am affected by that as well of course, but I don't want to bring up that subject.

Commissioner Anest: I'm just trying to figure out, because it does say, a 15 inch pipe stub to the property to the north, so it would be to the property line to the north.

John Bachand: If it was a quarter of an inch over the property line, that would be to the property to the north. If it's a quarter inch short of the property line, that's not the property to the north, in my opinion.

Commissioner Anest: I think to the property line. That's how I would interpret it, but if it's not to your property line, that's another story.

John Bachand: I'm pretty certain that it's not to the property line, because I didn't see any soil disturbed there.

Chairman Hall: No, to the property line, you would not see your soil disturbed.

John Bachand: Well, I'm just saying, I don't see anything disturbed two feet from the line.

Chairman Hall: Do you know where the stub is?

John Bachand: I see a stake in the ground, I was at work that day when they did it. I never saw the stub go in, I told them that there was supposed to be a stub going in and they said it wasn't on the plan, and then two days later they came back and dug it up and had to go through the hassle of cutting the stub in because I guess someone told them it was on the plan. I never saw them actually putting it in. I'm assuming that it is there and I see a stake in, which is common practice for construction to put a stake in at the end of the stub, but it's definitely well short of the property line. So as Craig said, I would have to get permission from her to tie into that.

Chairman Hall: Did the engineer say that the stub was there?

Craig Minor: Yes, that's my understanding.

Chairman Hall: Now it probably would behoove you to wait until the project is complete so that you know exactly what you have to do instead of doing something now and then having to redo it after the development is complete, because they are far from finished.

John Bachand: Then, you know, there is still nothing on file that refers to on the plans, there are notes right on the plans that are very specific, as a matter of fact, I sent you a copy of that, one of the plan pages that said property to the north has a right to drain or something along those lines. That's not on file anywhere, anywhere except in engineering and that was supposed to be on that, part of what was filed in the land records. I want something that protects me going forward, basically I just got a lot of, wait and see, it should be good, and I'm just uncomfortable with that, and I thought tonight was the perfect opportunity to re-raise this, based on what we heard earlier. You were very specific about the wording that was in there, and this is the exact document, and you can see the wording that I'm referring to.

Chairman Hall: Has this document been filed, the Certificate of Action? Has it been filed.

Craig Minor: Yes, this is the approval letter for the Packard's Way subdivision.

John Bachand: But it was never filed in the land records.

Craig Minor: The Certificate of Action?

John Bachand: Not as.....

Craig Minor: I'm sorry, no that letter would not be filed.

John Bachand: Well it has to be attached to the mylar and.....

Craig Minor: And the mylar itself is filed in the land records, yes. As a stand alone document, this has not, but this was photocopied onto the mylar, and then the mylar is filed in the land records.

John Bachand: That's not correct.

Commissioner Anest: Do you have a copy of that?

John Bachand: No, but I do have one at home, I'll be glad to send it to you.

Commissioner Anest: It doesn't necessarily has to be this, it could be one, two, it would just.....

Craig Minor: No, it's the whole letter.

John Bachand: It's on the plan that is down in engineering, but it never got properly put on the land records.

Commissioner Anest: So the mylar was never recorded in the land records?

Craig Minor: Yes it is. He is saying that the letter was not put on the mylar.

Commissioner Aieta: He wants this language, specifically.....

Chairman Hall: As part of somebody's deed?

John Bachand: That's your regulation. It says right here.

Commissioner Aieta: No, what they do is, they refer back to the mylar.

John Bachand: It says, the transparency of this Certificate of Action is affixed to the original plan mylar. The mylar originally signed and mylar is in the town Planning and Zoning office and the town land records.

Commissioner Anest: Right. So, on the actual mylar that is in the Town Clerk's office has this letter affixed to it. Superimposed on top of the mylar.

John Bachand: I didn't look in a while. I believe that it's not, because I've been arguing about this point.

Commissioner Anest: Can you check that?

John Bachand: Yes I will.

