

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

July 9, 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
Commissioner Michael Camillo
Chairman Cathleen Hall
Commissioner Kenneth Leggo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski
Commissioner Brian Andrzejewski - A

Commissioners Absent

Commissioner Richard Khentigan - A

Staff Present

Craig Minor, Town Planner

II. APPROVAL OF AGENDA

Craig Minor: Madam Chairman, I have a number of items to be changed, one item to be added, and four items to be removed. I recommend that you add, under Item Seven, New Business, Item B, Petition 27-14 Site Plan Approval, Fueling Station at 16 Fenn Road, Fenn Road Associates, LLC, owner/applicant, Richard P. Hayes Jr. 1471 Pleasant Valley Road, Manchester, CT, contact. I'm recommending that you add this to the agenda for the purpose of denying it without prejudice, and I'll get into more detail when we get to that item on the agenda. I also recommend that you delete the following items from the agenda, but only because in each case the applicant has asked that it be postponed because they are still working on their respective applications. Under Three, Public Hearings, delete Item A, Petition 30-14 Special Exception for the Panera Drive through, B, Petition 25-14 Zone Change for 16 Fenn Road, and Petition C, Petition 26-14, the Special Exception at 16 Fenn Road. I also ask that you delete from Item Seven, New Business, Petition 31-14, Site Plan Approval for Panera and that is again because they are still working on the plans.

Chairman Hall: Okay, do you want us to read them and then say that we are not going to deal with them, or do you just want us to ignore them?

Craig Minor: I would say just ignore them.

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 Il contact. Continued from June 25, 2014.**

Deleted from the Agenda

- B. Petition 25-14: Zone Change (Industrial to PD) at 16 Fenn Road, Fenn Road Associates LOC, owner/applicant, Richard P. Hayes Jr. 1471 Pleasant Valley Road, Manchester, CT, contact. Continued from June 25, 2014.**

Deleted from the Agenda

- C. Petition 26-14: Special Exception (Section 3.19.4: Fueling Station) at 16 Fenn Road, Fenn Road Associates LLC, owner/applicant, Richard P. Hayes Jr., 1471 Pleasant Valley Road, Manchester CT, contact. Continued from June 25, 2014.**

Deleted from the Agenda

- D. Petition 38-14: Special Exception (Section 6.2.4: Free-Standing Sign at 184 Fenn Road, Arco Sign Company applicant, Extra Space Properties Two LLC, owner Marc Cohen, 1130 S. Broad Street, Wallingford, CT, contact.**

Chairman Hall: Is the applicant present, if so, come forward, state your name and address for the record. Please come forward and sit in the chair. The applicant is not here. We have just read the petition for 184 Fenn Road, Arco Sign Company, owner Marc Cohen. If he shows up, we will come back to that, but at this point, the next one.

- E. Petition 39-14: Special Exception (Section 6.13: Accessory Apartment) at 38 Johnson Street, Bohdan and Debra Szaraburak, owner/applicant, Debra Szaraburak, 38 Johnson Street, Newington, CT, contact.**

Chairman Hall: I will recuse myself on this one and Carol will take over.

Vice-Chairman Anest: Would the petitioner come forward and state your name and address for the record.

Debra Szaraburak, 38 Johnson Street, Newington: My husband Bohdan and my mother is here. In 2005 we approached the town about building an in-law apartment which is I guess is also an accessory apartment, and we proceeded to get all the permits that we needed to get and the inspections along the way and pretty much everything that we did was approved by the Town, so we understood that everything was okay. Recently my father died, two years ago, so when my father passed away, we started talking about moving to Florida, so we decided to put the house on the market. When we put the house on the market we found out that we don't have an actual certified accessory apartment, or in-law apartment. So what we're trying to do is to get the documentation together to show what we did when we built the apartment. Our buyers, we have a closing date potentially set for August 7th, and their mother and father are going to be living in the accessory apartment, so they want to be sure that everything is legal and they don't run into an issue down the road. So we met with Craig Minor and provided the original plans and the pictures and as much information as we

could, and what we are asking today is that it gets approved, I don't know if it gets approved in arrears, or approved today, but that is where we are.

Vice-Chairman Anest: Do the Commissioners have any questions before we go to the public?

Commissioner Aieta: Just, you did not have an approval in 2005.

Debra Szaraburak: We did not have an actual approval of the apartment.....

Craig Minor: From TPZ. They had building permits, but not TPZ approval.

Commissioner Aieta: And they met all the requirements of the building department for the accessory apartment as the regulations are written today?

Craig Minor: That was a two part question. In 2005 they received a building permit because it met all of the requirements of the building department in 2005. Did it meet the 2005 TPZ regulations for an accessory apartment? I believe so. Because at that time, we had added the requirement that it be for a family member and this was for your mother, so yes, I believe it met all of the requirements at that time.

Commissioner Aieta: And it meets the requirements that are on the books today?

Craig Minor: Yes.

Vice-Chairman Anest: Since this is a public hearing, are there are members of the public who wish to speak in opposition to this petition? Are there any members who wish to speak in favor of this petition? Come forward and state your name and address for the record please?

Malgorzata Karas-Golka, 37 Johnson Street: This is directly across and I have no problem with this being approved. I've been living across the street, and no problems what so ever, and I don't see any problems with another family moving in.

Vice-Chairman Anest: Thank you. Is there anyone else that wishes to speak in favor of the petition?

Damien Mastrianni, 50 Johnson Street. I live right next door. I support what they have done, it's a nice addition to their home. There have been no issues, and I can't see any reason why that should be held up.

Vice-Chairman Anest: Thank you. Is there anyone else? Is there anyone that would just like to speak on the petition? Seeing none, any other questions from the Commission?

Commissioner Aieta: I would like to close the public hearing and move this petition to Old Business because of the time restraints, we aren't going to have another meeting until after the closing date, and put it on under Old Business and act on it tonight. Looks like a paperwork problem, who knows what happened so many years ago. They have been using it as an accessory apartment. It's a true sense of the word of what the regulations, the way that we envisioned the regulations, to have your mother or some family member live with you, and it seems like the other person who is buying it is doing the same thing, so it meets all of the requirements, I don't see why we should hold it up.

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

Chairman Hall: Thank you Carol.

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

Gary Bolles, 28 Burdon Lane, Newington: I attended the town hall renovations project meeting on the 7th of July, and I know that the Town Council is going to, voted to send you a 8-24 referral, and I read the following statement to the committee and I wanted to read it to you as a matter of record. I didn't want to leave any Commission out of this, and this was to the renovations committee.