Commissioner Anest: And let us know, because this has got to be like superimposed on the mylar. It's not attached by a paper clip.

John Bachand: That plan that he just showed you, is not in the land records.

Craig Minor: Yes it is.

John Bachand: No, the only thing that is in the land records is just that first page which is the plan, the area map or whatever.

Craig Minor: No, you're looking at what was filed by the developer a few years later when she got the extension to the deadline. I think that is what you are finding, which was a separate filing.

John Bachand: So this came afterwards? So how could something that came after have the Certificate of Action on it.

Craig Minor: The subdivision was approved back in 2007 and the Certificate of Action was generated, the then engineer for the project took the original, did whatever digital process there is to copy that only to the mylar, which didn't show the 15 inch stub, but nevertheless that stack of mylars was brought to the office, the then Chairman signed it, those mylars got recorded in the land records.

John Bachand: Can you tell me what page and book that is.

Craig Minor: No.

John Bachand: As far as I know, it isn't there, in fact, I found a hand written note on the file, and I shared that with you before where it said, Certificate of Action not on mylar. Then that note disappeared somehow.

Craig Minor: From the land records?

Chairman Hall: At this point, Craig says it's there, you have not seen it, at some point I think you need to get together and he can show you or guide you as to how to find it, and then, if it isn't there, come back to us. If it is there, Craig will tell us that at the next meeting.

Commissioner Aieta: You physically have to go to the Town Clerk's office.

John Bachand: I've done that, but I could be missing something, I thought I was looking at the right thing, but we'll get together and try to figure that out. Sorry to take up so much of your time, but that's been my main bone of contention here, that that puts me at a disadvantage. I could deal with this flooding and be told that I don't have a right to drain in that direction and everything else. Those plans specifically stated and say it.

Chairman Hall: Hopefully we can resolve this by the next meeting.

John Bachand: Thank you.

Chairman Hall: Thank you. Anyone else for public participation for items not listed on the agenda?

Gary Bolles, 28 Burdon Lane, Newington: Ladies and gentlemen, I fully want to echo what Mr. Bachand just told you. I suggest that you, you're very well educated people, that you read entirely that document that he gave you. This conservation easement I think that the lady that was here tonight should not have come before you, she should have gone to the Conservation Commission because they are the ones that put together this Conservation easement that said, no clear cutting in that area. I don't think that you folks have the authority to tell her, one way or the other, she should have gone to the Conservation Commission, and there could be a lawsuit.

Commissioner Aieta: Gary, the Conservation Commission handles wetlands, this is not a wetlands problem. There are no wetlands involved, this is the purview of this Commission.

Gary Bolles: Yes, but they put together the Conservation easement.

Craig Minor: No they didn't

Commissioner Aieta: No they didn't, we did.

Craig Minor: I did, literally me, because it hadn't gotten done until I got here in 2011 or 12, whenever I got here. The Conservation Commission did not have anything to do with the conservation easement that was enacted by the Planning and Zoning Commission.

Gary Bolles: Well it certainly is not a tree preservation easement.

Chairman Hall: I think we have established that. Thank you.
Anyone else from the public wishing to speak?

Jeff Zelek, 55 Welles Drive, North: Good evening. I am also the vice-Chair of the Conservation Commission, but I'm not speaking on behalf of the Commission, I'm just speaking on behalf of myself. The town charter does establish a Conservation Commission to advise on wetland matters and conservation matters. I don't know of anything in the town charter that authorizes any other agency to be involved with approving activities within the conservation easement so from my own edification, can you please tell me under what authority are you approving activities with an easement. Thank you.

Craig Minor: I can answer that. The Conservation easement was imposed by TPZ in accordance with the statute in the subdivision laws of the State of Connecticut which gives towns the authority when they are approving a subdivision to designate up to, and I forget the number, twenty-five percent as open space, and typically there is a purpose before a Commission will invoke that. In this case, the Commission invoked it because they wanted to create a preservation area and they didn't need Conservation Commission permission to do that. I can speculate that there might be circumstances where this Commission would seek the guidance of the Conservation Commission in whether to impose an open space obligation on the developer, but in this case, the Commission did not. The Commission on its own authority which it has under the statutes, 8-25 I think it is, has the authority to require a subdivision developer to designate a certain amount of land as open space. You can't do that for a site plan, but you can for a subdivision.