"In regards to your proposal to construct a new Parks and Recreation center at the corner of Willard Avenue and Cross Street there is a critical piece of information that I don't think this committee has. I'm going to give this to you by the numbers:

1. This proposal, if approved, is to build a new parks and recreation center on wetlands.
2. According to the State of Connecticut, the definition of a wetland, Connecticut only requires that there be hydric soils.
3. Hydric soil is soil which is permanently or seasonally saturated by water resulting in an anaerobic condition such as found in wetlands. Anaerobic means involving an absence of free oxygen. By physical observation over the years and through documentation on the town level and state level, the area on which the center is to be built is definitely hydric soils. Despite the town's effort to modify the wetlands in the proposed area over the past twenty years, once a wetland, always a wetland.
4. The EPA has determined that all streams and their associated wetlands need to be preserved and protected.
5. They have just recently announced a new rule which covers all associated wetlands that are connected to existing streams and other bodies of water, not just navigable waters.
6. The new rule provides vital safeguards for these wetlands.
7. We would not want to begin building or disturbing this land without all proper state and federal permits, not to mention our own Conservation Commission.
8. This Committee should not approve any application or proceed with any further discussion until a thorough investigation is completed into whether the Town of Newington is acting contrary to law either through negligence, ignorance, or deliberate indifference to our existing wetlands.

In conclusion, if you weren't aware of the points of information that I have just enumerated to you, now you know, and further nobody can claim that they didn't know. Now I also know that this building, and this may affect this board, this new building is to be setback from, I guess it has a hundred foot setback, and they claim well, that's the end of the wetlands. As you go east back a hundred feet, you are going towards Mill Pond and there are wetlands there also. Further more, that building, as I understand it is going to be a slab construction, just a slab, no cellar in it, like the Police Department, and in a couple of years, that slab could start sinking. I just wanted this board, out of courtesy, to be aware of it. Thank you very much.

Chairman Hall: Thank you Gary. Anyone else wishing to speak on items not on tonight's agenda.

V. **REMARKS BY COMMISSIONERS**

None

VI. MINUTES

June 25, 2014

Craig Minor: These were just distributed tonight. What the Commissioners might have gotten recently was the Record of Vote, because the clerk knew that she was going on vacation and wouldn't be able to get the complete verbatim minutes done until recently, so the full minutes are just now in front of you. You might want to table it and give yourself a chance to read it, or you might want to take a minute and look at it, whatever your pleasure is.

Commissioner Anest: Why don't we table them.

Commissioner Aieta seconded the motion, and the vote was unanimously in favor of the motion, with six voting YES.

VII. NEW BUSINESS

- A. 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.**

Deleted from the Agenda

Chairman Hall: We'll have to go back to Public Hearings for Petition 38-14. Carol, I'm going to have you read it again.

- B. Petition 38-14: Special Exception (Section 6.2.4: Free-Standing Sign at 184 Fenn Road, Arco Sign Company applicant, Extra Space Properties Two LLC, owner Marc Cohen, 1130 S. Broad Street, Wallingford, CT, contact.**

C. Petition 27-14: Site Plan Approval (Fueling Station) at 16 Fenn Road, Fenn Road Associates, LLC, owner/applicant, Richard P. Hayes Jr. 1471 Pleasant Valley Road, Manchester, CT, contact.

Eric Merliss, Arco Sign Company, 1133 S. Board Street, Wallingford: Marc Cohen is the owner of Arco Sign Company, not Extra Space.

Commissioner Aieta: Who is the owner then of the property?

Chairman Hall: Well the letter came from Tiffany Fletcher.

Craig Minor: I believe Extra Space Property LLC is the owner of the property, and Arco Sign Company is the applicant for the permit on behalf of Extra Space, and Marc Cohen is the owner of Arco Sign Company, but Eric is here representing them.

Commissioner Serra: Also, it says 1130 S. Broad, and I thought you said 1133.

Eric Merliss: Yeah, we're 1133 S. Broad.

Chairman Hall: Would you like to explain please what you would like to do?

Eric Merliss: Sure. You have the package? Okay, great. We have first a set of channel letters on a raceway, going on a brick wall. These are just normal letters, LED illumination.

Chairman Hall: Do we have that? I just have the pylon sign.

Eric Merliss: I can start with the pylon sign.

Commissioner Aieta: I don't mean to interrupt you, but how many signs are you talking about.

Eric Merliss: We have the one full sign, and then we have two sets of letters for the wall.

Chairman Hall: On the building?

Eric Merliss: Correct. One on each side of the building, two sets of letters.

Craig Minor: Tonight we're only talking about the free standing sign; we're not talking about the wall signs.

Eric Merliss: Sounds good. So the full sign, it's an eighteen foot overall height, I have a diagram there showing the illumination, the Lexan faces, there is a three foot wide pole cover that goes around the pole, that's buried in the ground. Actually there is a, Cube Smart, it's going in the same space as the existing Cube Smart pole sign that is there now.

Commissioner Aieta: Where do you take the measurements for the height of the sign, from the pavement or from the raised sign area.

Craig Minor: I'll answer your question. In this case we took it from the island where the sign is. I see your point; if we had measured from the pavement, then it would be some six or eight inches higher. I suppose that is at the Commission's discretion. If you want to measure from the pavement then you can instruct him to lower it by six inches.

Commissioner Aieta: Yeah, whatever that railroad tie, could be eight.

Eric Merliss: And we can adjust.

Commissioner Aieta: We need to establish, because there are other signs coming up, on the agenda, we should establish where we are taking measurements. I believe it is from the ground, not the platform that it is on, it would be from the pavement, you would have to adjust it by the height, you'd have to lower it a little bit, take it from the pavement, make it eighteen feet high from there.

Eric Merliss: Not a problem.

Chairman Hall: Are there other questions on this? And the three foot base is not going to block any sight lines?

Eric Merliss: No.

Chairman Hall: Did you say that was metal?

Eric Merliss: That's an aluminum pole cover that goes over the pole, and it's a steel pole inside. This nice decorative cover goes around it.

Chairman Hall: Right, but it would be more of a box?

Eric Merliss: Right, a rectangle.

Chairman Hall: And the illumination?

Eric Merliss: I'm just trying to see if it's LED, does it say LED on it? Great, it's LED illumination which doesn't have the outages that others have, and some towns are encouraging to switch over to LED.

Chairman Hall: Right, and is it going to be on a timer? Or is it going to be.....

Eric Merliss: I'm not sure, whatever they choose inside of the store. Most likely a timer. I'm sure whatever they have there now.

Commissioner Aieta: You could make that part of the conditions, that they turn it off at a specific time.

Eric Merliss: I can make the recommendation that they do a photo eye.

Commissioner Aieta: Photo eye?

Eric Merliss: Photo eye sensor, where it comes on when it is dark, and it turns off as soon as the sun light hits it.

Chairman Hall: Well, that's all night though. Is this a twenty-four hour facility?