Jeff Zelek: So I believe you are talking about the establishment of an easement, which you are absolutely correct.

Craig Minor: No, not an easement. It could be fee simple. The developer could have been told to give that land to the town. The town has a lot of options in how it can take advantage of that law.

Jeff Zelek: I'm talking about approving any activity within the easement, typically easements are very specific and they are worded in a manner in which it will prescribe the types of activities that permission needs to be granted. You had one of those instances this evening, so I'm not talking about the establishment of an easement which you are absolutely correct, you can do, I am talking about approving activity within the easement once it is established. What authority are you resting on?

Craig Minor: Well in this case what the Commission is resting on is the creation of the open space in the first place back in 2007. It created the open space to a Certificate of Action, the subdivision application shall be reduced from ten lots to eight lots, abutting the back of Vincent Drive. Within this conservation area, no grading, and no clear cutting of trees shall occur unless associated with storm water control required by the Town Engineer. The Commission could have.....

Jeff Zelek: Please continue reading that.

Craig Minor: Well, that's it.

Jeff Zelek: There should be a section in there telling you who is given the responsibility of approving the activities.

Craig Minor: Well, I only have the first page of that. Oh, the easement, the easement that was just drafted last year, so,

Jeff Zelek: It doesn't say that the TPZ is to approve any activities within the easement, it just says the Town of Newington and the de facto agency for approving any activities with a conservation easement is the Conservation Commission.

Craig Minor: If the homeowner came to us today and said, I would like to do something which I admit is inconsistent with this conservation, this permanent private conservation agreement, if that were to happen, I would suggest to the Commission, TPZ, that you consider, consider at your discretion consulting with the Conservation Commission, get their thoughts on whether this hypothetical request should be granted, but nothing in here says that the Conservation Commission is the agency of the Town of Newington to enforce this, so since this was created as a result of the Planning and Zoning's subdivision approval, I'm going to go out on a limb and say it is the Planning and Zoning Commission's discretion, jurisdiction, whatever, to grant relief to this, or enforce it for that matter. Not the Conservation Commissions.

Jeff Zelek: So, I would disagree. Because the charter, as I said, authorizes the Conservation Commission to advise on wetland and conservation issues. They are there to advise any board or commission and also the Town Council and the Town Manager, if you do look at the wording. I don't see anything in the Charter that says that TPZ or any of it's agents are authorized to authorize any activity in a conservation easement and I don't see anything in your TPZ regulations either, so therefore I'm just asking, on what authority are you asking?

Craig Minor: Right, and as I said, under Section 3.9 in the subdivision regulations which gives this Commission the authority to require a subdivider to designate certain land as open space and to have protection.

Jeff Zelek: So I will just leave you with one more comment, I think it would have saved a lot of time if you had referred this to the Conservation Commission and possibly, I'm hearing that there are a number of people with different opinions regarding this, some that were appeased this evening, and some that may not have been appeased, so just be careful with this. My opinion, thank you.

Chairman Hall: Thank you Jeff. Anyone else wishing to speak?

XIII. REMARKS BY COMMISSIONERS

None

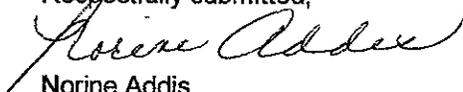
XIV. CLOSING REMARKS BY THE CHAIRMAN

Chairman Hall: Thank you very much for your patience this evening. It was quite long and I think we have a lot accomplished. Appreciate again Craig, all you did, and Carol as well for getting us through all of the petitions. We meet again on the 25th of June, and we will see what that brings.

XV. ADJOURN

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Serra. The meeting was adjourned at 10:08 p.m.

Respectfully submitted,



Norine Addis,
Recording Secretary