Eric Merliss: I don't believe so. I think they close at 10:00 p.m.

Chairman Hall: There's no reason then to keep it on past midnight even, so I think maybe a timer would be better.

Commissioner Leggo: Not being familiar with the parking lot, by looking at the picture I noticed that there's actually four or five different parking spaces at least that were taken out by this.....

Craig Minor: No, they're already gone.

Commissioner Leggo: I know they're already gone, I'm just noticing that's where the sign is going.

Chairman Hall: The car would have to be about this big to park there. You could do a smart car.

Commissioner Anest: Have you gotten a report from the ZEO.

Craig Minor: Yes, she confirmed today that at the moment, this will be the only signage there because the two wall signs that were there up until recently have been taken down. I assume from what he said a couple of minutes ago in anticipation of your new application for wall signs which the staff handles, the Commission doesn't. So at the moment, they have zero signage, so this certainly doesn't exceed their aggregate, and you'll need to make sure that the wall signs that you have applied for don't exceed the amount that you are allowed, but the

staff will make sure of that your wall sign permit doesn't get approved if you have asked for more in total than you are allowed.

Chairman Hall: Any other questions? This is a public hearing, so we do ask the public if there is any input. Anyone from the public wishing to speak in favor of this petition?

John Bachand, 56 Maple Hill Avenue, Newington: Just, I'm a vendor for the company, and I think it's a great company. They run a clean operation and I'm sure they are going to be a good taxpayer, so it's not anything out of the ordinary, what they are asking for, I would say I have no opposition to it, that's for sure. I'll just say, I have worked for several different facilities and they run a pretty clean operation.

Chairman Hall: Thank you John. Anyone else wishing to speak in favor of the petition? Anyone wishing to speak in opposition?

Jeff Zelek, 55 Welles Drive No., Newington: I'm not speaking in favor or against the applicant but what I would like to ask the Commission is to keep the application open so the public will have an opportunity to look at the materials that were submitted. Also, I just found something called International Dark Skies Association. There are conservation groups that are interested in kind of keeping the night skies not as lit as they are today, so I would just like to know if there has been any consideration as far as conservation for the signage.

Chairman Hall: Thank you Jeff. Anyone else wishing just to speak? Seeing none, what is the pleasure.....

Commissioner Aieta: I would like to close the public hearing and move it to Old Business for the next meeting.

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

Craig Minor: This item, New Business: Site Plan Approval, Petition 27-14 for the fueling station. This has not been on your agenda previously even though the related Special Permit was on the agenda and the related but separate zone change was on your agenda, because it's never been a complete application. The reason I say it's not a complete application, well, that's actually a euphemism, the application actually is in violation of state statutes. By state law, I'm going to paraphrase, by state law any project that requires a wetland permit has to apply for the wetlands permit before they can apply for the P & Z permit. They can do them on the same day, but they have to apply for the wetlands permit before they apply for the P & Z permit. That law doesn't apply to special permits and it doesn't apply to subdivisions and it doesn't apply to zone changes; it's just one of those quirks of state law, it only applies to site plans, but it's a pretty well established planning law. When I brought this to the applicant's attention, that he hadn't applied for his wetlands permit, well, to make a long story short, he did not apply, and as of now still has not applied for a wetlands permit. So the advice of Town Counsel, and myself, because the sixty-five days is about to run out, is that you deny it without prejudice for the reasons that I list in this draft suggested motion.

Chairman Hall: Discussion?

Commissioner Aieta: Yeah, you had made some comments in your report on a bunch of things that were deficient in the plan. One of them I believe was that you were almost asking for a master plan to see what is happening with the whole project. I think that was brought up by the Commission, that we want to see a master plan because we don't want to see him

come in this week with this, and then next week, we would like to see how this whole big piece of property is going to flow with the shopping center, so I would insist that they bring that, are they aware that they have to bring in some kind of a master plan for all the property that they own in that vicinity?

Craig Minor: Yes.

Commissioner Aieta: Okay. I think it's important that we see everything all at once, not bits and pieces and we approve one thing and then we get another thing and it doesn't meld well, and, they are asking for several different things on the agenda. They are asking for a zone changes, they are asking for site plan approval under a regulation that they wrote themselves that they are looking to waive parts of it, I'd like to see it come back in one complete application, everything in place. I wouldn't even put it on the agenda until you are satisfied that everything that you bring to the Commission is what we are looking for, we're not going to be saying, oh well, they'll bring some more stuff in, we want to see it all at once. It's a big project, it's in a real sensitive area, near the busway, a lot of stuff going on there, and these are major major decisions we're making on a sensitive piece of property.

Chairman Hall: Any other comments from the Commissioners. We're all in agreement on that.

Craig Minor: Does someone want to move this to Old Business, or act on it under New Business?

Commissioner Anest: I'll move this to Old Business.

Chairman Hall: Okay, so 27-14 will be moved to Old Business. The vote was unanimously in favor of the motion, with six voting YEA.

VIII. OLD BUSINESS

Chairman Hall recused herself from the following petition, and turned the meeting over to Vice-Chairman Anest.

Petition 39-14
Special Exception (Section 6.13 Accessory Apartment)
38 Johnson Street
Bohdan and Debra Szaraburak, owner/applicant; Debra Szaraburak, 38 Johnson Street, Newington CT, contact.

Commissioner Aieta moved to approve Petition 39-14: Special Exception (Section 6.13; Accessory Apartment) at 38 Johnson Street, Bohdan and Debra Szaraburak, owner applicant, Debra Szaraburak, 38 Johnson Street, Newington, CT contact.

CONDITIONS:

None

The motion was seconded by Commissioner Leggo

Vice-Chairman Anest: Any comments?

Commissioner Aieta: Just for the record, we made comments during the public hearing portion that should be part of the record for this application.

The vote was unanimously in favor of the motion, with six voting YEA.

Chairman Hall returned to the table.

A. 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.

Commissioner Sobieski moved to approve, with conditions, Petition 23-14; Special Exception Section 6.2.4; Free Standing Sign at 2551 Berlin Turnpike (Cody Plaza) Bianca Signs Inc., applicant, 2551 Berlin Turnpike LLC, owner, Paul Bianca, Bianca American Signs Inc., 99 Newington Avenue, New Britain CT, contact."

CONDITIONS:

1. The applicant shall contact the Zoning Enforcement Officer within one week of completion and request a compliance inspection.

Chairman Hall: Discussion on this?

Commissioner Aieta: Did the Zoning Enforcement Officer measure the sign.

Craig Minor: No, he didn't measure the sign.

Commissioner Aieta: That is existing?

Craig Minor: Right, he didn't measure the sign. We confirmed...we had the applicant submit a revised sketch showing clearly how high the sign would be which is what the Commission requested at the last meeting.

Commissioner Aieta: The sign is over, the way that the sign sits now, it's sixteen feet. If you add three feet, that's nineteen feet, it's a foot over the sign regulations. It's not eighteen feet. When you add the three feet it's going to be nineteen feet tall.

Craig Minor: The applicant said that it's fifteen feet. You're adding the pavement...

Commissioner Aieta: From the pavement up it's going to be a foot over the sign regulations of eighteen feet tall. The sign that is there now, the box part of the sign that is there now is eight feet, the distance from the sign to the platform that it sits in is 7' 10", and there is at least another four to six inches of distance from that to the pavement. So it's at least sixteen feet four now, and add another three feet, that's nineteen feet four. It's a foot over the regulations.

Chairman Hall: It says recommend with approval of the ZEO to verify the height after installation, but that might be a little too late, because if they have it installed and it's too high, they would have to go through the process of removing it, changing it, putting it back up again.

Commissioner Aieta: I thought I had asked the last meeting that the Zoning Enforcement Officer measure so we could confirm what the applicant said. Apparently it's a foot over, it's going to be a foot over the sign regulations of eighteen feet even if you said, forget about the part that's above the curbing, it's still a foot over.

Craig Minor: I don't know how you know that because the applicant submitted a plan that shows that the existing sign, measured from the ground where it is, which I agree with you, it's probably eight inches high, let's put that aside for the moment, measured from the ground to the top of the existing sign, according to what the applicant submitted, it's fifteen feet. So this additional three feet would make it eighteen which is within the regulations. The new point that you are bring up is...

Commissioner Aieta: How I know is, I went there before the meeting and measured it myself.

Craig Minor: So you did your own research.

Commissioner Aieta: Yes I did.

Craig Minor: On an item that the public hearing had closed.

Commissioner Aieta: Yes. You're saying that we can't do that.

Craig Minor: Right.

Commissioner Aieta: Why not?

Craig Minor: Because that's what is considered "ex parte". You did research that the applicant doesn't have the opportunity to rebut because the hearing is closed.

Commissioner Aieta: Then let him put it up and it will be nineteen feet. I told you before, at the last meeting I asked, the last meeting for the Zoning Enforcement Officer to measure it.

Craig Minor: Well, it was not my sense that was the consensus of the Commission. The consensus was that you wanted the applicant to submit a revised plan. But I think the point that you are raising, which is, well, the previous applicant you approved with the modification that they lower the proposed sign so that the total height measured from the pavement to the top of the sign, and that would be your policy going forward, and that's fine, I'll make sure that all future applicant understand that. I don't think there is any problem with applying that same rationale today.....

Commissioner Aieta: Even if you don't apply that, it's still over the eighteen feet.

Craig Minor: Again, I don't know that because according to the applicant...

Commissioner Aieta: Well, we should know that because the Zoning Enforcement Officer should have gone before this meeting and reported to us tonight the height of that sign. You're relying on anybody that comes in here to, someone has to verify this information, anybody could come in here and say whatever they want, and we take it as gospel. I was told that this sign was over the height limitations. I took it upon myself to check it because I knew that the Zoning Officer wouldn't do that because he only works two days a week.

Chairman Hall: Well, he was on vacation last week.

Craig Minor: I would have had him do it if I thought that was what the Commission had asked. I didn't have the sense that that was what the Commission had asked. I know that there was one comment about measuring the sign, but at the end of the night, the Commission wanted the applicant to submit a single plan that showed the complete height, so if that was my oversight, I apologize but I did not think that you wanted the ZEO to go out there with a tape measure to measure how high the existing sign is. I apologize, I misunderstood that.

Commissioner Aieta: The problem is, if you allow them to build it the way that they say, they're going to a foot over the height, and they are going to put it up, and then we go out there and check it, it's going to be a foot too high, then what are we going to do? Tell him to take the sign down?

Chairman Hall: He's going to have to in order to.....

Commissioner Aieta: The three foot can only be two foot, that they want to add.

Craig Minor: Then approve it with the condition that the height be, and that the ZEO confirm this before the building permit is approved, because the ZEO is involved with the building permit process, with the condition that the ZEO shall confirm prior to the issuance of a building permit that the total height measured from the pavement will be no more than eighteen feet. You can do that, that's a reasonable condition.

Chairman Hall: Everyone okay with that?

Commissioner Aieta: And you will verify that that's what...

Craig Minor: Yes, the ZEO will measure it or confirm that the total height, from pavement to the top of new sign will be no more than eighteen feet.

Chairman Hall: However he gets to eighteen. So we have a Condition #2 on that.

Craig Minor: Let me finish writing this and maybe this will take the place...

Commissioner Anest: Make sure that it's measured from the ground.

Craig Minor: From the pavement, which is lower than the ground. Okay, a condition: the ZEO shall confirm before approving the building permit that the height shall be no more than eighteen feet measured from the pavement. Okay, I can make changes.

The motion was seconded by Commissioner Anest.

Chairman Hall: Any other comments on this one?

Craig Minor: Do you want me to read it again?

Chairman Hall: He's going to read it again so everyone knows what we are talking about here.

Craig Minor: The ZEO shall confirm, before approving the building permit that the height shall be no more than eighteen feet measured from the pavement.

Commissioner Anest: Can we have him go out and measure it again after it is up?

Craig Minor: Sure.

Commissioner Aieta: Do you want to make that part of the motion?

Commissioner Anest: Yes.

Craig Minor: Keep the old number one as number two, that the applicant shall contact the ZEO within one week of completion and request a compliance inspection.

Chairman Hall: So that would become number two.

Craig Minor: Yes.

Commissioner Aieta: So we will have it checked two ways.

Chairman Hall: Before and after.

The vote was unanimously in favor of the motion, with six voting YEA.

Petition 27-14
Site Plan Approval (Fueling Station)
16 Fenn Road
Fenn Road Associates LLC, owner/applicant, Richard P. Hayes Jr. 1471
Pleasant Valley Road, Manchester, CT, contact.

Commissioner Serra moved to deny, without prejudice, Petition 27-14; Site Plan Approval (Fueling Station) at 16 Fenn Road, Fenn Road Associates LLC, owner/applicant, Richard P. Hayes, Jr. 1471 Pleasant Valley Road, Manchester CT, contact.

FINDINGS:

1. The Town Engineer as Agent for the Newington Conservation Commission stated on May 27, 2014 that this activity requires an application to the Conservation Commission:

From: Minor, Craig
Sent: Thursday, May 22, 2014 1:39 p.m.
To: Greenlaw, Chris
Subject: Proposed Fueling Station at 16 Fenn Road
Chris:

Does the proposed fueling station at 16 Fenn Road (I gave you the site plan several months for a previous application) require approval by the Conservation Commission? My understanding is that some of the proposed improvements are within the upland review area. Thank you.

From: Greenlaw, Chris
Sent Tuesday, May 27, 2014 12:39 p.m.
To: Minor, Craig
Subject: Proposed Fueling Station at 16 Fenn Road
Yes, If the new application for 16 Fenn Road proposes activities with the same layout* then a wetland application would be required. Of note: "Layout, meaning Plans previous submitted, entitled "Proposed Stop & Shop Fuel Facility #0630, 15 Fenn Road (Conn SR 505) Newington, Connecticut, sheet C-3, revised

02/25/2014, Grading, Drainage and Erosion Control Plan” depicts a “100 RA” running diagonally across the parcel. This line designates the Upland Review Area” which is a “Regulated Area” by the Inland Wetlands Commission.

2. The applicant did not file an application for a wetland permit in accordance with Section 8-3 (g) of the Connecticut General Statutes:

Sec. 8-3. Establishment and changing of zoning regulations and districts. Enforcement of regulations. Certification of Building permits and certificate of occupancy. Site Plans. District for water-depending areas.

- (g) The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use of structure with specific provisions of such regulations. **If a site plan application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an application for a permit to the agency responsible for administration of the inland wetlands regulations not later than the day such application is filed with the zoning commission.** The commission shall, within the period of time established in section 8-7d, accept the filing of and shall process, pursuant to section 8-7d, any site plan application involving land regulated as an inland wetland or watercourse under chapter 440. The decision of the zoning commission shall not be rendered on the site plan application until the inland wetlands agency has submitted a report with its final decision.

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

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

None

X. TOWN PLANNER REPORTS

A. Town Planner Report for July 9, 2014

Craig Minor: Number One: Zoning Enforcement Issues Raised at Previous TPZ Meetings: A. Sunshine Laundry on Rockwell Road. I inspected the site earlier this week and I determined that incoming (dirty) laundry is temporarily stored in the parking lot and in containers along the side of the property, well beyond the screened loading area. I have directed the Zoning Enforcement Officer to contact the owner. Actually, that last sentence is not true, I have not done that. He was on vacation last week, and I just saw him today for the first time, and I did not talk to him about it. But it is, in my opinion, a violation of the zoning regulations which say that some outside storage of material is allowed, but it's the Commission's practice for the Commission to approve that, not the staff, and certainly not the property owner unilaterally. So, having said that, I would recommend that you direct me to contact the property owner and tell them to apply for a permit to store their material outside, and I will certainly advise them to gather it in considerably before they even submit an application, or submit a plan showing additional screening, or something, because the situation now is not acceptable.

Chairman Hall: Craig, give us a little history on that. Who was the overseer of that?

Craig Minor: Rockwell Road is in one of the Newington Industrial Parks. It was developed by the Town of Newington some thirty years ago, and the EDC, the Economic Development Commission, still has some oversight over that industrial park and some other parks in town. A year or so ago, when Sunshine Laundry originally wanted to use their screened loading bay area for the sorting of dirty laundry, or maybe even outgoing laundry, in the open air. They went before the Economic Development Commission and they got approval from the EDC with the understanding, the condition that it be screened behind that chain link fence with plastic slats that were added at that time. Their argument was, and it makes sense, that dirty laundry coming in is not pleasant, and it makes sense from their point of view to sort it outside before bringing it all in, and the EDC, I wasn't at the meeting, but I'm told that the EDC thought that made sense, and they approved letting Sunshine sort their dirty laundry within the loading bay behind that screened fence. But as you can see from the picture, what Sunshine Laundry has been doing is extended well beyond that, so at this point I recommend that they come before the Planning and Zoning Commission to, in a sense, reinforce what the Economic Development Commission approved a year or so ago. There has been a slight change in the operating procedures for the EDC. It was exactly thirty years ago that the EDC created those industrial parks so the jurisdiction over the industrial parks is sort of going away, and those parcels are about to become the same as any other property in Newington, under the sole jurisdiction of the Planning and Zoning Commission. That's more than I was prepared to say and it's also leaving you with a lot of details that I'm not prepared to give you at the time, not because of (inaudible) but because they are complicated. There was a declaration when the industrial park was created thirty years ago, there were pages and pages of rights and responsibilities that the property owners agreed to, under the oversight of the EDC, but after thirty years those rights dissolve, and it's now been almost exactly thirty years so those restrictive covenants are about to expire and those properties will be under the sole jurisdiction of the Planning and Zoning Commission, and not the EDC.

Chairman Hall: So then we would have some control at this point, whereas last year we would not have because we had no jurisdiction.

Craig Minor: Correct.

Chairman Hall: So in a way, this is actually to our favor.

Craig Minor: Yes.

Commissioner Aieta: So with all that being said, the Zoning Commission still has, they don't have the right to store outside the building.

Craig Minor: Without your permission.

Commissioner Aieta: Without our permission. I wouldn't want them to come into this board until they clean it up.

Chairman Hall: Show us a plan where it would work.

Commissioner Aieta: I don't know what we would be approving. I can't see myself voting for them to even have sorting material outside of the compound of their building, which would go against what the EDC allowed them to do. My interpretation of it, you buy a building that is sufficient for the operation you're going to do, you don't buy a building that is so short of space that you have to start storing stuff and sorting stuff outside of the confines of the building. I don't even know if we want them to come here until they get it to the point where

they at least clean it up. There's a couple of things happening here, they have loaded the whole parking area and now they're parking on the street and in the front of their building, and they are blocking the fire lanes, if there was a fire there you can't get in from the front of the building, because they park all of their cars in the turnaround in the front of their building, so they are violating the fire regulations by not being able to have a fire truck get in close enough to the building to fight a fire. And the same thing in the back of the building. Plus, there's also we should be looking to send this to the Health Department, I think it's a tri-town.....

Chairman Hall: The Central Connecticut Health District.

Commissioner Aieta: Because the laundry that they do is not only for restaurants, it's for hospitals, there could be, we don't know what, in that laundry that is being stored outside.

Chairman Hall: So at this point, we want the Zoning Enforcement Officer out there as soon as possible, even if means shutting them down. I mean it may come to that if they are in such flagrant violation and if there are health hazards, that could be a problem, and now that we are aware of it, we can't just ignore it.

Commissioner Aieta: Would you make a recommendation that we send it to the health district also?

Chairman Hall: Now how would we do that?

Craig Minor: I'll do it. I work closely with Greg of the Health District, so I will talk to him about that.

Commissioner Aieta: At least he could go over and see what it is, I mean we are under the understanding that they do restaurants and they do hospitals.

Chairman Hall: And they may not be aware of this either, so it's a twofold. Zoning Enforcement and Health District.

Craig Minor: Yes.

Chairman Hall: That is your charge.

Craig Minor: Yes, and I want, I respectfully suggest that you keep an open mind that once they clean it up, and you let them make a presentation as to why they should be allowed under controlled circumstances to do some outside storage of their material, you keep an open mind and wait to hear what they have to say. I will talk to the Health Director and I certainly will tell them to clean it up before they even apply.

Chairman Hall: Right, because we will not listen if.....

Craig Minor: Right, it's allowable, but they don't have your permission yet, and at the rate they are going, they are making it hard for themselves to get your permission, but I think they can, once they clean it up.

Commissioner Aieta: My recommendation as Commissioner would be that if they require more space for sorting, then maybe they should put an addition onto the loading dock and then have that all encased inside their building, so there is no outside sorting of things, because that lends itself to this thing expanding at any moment, we could resolve this, and

six months from now it could be just by nature of things, it could be expanding to where it is today again. I think they should be doing all of their activities inside their building. That's just my opinion, you may not.....

Commissioner Anest: I agree. I mean, the Health District may not allow them to sort outside. We don't know.

Chairman Hall: Right, but that's why we have to have both of hem to take a look at it.

Commissioner Anest: We really need to get all of the information before we can even.....

Craig Minor: Right, get all of the information before you make any.....

Commissioner Anest: Any type of decision.

Commissioner Aieta: Because if they are sorting restaurant stuff, Cathy brought this up, sometime in a restaurant they just throw everything in the middle of the tablecloth and roll it up, and there is food and there is other stuff, so that could lend itself to rodents and all kinds of other problems.

Chairman Hall: We need to have more eyes take a look at this.

Commissioner Serra: Just following up on something else that Frank said, if there's a hazard with cars parking, a fire hazard, don't we need to have the Fire Marshal look at this also? I mean, it's not a problem that is going to be fixed overnight with them cleaning this up.

Craig Minor: Well, if they are violating a fire zone, then they are violating a fire zone, and that's not allowed. They can't do that, and if they are doing it now without repercussions, I will talk to the Fire Marshal about that.

Commissioner Serra: Then you could notify him and have him look at that also.

Commissioner Aieta: They way that they, because they took the parking area in the back and took the whole parking area and made it a storage area, now they are blocking, so they still have to park the people who work there, so they park in the back and they block, so you couldn't get a fire truck, you could only get it to the curb cut, and then in the front, the overspill, they park in the turnaround. Basically the way that that building was designed for another tenant, was basically a drop off area, was not, maybe there is just a couple of striped areas in the front, but they are loading that up too, so you can't get a truck, a fire truck even, you would be out on the street fighting the fire, not able to get the truck closer, but it just seems to me that it lends itself to a bad situation if there was a fire there, and they way they are storing stuff there, that is not out of the realm of possibility.

Commissioner Sobieski: Maybe the Police Department should look into that too, if there is a traffic problem on the street.

Commissioner Aieta: Well, we just want to clean it up, that's all.

Chairman Hall: Well, it's better for everybody that way and for them as well, because they could end up with a situation down there that could be catastrophic, and we don't want that to happen.

Craig Minor: Okay, good, thank you.

Old Performance Bonds Held by the Town: I prepared an updated chart. I put in bold the changes since the last time I gave you a report. The first item that there is a change to is Item 6: Fountain Point at 435-45 Willard Avenue. I noted what the Commission did at their site walk and what the consensus was, so I think for my next report this will probably drop off because that has been resolved. The next item is Item 25: that is the house on Waverly Drive. The homeowner called me late last month and told me that he is negotiating with the owner over price, and I know he has been negotiating since September, but that's the status. The Newington Professional Center at 1268 and 1300 Main Street: this has been pending, this \$20,000 performance bond, because there were a lot of trees and shrubs that weren't planted per the approved site plan. The landscape contractor came in to meet with me the other day, and she had a professional opinion as to the plan prepared by the landscape architect. She felt that a lot of the plantings and specimens that the landscape architect specified were, in her opinion as a landscape contractor, the wrong trees, wrong shrubs given the sun exposure, given the propensity to collect water, she went on for some length about that. She felt that if they continued to replant those plants, they would continue to die. She asked would they be allowed to substitute, and I said yes. Just show me a plan of what you want to substitute, I'll bring it to the Commission and if the Commission feels that it is equivalent, then fine; we'll let the Commission decide. I'm waiting for her to give me a revised plan showing the substitutions that she recommends. And then Item 27: the House of Pancakes restaurant. It's now summer, so I sent the manager of the House of Pancakes a letter explaining to him that there is money available for landscaping, and that he/she should contact me to discuss the details of it. Rockledge Drive: that's the subdivision where the developer never planted trees, but left \$10,000.00 to do it. I contacted all of the homeowners back in December. Three of them contacted me and said yes, they would like to have trees. I've gotten the names of some local landscapers so I can put it out to bid to hire a landscaper to do it, and then today I sent the three homeowners a list of recommended street trees in Connecticut and I asked them to tell me which of those they would like, their top five of those trees. Hopefully the three homeowners will all agree on at least one kind of tree, so that we can plant one kind of tree, which would look a lot better. I'm crossing my fingers that there will be at least one tree in common on each of the three people's top five, and then we will go with those. I also suspect that once these trees get planted, some of the other neighbors who either disregarded my letter or initially thought, I don't want the town's trees will see their neighbors getting trees and will call me back and say, yes, I've changed my mind, can I have some trees. I'm pretty sure I'll have money left over. I mean, \$10,000 that will buy a lot of trees.

Commissioner Aieta: You could get some pretty good caliper trees for that kind of money.

Chairman Hall: Yeah, but it's the installation, it's not the tree. It's the labor.

Craig Minor: Okay, Item Three: Newington Junction TOD Planning Committee. The Committee met last week to review the memo from the consultants and to discuss their role going forward. As of this writing, no decision has been made. The Committee is scheduled to meet again on July 3. They did meet, and again, no decision has been made, but the committee is considering what their role should be going forward, whether they should continue as a stand alone committee, should they dissolve, should they recommend to you that they be morphed into an official subcommittee of this group. They are looking at the different options, and so they will come back to you through members of the committee that are on your Commission for your approval. But at the moment, the committee is deciding what it's next step should be.

Commissioner Anest: When are we going to get a copy of that?

Craig Minor: Oh, you asked me for one, I'm sorry, I'll e-mail it to you before I go home tonight.

Commissioner Anest: Thank you.

Craig Minor: And, the never ending saga of Modern Tire: remember I told you at the last meeting that the judge approved one of Modern Tire's appeals, but denied the other? The court screwed up - it was the opposite. The court denied Modern Tire's request to be able to appeal the zoning amendment which the judge found in their favor substantially, and I guess Modern Tire wanted more, but they are not going to be able to appeal that decision. Modern Tire's request to be able to appeal the site plan approval is still pending. I've simplified it immensely because it's really nuances of these things, but that is in layman's terms.

Commissioner Aieta: They did uphold, they still upheld the decision of the judge that the waiving of the regulations was, that was not thrown out, that is still on the books, right?

Craig Minor: Right.

Commissioner Aieta: Our regulations, in reality, that auto related regulation that has waivers for garage doors facing the highway, other waivers we have in that regulation is null and void, so if someone came in we could not waive, or even this application would void the action that we took on the Firestone, wouldn't it?

Craig Minor: You're right, and I'm not an attorney so I don't want to paraphrase the impact of the judge's decision on our zoning regulations, but that's unchanged. The decision is still the decision on our regs.

Commissioner Aieta: When do you think that this Commission should look at those auto related things and bring them in line with the decision of the judge based on the McKenzie case?

Craig Minor: That's a good point, now that the judge...

Commissioner Aieta: I don't want to start if this is still out in the air, but at some point we're going to have to, because someday someone is going to come in and ask for something and we've got a regulations that is not really.....

Craig Minor: Now that the court has denied Modern Tire's appeal of the regulation, I'll talk to the Town Attorney but now it looks like it's safe to go back to the water and amend the regulations so that it complies with the McKenzie decision.

Commissioner Anest: Can we have either Attorney Bradley or Attorney Boorman come in and explain it, because we have a bunch of new members here on this Commission, just so that they can fully understand what is going on and what we need to do to bring everything into line/

Craig Minor: Yes.

Chairman Hall: Do we have to do that in executive Session, or can we do that in an open meeting?

Craig Minor: We could probably do both; we could do some of it in public session which would be a benefit for the public, but then go into Executive Session if there are some nuances that probably should be done in Executive Session.

Commissioner Anest: And they should be able to make that determination of what to discuss and what not to discuss.

Commissioner Aieta: One other thing that I would like to bring up: how does this affect the Hayes piece? I know we made a separate regulation specifically for that gas station on the Stop and Shop piece. Is there anything in that regulation that says that we can waive, is there anything that we wrote as part of that, I'm sure there is, because if Shipman wrote it, it always puts in...

Craig Minor: I don't remember if that could be waived by two thirds.

Commissioner Aieta: That could be a problem when they do eventually get their stuff together, because if there is something in the regulation that they wrote, I'm sorry, I should have read it and been able to say yes or no, but I'm not sure, if there is something in there that says, you can do this, but you could waive it, then that regulation is tainted too.

Craig Minor: For the past couple of months, ever since the Dr. Patel building, I've been advising applicants that even though the regulations say the Commission can waive things by a two thirds vote, I'm advising people, don't even ask, just prepare your plan to meet all the regulations.

Commissioner Anest: Could you ask one of them to review the fueling station regulation that we have to see if we need to tweak that one or what we have to do on that so we don't run into any problems?

Craig Minor: Yes.

Commissioner Aieta: See, if I had it to do over again, I would have insisted that they come in and not made a separate regulation for the fueling station, I would have put it under the auto thing and have it where it is supposed to be. I think we made a mistake.

Craig Minor: That was my recommendation at the time, but Attorney Shipman was able to persuade me that it made sense for it to be free standing. It sounded entirely plausible when he explained it to me; there is a reason that we didn't combine them at the time.

Commissioner Aieta: Yeah, well we did it because we were in the middle of this lawsuit. That's the reason I think as to why we separated it out. Maybe we acted too hastily.

Craig Minor: Okay, that's all I have.

XI. COMMUNICATIONS

Craig Minor: We received two referrals from CCROG: the City of Hartford wants to amend their zoning regulations in two areas. One is regarding a stadium, and another is regarding the setback for a stadium. I did not get the regulations themselves, but I can request them from the Hartford planning department if the Commission wants me to, if you are curious. But I wasn't going to waste their time or mine if the Commission didn't want me to, so I'll wait and let you tell me if you want to see those regulations.

Chairman Hall: Do you think it was sent to all of these CCROG members?

Craig Minor: That letter was sent to all the CCROG members, yes.

Chairman Hall: Just a FYI?

Craig Minor: It should be to the towns that abut Hartford.

Commissioner Aieta: I think it's an issue that the City of Hartford has to wrestle with for their zoning. If it was right on the border of Newington, touching our borders, I would say we would want to look at it, but this is several miles from our borders, it's in the center of the City of Hartford. I wouldn't want them coming into the center of our town, telling us what to do. This is home rule, something that they have to take care of. I appreciate them alerting us to it as part of the CCROG referral, but I don't think we have anything to say.

Chairman Hall: It's going to be interesting to watch.

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

John Bachand, 56 Maple Hill: Mr. Planner, I thought we were going to address the situation with the subdivision next to me, with the plan filing.

Craig Minor: Well, I can give the Commission an update on that. At the last meeting I brought to the Commission's attention that there was an issue with the map filing. I've looked into it, and at this point I don't recommend the Commission take any action. I did contact the Town Attorney and ask him for his thoughts on it. That was only a couple of days ago, so I haven't gotten a response yet.

John Bachand: I would like to suggest that you could keep the immediate property owners informed, possibly with a letter so we don't have to keep coming to the meetings to follow what is going on. It seems to me that the situation seems to be in limbo, serious limbo.

Craig Minor: It's a non-issue and I don't know if the TPZ wants to.....

John Bachand: Is that your own opinion, or is that from the attorney?

Craig Minor: That's my opinion, it's a non-issue. This happened seven years ago...

John Bachand: We're talking about the potential for a six lot subdivision to be built on null and void plans. If you did the research and found that.....

Craig Minor: It's not a null and void plan until a judge says it's null and void, and a judge isn't going to say that until somebody takes some kind of legal action against the developer to have the plan declared null and void. That's why I say it's a non-issue.

John Bachand: I just thought it seemed to be up in the air, and then you did mention in your e-mail that you were getting a legal opinion on it, so, how will we be informed of that, especially the immediate abutting property owners. I think we deserve to have some notification.

Craig Minor: If I learn anything, I will share it with you.

Chairman Hall: You'll bring it back to us too, right?

Craig Minor: Yes, I'll bring it to the Commission.

Chairman Hall: And it will become part of our minutes. So it will be, at that point, public knowledge and we'll just make sure that you are informed as well.

John Bachand: Thank you.

Commissioner Anest: You said you were reaching out to the owner of the property for the plans.....

Craig Minor: I asked the current developer, Ms. DiMauro, if she still had the mylars and she pointed out to me that she was not the applicant in 2007. She was one of the two property owners, she and Holly Kobayashi were the two owners, but the applicant was Greene Associates LLC and it was Greene Associates LLC who got the approval. Attorney Sabatini was their attorney, so the approval letter was sent to Attorney Sabatini, but Greene Associates LLC was the applicant, so it was Greene Associates that was supposed to file the mylars, and only filed the one sheet for some reason. And, as I understand it, it was after that Ms. DiMauro got involved and became the developer. She bought the project from Greene Associates LLC and now she's the developer, so she is responsible for doing certain things, but she was not the applicant that got the permit in the first place.

Commissioner Anest: Is Greene LLC still alive?

Craig Minor: I went to the Secretary of State's web site, and there is a Greene Associates, but it's a husband and wife down in Milford

Commissioner Anest: Do you know who the principals were at the time?

Craig Minor: No, and I asked Attorney Sabatini but I did not get a complete answer. Maybe if I follow up with him.....

Commissioner Anest: On the application, it doesn't have who the applicant is?

Craig Minor: Greene Associates LLC.

Commissioner Anest: Yeah, but who's the principal, usually, it didn't have one?

Craig Minor: We usually don't. If you think about it, we often get, like Extra Space LLC, or Hayes Kaufman LLC, we don't usually know who the principals are behind the LLC.

Commissioner Anest: I'm just, if there is a way to reach out to Greene LLC, maybe they have the mylars somewhere that can get recorded to at least resolve part of the problem.

Craig Minor: I talked to Alan Nafis who was the engineer back in the day. His recollection was that Greene Associates was a gentleman out of Bristol, and I'll follow up on that. The mailing address for Greene Associates on the cover of the plans is an address in Stamford I think, and the LLC that exists is in a different town, so I think it's a different Greene Associates. I'll keep working on that, on the off chance that there is a dusty roll of mylars in somebody's closet somewhere.

Commissioner Aieta: The Secretary of State should still have, even if it's a defunct LLC, should have the filing, and you should be able to, it should say right on that filing who the agent of record, or member, it should give you a name.

Craig Minor: Okay, I'll dig deeper.

Commissioner Aieta: They don't throw that stuff out, some of them say they are defunct, or out of business, or dissolved, but it never goes away. The name always stays here because someone could come in and try to take the name or something.

Craig Minor: Then that husband and wife probably are the same.

Commissioner Anest: Somebody might have mylars buried somewhere. Or the engineer...

Craig Minor: I talked to the engineer, but that's another issue.

Commissioner Anest: If we could do something, I know it's not really not us, but it is us, so let's just try to solve, try to help the neighbors as much as we can.

John Bachand: So, just to clarify, if the plans can't be found, nothing is going to happen, is that what you're saying?

Craig Minor: No.

John Bachand: I thought you said this was something that might not be able to be found.

Craig Minor: What I said was that I don't recommend that the Commission take any action at this time.

John Bachand: Well there are two different issues. One was the filing of the complete set of plans, the other is the ninety days filing requirement that appears not to have been done, so...

Craig Minor: Right, and I've asked the Town Attorney to comment on that situation.

John Bachand: Just to clarify, when you say it's a non-issue, does that mean just because so much time as gone by and everything is convoluted and the project is started and...

Craig Minor: Exactly. If this was 2008 and we realized that the plans were filed after the ninety day deadline and no lots had been sold yet, the ink was still wet on the plans, at that point, it would have been appropriate for the Commission to take some action to correct it. But this point at least two of the lots have been conveyed out, a third one is in the process of being sold, the road has been built; I'm not going out on a limb very far by saying that a judge is not going to, in 2014, invalidate that subdivision because the plan was filed three months late in 2007. That's just not realistic, I don't think it's something that this Commission needs to spend a lot of time on.

John Bachand: I'm not asking to have this validated or anything.....

Craig Minor: Yes you are.

John Bachand: No I'm not. I'm not asking that the project be invalidated. I agree, it's too far along to stop, I just think there is a serious cloud over it, and I live right next door to it. So, what if someone you knew was buying a property there, wouldn't you be concerned that this could come out in the open and be resolved properly.

Craig Minor: Well, since none of the attorneys of the people who bought those lots thought it was a problem, then no, I don't think it's a problem.

Chairman Hall: They do a title search before they...

John Bachand: Exactly, but do they know what is going on? I'm just saying, they probably don't know what is going on because our land records allowed them to file the plan.

Craig Minor: What the person doing the search would not know is that our regulations are in conflict with the state statute. What the person doing the search would know is when it was recorded. He would see: recorded on this date; approved on this date that was some six or seven months later, but apparently this has not been an issue. So I don't think that we should create an issue.

John Bachand: I think it's beyond this Commission's ability to do anything about it right now, but I still would like to know what the final legal opinion is on it.

Chairman Hall: Once we get that, then we will all have the answer and we will make sure that you have it as well.

John Bachand: Okay, thank you.

Chairman Hall: Anyone else wishing to speak on items not listed on the agenda. Come forward, list your name and address for the record please.

Elizabeth Wolf: My property is directly near this project and I too would like to know what is going on over there. I was the one that stopped some of the tree cutting because they were in there looking around, and I saw them with a chain saw and I told them, they're not doing anything until I call the Town Planner, and he came and sent someone out, so this has been going on, my husband and I have fought this since 2008 and we thought it was a dead issue and all of a sudden this whole dragon lifted its head and I started seeing this place cleaned off. I never was informed that it was okay for that property to go on.

Craig Minor: Ma'am, did you get a certified letter from my office a couple of weeks ago?

Elizabeth Wolf: Yes I did.

Craig Minor: That explained about the cutting of trees on the lots.

Elizabeth Wolf: I understand that, but the only reason that it was stopped was because I stopped it. They had the surveyor come and tag these trees and I didn't know what it was all about until I saw a man come with a chain saw ready to cut them down, and that was beyond where the line was of the conservation area. So that's why they stopped, and they had to appeal to the board, I'm assuming, that they could do it.

Chairman Hall: Thank you Mrs. Wolf. Anyone else wishing to speak on items not listed on the agenda?

XIII. REMARKS BY COMMISSIONERS

None

XIV. CLOSING REMARKS BY THE CHAIRMAN

Chairman Hall: As far as Chairman, we won't be meeting at the end of July, enjoy your time off, we will be back on August 13th, and by then I'm sure we will have some petitions to deal with.

Commissioner Aieta: I'm sorry, I should have said this under Remarks by Commissioners. Can we leave this Sunshine laundry as an item that we talk about until it's resolved, so it comes up on the next agenda, so we can see what, how it's progressing through the process?

Craig Minor: Sure.

Chairman Hall: And any Commissioner who hasn't driven past, just as you can, it's worth a trip.

Enjoy your weeks off, and we will see you on the 13th.

XV. ADJOURN

Commissioner Leggo moved to adjourn the meeting. The motion was seconded by Commissioner Serra. The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary