

NEWINGTON TOWN PLAN AND ZONING COMMISSION

September 27, 2011

Regular Meeting

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

I. ROLL CALL

Commissioners Present

Commissioner Anest
Commissioner Camerota
Commissioner Hall
Commissioner Lenares
Commissioner Pane
Chairman Pruet
Commissioner Schatz
Commissioner Aieta
Commissioner Turco

Commissioners Absent

Staff Present

Ed Meehan, Town Planner

II. PUBLIC HEARINGS

- A. PETITION 27-11 – Hayes Kaufman Newington Associates, LLC applicant, represented by Attorney Mark S. Shipman 20 Batterson Park Road, Farmington, CT 06032 request for Zoning Regulations amendment Section 3.11.7 to permit by Special Exception approved “Fueling Station.”
Continued from September 14, 2011.**

Chairman Pruet: Councilor, good evening.

Attorney Shipman: Yes, I know that you left the petition open, there must have been a reason, you must have questions. I don't think I have any thing more to add to what I said before. I'm happy to respond to questions and comments from the public. I know that there was one Commissioner who last meeting was concerned with perhaps limiting the application of this amendment so to speak to grocery/supermarkets, centers with groceries, supermarkets. I haven't submitted anything. If at the end of the day you see fit to approve an ordinance but would like to have that change, I have drafted something I could submit to the Planner.

Chairman Pruet: Thank you. Ed, staff comments on the petition?

Ed Meehan: I have nothing to add Mr. Chairman. The applicant at public hearing clarified proposed item H, which was originally submitted by certificate of approval from the Zoning Board of Appeals and at the initial public hearing Attorney Shipman clarified that it could be modified to follow your Section 6.11 which is the section where the TPZ issues these types of

certificates as needed, and I do recall the grocery store/super market conversation. It is difficult to define that, but that may be something that Attorney Shipman can help us with.

Chairman Pruet: Okay. Commissioner comments on this? We can discuss this. Anybody want to start?

Commissioner Turco: Thank you Mr. Chairman. Just for a little history, it was mentioned at the last meeting, and perhaps Ed could clarify, why was it in the past that the gas stations were taken out of the regulations and the TPZ would no longer allow any new ones to be built?

Ed Meehan: The gas stations were removed from the regulations in 2007 as part of a re-write of the regulations that eliminated auto related uses which included gas stations, car dealerships, auto repair service locations, principal uses that required DMV licensing. At the time that the Commission discussed this, it was felt that the public was adequately served with the numerous auto related uses in town. There was an attempt to follow the guide lines of the Plan of Conservation and Development which as a strategy recommended removing auto related uses from the Berlin Turnpike. In that respect, the Berlin Turnpike covers two large zones, the PD Zone and Berlin Turnpike Business Zone so the removal of the auto related uses affected other PD Zones such as Cedar and Fenn, Christian Lane and Kelsey Street and the North Mountain Road area, so that was the policy decision that the Commission made about five years ago.

Commissioner Turco: Thank you.

Chairman Pruet: Additional Commissioner comments?

Commissioner Camerota: I do actually have a request and I apologize, you did do this before in the fall for another petition, could you pull those meeting minutes again for when they took out that regulation and other regulations. I looked for them, and I don't have them.

Ed Meehan: Okay, will do.

Commissioner Schatz: I think what the applicant has to do is tighten up this Special Exception so it will be, for that particular store, not a lot of stores on the Berlin Turnpike, not a lot of stores anywhere, that sell groceries, plus they sell everything else, but the problem that I have now, looking at it from a different viewpoint, I shop at Stop and Shop over there, and obviously on gas I save as much as fifty, sixty cents a gallon, and I don't shop there because I do that, they have that over in West Hartford, they have it in Berlin, the only trouble with some of the locations, if this was approved, I think the traffic pattern would really have to be worked out. On some of those locations, it's a little tough.

Chairman Pruet: That's our guideline to review. Anyone else?

Commissioner Anest: Regarding tightening up the Special Exception, Attorney Shipman, do you have language that specifies just for what we discussed?

Attorney Shipman: I do. I haven't submitted it to Ed, but I did draft something that changes it to shopping centers with a principal building containing a supermarket grocery store occupying not less than 60,000 square feet and I put in definitions for supermarket grocery stores and primarily engaged in sales of groceries. I'm sure that the Commission and Mr. Meehan think of other things, but I'm happy to provide that so that there is at least something

that you can look at. Something else, but after Commissioner Aieta speaks so unless you have something else on that, I do have something.

Commissioner Anest: Yeah, I do. I think what we are concerned about is because there are other stores on the Berlin Turnpike that do, that sell groceries as well as hard good and soft goods, I think that is what we are concerned about.

Attorney Shipman: You can make it as tight as you want. I defined grocery as meaning, having sales of grocery items equaling at least sixty, fifty percent by volume of sales. Not dollars, because you can have stores that sell other than groceries and the non-groceries are bigger ticket items, so I've done it by product as opposed to dollar volume, but there are any number of ways to do it, you can change the numerator and the denominator on the fraction to make it as tight as you want but that's what I tried to draft. I would only comment also and historically that what you did, there hasn't been anything like this. I didn't call it a gas station, we called it a fueling station because it is not going to do anything but sell fuel. The uses you eliminated basically were uses that got motor vehicles and at the time, ZBA permits and they were repair shops, they were convenience stores, they sold all manner of things, they stored cars, they towed cars, and you were, and I remember because I was here for one of the meetings, you were very concerned with the fact that it was not a particularly good use on the Berlin Turnpike, which was a high retail, a high visibility zone. I think what I'm trying to do with this ordinance, what we're trying to do is come back to, you know, I don't mean to be crass about it, but this isn't exactly a protected industry, you know, if you can lower the price by having more people, more stations, especially as Commissioner Schatz said, I see the one over in near Home Depot in Bloomfield with a big sign up that says, you can save ten, twenty or thirty cents per gallon, you can have an effect in a relatively high priced market and the specialized way in which this is drafted in the sense that it has to be internal, nothing on the street. I could tell you that Berlin approved one in February '09 and in there, Roman numeral six, D 3, if you want to look at it, but they allowed them on the street. We have taken them off the street and put them where the access is internal, you might be able to see them. We tried very hard to address the items that were the reason for removing gas stations in the first place.

Commissioner Aieta: I think this Commission has to be very careful about restricting it to the point where you make this, Attorney Shipman's interpretation of this, that it only fits one particular site. I think that we have to be very careful when you do that and I think you have to keep it at some point so that other sites can be considered. You just can't zone to accommodate just one particular site, or one particular store. I don't think that's good zoning.

Attorney Shipman: I agree with you, Commissioner Aieta, I think however, the way that I have drafted this there's, and I defer to Ed, probably four locations in town that fit the definition of this, maybe even five.

Commissioner Pane: I agree with Commissioner Aieta, and I would just like to say, if the Commission is leaning towards possibly putting this in, this is the improper way of doing it. We should go back and look at our entire auto related use regulation instead. This Commission was so adamant on keeping it out, from the previous Commission, that you are either still adamant on keeping it out, or if you want to re-address it, then we should be looking at the entire auto related regulations. Thank you.

Chairman Pruet: Further comments?

Commissioner Hall: That's essentially what we did, not too long ago because there was another petition that came before us, we spent a lot of time on that, and we agonized over Newington TPZ Commission

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that, and we came to a decision. With this petition, we have to be very, very careful. We are not going to spot zone. This would be applicable to more than one site. It would be the door opening again, to something that maybe we had visited before, maybe we decided before, so we have to be very, very careful about this. Attorney Shipman mentioning five or six places, we have to know where these would be, again, just as we did the last time. Ed was very good about centering on where the use would be applicable and then helped us make our decision the last time too. So, I would like to see what five or six they might be talking about, but we have got to stay away from spot zoning, just because we know where this might fit, that's not the only place and we can't be doing it as if we are approving it or denying it for that place. We have to get that out of our mind.

Chairman Pruet: I agree with you. Ed, just a clarification on, first of all, this is not a motor vehicle petition. Am I correct on that? It's more of a consumer gasoline station.

Ed Meehan: It's regulated by the Department of Consumer Protection because they are not doing auto body repairs, they are selling gasoline. The sites that Commissioner Hall mentioned, the ones that I think would qualify as the regulation is set down, not this supermarket/grocery store component, would be the Stop and Shop Plaza on Fenn Road, the Stop and Shop store, the former Shaw's store on Kitts Lane, the Price Chopper on the Berlin Turnpike at Louis on one side, Pascone on the other, the Target store on the Berlin Turnpike, southbound lane, Wal-Mart, Staples Plaza, Berlin Turnpike, northbound lane, are the stores that come to mind at least over 60,000 square feet, gross floor area, those are the ones I think of.

Commissioner Pane: Mr. Chairman, with all due respect to the Town Planner, this did fall under our auto related uses previously, and that is why it is not allowed now. So, it is an auto related use, gas stations, automotive repair, all that stuff falls under this, so I don't want the Commissioners to get the opinion that this is something different. This is exactly what everybody was against several times, and I'm not saying that I'm against it, but what I'm saying is that it has to be addressed, you should be looking at the whole auto related use regulation, or don't look at this, because what you are doing here is, you are trying to develop regulations just to fit certain types of areas and that's not really fair to other businesses that might want to have something similar but might be just a little bit less in square footage, or might be in a different zone, I mean, this is really a complicated issue here, and to come in here and write regulations to fit one type of style of gas station, fueling stations for box stores still falls under our regulations and it should be addressed under all of our auto related uses. Thank you.

Chairman Pruet: Just picking up on what Cathy said, we had a lengthy discussion on this before, I mean, it was a legal issue so I would rather get a further clarification, not that I distrust what Ed said, but because it is an important matter, get a further clarification on how this petition would fit against our guidelines.

Commissioner Camerota: Ed, about locations, what about the former Food-Mart? If that was to be a grocery store again, would that be one of the locations?

Ed Meehan: On Lowry Place?

Commissioner Camerota: Yes.

Ed Meehan: Actually I don't think it is too small. The whole gross floor area over there, Food-Mart used to be about 34,000 square feet, the whole shopping center is about 75,000 square feet, so that might be a possibility.
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Commissioner Camerota: If they reconfigured the store, built on or something.....

Ed Meehan: Yeah, the way that this is written, it comes into the regulations under Section 3.11.7 which is the B Zone, the general business zone, and our regulations are based on the cumulative principle where things in one district can flow over into another district, so that is a good point. You may want to look at that, although we do say in our regulations that gasoline stations and auto related uses are not permitted in the business town center zone. That has been in the regulations for many years. So that would probably exclude the Lowry Place store, but I agree with what the Commission members have said, you have to read this in the context of the whole body of the regulations to see where it fits. I believe that Attorney Shipman has offered the definition of a fueling station which is different than a traditional gas station uses. Maybe thinking about that would satisfy what Mr. Pane is saying, but you should see how this relates to the whole body of regulations.

Chairman Pruet: Maybe I can get a consensus from the whole body of Commissioners here....

Commissioner Schatz: The problem with a fueling station not a gas station, does that mean you are going to do propane, electrical, electricity.....

Attorney Shipman: This is limited to and it includes some of what you are saying, it's, the sale of products shall be limited to gasoline, diesel fuel, fuel oil in enclosed containers, anti-freeze, natural gas for use in an internal combustion engine, electricity used to power motor vehicles, compressed air for filling tires. That's it. No storage of vehicles on the premises, no convenience store, it's a 200 square foot building, it's, and I do want to stress, the way that this is drafted, this is an accessory use. There has got to be a principal use, it's not a, you just can't put a gas station in, you have got to have a principal use, the way, and perhaps some of what you are concerned about with the center, although I looked at your regulations, and don't think this over rules or trumps your business, your regulation that says no gas stations in the town center zone, but this is, this has got so many restrictions, I mean, it's not really for a particular site, but you'd have to make a determination under this regulation which has through P for standards, and then it also has to meet the requirements of your Special Exception section which is an overlay of requirements, so you have a tremendous latitude in approving, or disapproving, but I do want to stress that it's an accessory use and there must, and the user must be the occupier of the principal building. In other words, if you are the Stop and Shop, you can't lease this out to a Shell station. You must be the licensee and operator, Stop and Shop. If you are Wal-Mart, you have to be the licensee and operator. It's not subleased to anybody, it's not for a lease for Mobil or Texaco or who ever is around, it's got to be operated by the principal user so we tried to narrow it, rather than narrow it in terms of the locations and making it spot zoning, we've tried to narrow it in the sense of the, not making it an auto related, other than, you can fill your gas up there. I don't think you had anything like this in the regulation that you had before. Somebody could have done this, and it would have fit within what you had before, but you didn't have anything that restricted it to this, and that is what we are trying to do. I recognize that gas stations are not particularly attractive, that's one of the reasons why towns tend to say, no more, they don't want them sitting on the corners which is where they always were, they don't want them in the middle of a street where they always were because they're not necessarily the most attractive uses in town, but if you put them inside an existing commercial use, you are not going to have a problem with the residential abutters, and if it is too close to residential abutters, that would mean it couldn't be approved under the Special Permit applications, it's not going to be where

it really creates more traffic than what is entering and exiting from these sites at existing exits and entrances that in almost every case are controlled by traffic lights, so I think we are trying to carve out, not a special place for a special location, but a special type use that has got a Newington TPZ Commission

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benefit for the community and certainly a benefit for the principal users. As Commission Schatz said, you can go over to West Hartford and you can get, you can go to Berlin, you can take your Stop and Shop credits and go over there and get your gas, or you can shop there and get your gas. If you use the Shell stations which give them, which give you credit for your groceries, you only get a ten cent discount, but if you are using one of their self contained, you can get almost as large a discount, I think it's up to thirty cents.

Commissioner Schatz: So if I had a propane car, I couldn't gas it up there.

Attorney Shipman: Propane car you could, propane tank for your grill, no. If they had a propane fueling location, I doubt if there are going to be that many of them. If they have a place you can plug in your electric car, you can do it there too, but you can't fill your propane tank for the bar-b-que grill because that is not for use in an internal combustion engine.

Commissioner Schatz: Thank you.

Chairman Pruet: Further Commissioner comments on this?

Attorney Shipman: Frankly, we would also, although it says, diesel fuel, we would have no objection to eliminating diesel fuel which would, I know there are a lot of cars that use that, but it would mean the trucks don't pull off to fill up.

Chairman Pruet: Thank you. It comes down to, it's a policy decision that we control, or a legal consideration, that is what we have to decide as a Commission, how we are going to go forward with this.

Commissioner Lenares: I think that Attorney Shipman did a nice job in preparing some of the descriptions that might help us, if you want to say limit to where this accessory use might go, I am a fan of that, and I think we can work that, to try to make it work, what I'm not a fan of is what Ed had described of the prior Commission's, like one of their reasons for taking out auto related uses was because the Commission at that time felt that we had enough of them. I'm not a big fan of that. I own a business in town, I would probably like it if there was less competition in my field as well, but I don't think as a Commission we should look at that, and say, we have enough gas stations. If it fits, we can make it work, the traffic is not a concern, there is a lot of things that have to work, it's not just let's let it go, the more competition the better, I'm not a fan of that. It's got to work, but to say we have too many gas stations, I don't like that and to be honest what Commissioner Pane had said about maybe revisiting the initial regulations might not be a bad idea. Thanks.

Chairman Pruet: I just want to get back to this, is, we interpret the policy, we interpret petitions, is this a policy decision or is this a legal decision where it conflicts with our existing motor vehicle instruction. You heard Ed say no, it doesn't come under that criteria, it comes under the Department of Consumer protection or DEP, that's why I would like to discuss it further.

Commissioner Schatz: Through the Chairman, the argument over if someone came in and said, I want a fueling station, it would have to come under a Special Exception too. Wouldn't we have to judge each one individually, not just give a carte blanche.....

Ed Meehan: If this was in your regulations, if you adopted this, or some form of this, the second step would be for a location that meets the criteria, of which you adopted, a sixty thousand square foot area. They would then apply for a special exception.

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Commissioner Schatz: That's a bad thing, really.

Ed Meehan: If they meet the criteria, it goes back to, you can't write this for only one site, it's got to be fair to everybody, not everybody, but most of the general business sites in town. So if Target qualified, they would go through the Special Exception process, they would have to prove traffic safety, location as far as adjacent neighbors, all of the things that you look at for a special exception.

Commissioner Hall: And also we have to remember that this will be a traffic generator. I know that they are saying that is only going to be people who shop at Stop and Shop that are going to go and get their gas. I can tell you for a fact that the people down in Berlin, because I'm by there almost every day, I see cars going in, getting the gas and coming back out again. Didn't go anywhere near the store because they already have their points. So they are just going to get their gas. So, we do have to be concerned about the traffic as well. Ten, twenty, thirty percent gallon, reduction is plenty of incentive, and if the prices start going up again, and you are able to do this, you are going to see people coming from different directions, as long as they have their points, and I know that it goes hand in hand, that they have to have the points in order to do it, but we also have to consider the traffic on this, because it is not going to be a wash, and I think at one point it was sort of presented that way, it's only going to be the people who are already there that are going to stop and get their gas, I don't believe that.

Commissioner Aieta: I would be inclined to go along with this if it was done in conjunction with the change, with looking at the whole regulation. I think that, you know what my opinion was when we visited the last time, I thought that it should never have been taken out of the regulations. You can't do zoning because something is difficult so you just take it out of the regulations because you don't want to take the time to make the applicant comply with certain regulations, and I think that is what the other Commission did. They had some problems with auto related uses, and they just said, well, we'll just take them out of the regulations, instead of doing their job as Commissioners and regulating them to the point where they make it a nice looking building. They don't have the tires out in the front, on the Berlin Turnpike, they have the garage doors in the back, a whole litany of other things to make the sites pleasant and good looking sites for the town. I think that they did a disservice by taking that out of, all auto related uses out of the regulations, because in fact, what will happen eventually by what we have done, by removing that, at some point, they will eliminate all auto related uses in the Town of Newington. It might take ten years, fifteen, twenty years, whatever it takes, eventually as those businesses go out of business, or something happens that they are not in business, you can't replace them, so at some point, there won't be any gas stations in the Town of Newington. There won't be any auto related uses, that's what they did by taking that whole section of auto related uses out of the regulations.

Chairman Pruet: Okay, again, we are at the point now where if we follow that format, then we have to open up discussion for a complete review of the motor vehicle regulations, and of this too. How would that fit with the petition that is submitted?

Ed Meehan: You have got to deal with the petition that is submitted. You can keep this hearing open, you have time to October 12th to think about it, and I can give you some of the information that you have asked for tonight, and deal with this petition as it has been

submitted. Then if the Commission's will is to look at the broader auto related use section again, you can bring that back as work that you will do.

Chairman Pruet: Okay, any other comments before I open it up to the public? Okay, this is a public hearing. Anybody wishing to speak in favor of this petition, please step forward and
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state your name and address and speak on it. Anybody from the public wishing to speak against this petition? Seeing none, is it the pleasure of this Commission to keep this open as recommended by the Town Planner so that we can more information. Okay, that is what we are going to do, we are going to keep the petition open. Thank you.

Attorney Shipman: Mr. Chairman, just before I go, may I leave these with Ed Meehan?

Chairman Pruet: Absolutely.

Attorney Shipman: Thank you. I understand that the public hearing remains open, is that correct?

Chairman Pruet: That's correct.

III. **PUBLIC PARTICIPATION** (relative to items not listed on the Agenda-each speaker limited to two minutes.)

None

IV. **MINUTES**

September 14, 2011 – Regular Meeting

Commissioner Schatz moved to accept the minutes of the September 14, 2011 Regular Meeting. The motion was seconded by Commissioner Camerota. The vote was unanimously in favor of the motion, with seven voting YES.

V. **COMMUNICATIONS AND REPORTS**

A. 8-24 Referral Report – Street Acceptance Barkledge Drive and Sterling Drive.

Ed Meehan: The 8-24 Referral you were supposed to hear tonight for road acceptance, the Town Council is also meeting tonight, so we need to wait until October 12th, to get their referral report.

Chairman Pruet: Very good, any other.....

Ed Meehan: That's it.

VI. **NEW BUSINESS**

A. **PETITION 25-11 - 1095 Main Street, New Center Corp. 1095 Main Street owner, Farmington Bank applicant represented by Dale Bertoldi, Tecton Architects, Inc. One Hartford Square West, Hartford, CT 06106, bank use with drive-up window-service B-TC Zone District request for Site Plan Development and Section 3.12A Town Center Village Overlay District. Continued from September 14, 2011.**

Chairman Pruet: If the petitioner would just state your name and address for the record?

Jim Haig, Tecton Architects One Hartford Square West Hartford, CT : We were here before and my understanding is that the two remaining issues that I'm aware of is the color of the brick that we had selected, and we had left a sample with the Commission last time, and I
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believe several if not most have been on the site with that sample, and looked. I'm assuming, I haven't heard anything negative so whether that has been approved, I believe that most have looked at it, and there was nothing against it. The other issue was the color of the windows, on the new portion of the building. We tried to revise the elevations, there are certain limitations to the primer and the size of the line weight, but the intent is that the entire window frame at the bank addition would be all white. Are there any other issues or questions or comments, be glad to respond.

Chairman Pruet: Just to follow up on the brick, you mentioned before about it being sand blasted, or power washed and pretty much come out to the same color as the existing brick.

Jim Haig: The existing brick would be power washed, sand blasting is a little brutal to the brick surface, but yeah, the intent was to wash thirty, forty years worth of accumulated dirt and grime off, that would give you a truer look at what the brick is. This is our best effort right at the moment to match what is there. We can always revisit that once it is cleaned and dried we can look and verify that it is the best color, and if we need to make some adjustments we can do that.

Chairman Pruet: Okay, good. Staff comments, Ed?

Ed Meehan: The site plan, the civil part of the site plan drawings for the layout are submitted, and they meet our standards. I did have a conversation with the architect, I know that one of the Commission members and other people mentioned the possibility of more parking out front. It hasn't been engineered yet, but I think it is worth exploring later on maybe moving one of the handicapped spaces to the back, which is an accessible route into the back of Dunkin Donuts and the bank. If you do that, I think you can get maybe two spaces out front, pick up two spaces?

Jim Haig: Yes.

Ed Meehan: So it would create about eight spaces in front, so there would be in and out spaces in front, still complying with the ADA requirements, would still have one handicapped space in front and now they would have one in the back for access to the back of Dunkin Donuts. That's where the space is now, access both front and back.

Chairman Pruet: Thank you. Commissioner comments?

Commissioner Pane: I like the match of the brick, and I'm glad to see that they have changed the windows. Just a couple of small things, when you carry the brick around the side near the church side, which would be the north side, it's, the brick is in two different heights, can we just pick an elevation and carry it all the way around, so there doesn't, you don't have three different elevations of brick?

Jim Haig: One of the concerns that we heard from the Commission was that on the Main Street side, is that we match, or pick up the lines of the Dunkin Donuts, and that portion of the brick is staying, so that's why on that north elevation, what you see on the perspective, also the front, the east elevation, is that the line is consistent, starting with the Dunkin Donuts, and running across, and so what we did is, we just carried it around the corner to the first

convenient place, which is the side of the window. Otherwise, we would be considering bringing it down, a shorter wainscot on the north elevation.

Commissioner Pane: Then as you go around towards the back, there is a different height too.

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Jim Haig: Well, it's the best, that's somewhat related to the grade. As you see on this north elevation, there's more black, that represents the soil that is cut, and as you go toward the back, it's thinner, which indicates that the grade drops away, so we were keeping the line consistent so that when you turn around with the west side, this line continues on around. This is all existing.

Commissioner Pane: I understand that. So the line in the back meets the corner up there.

Jim Haig: Right there.

Commissioner Pane: Okay, then why not just pick a happy, who suggested the height of the windows?

Jim Haig: Which height?

Commissioner Pane: The original height of the brick.

Jim Haig: This one here?

Commissioner Pane: Yes.

Jim Haig: You come back to this front elevation, and that's where it picked up at the bottom of the soffit. We brought it, we just happened to raise our window head just a little bit so that it all matches up. As you can see, there is some brick above the.....

Commissioner Pane: Okay, looks good. Just a couple of other little things, the dumpster enclosure in the back, do we have anything that is, do we have an enclosure on that, or is it just a dumpster sitting out in the.....

Ed Meehan: No, it's going to be enclosed.

Commissioner Pane: I didn't see an enclosure on the blue print.

Jim Haig: I don't believe there is a specific detail.

Commissioner Pane: Okay, I just want to make sure that we had some sort of enclosure on the dumpster, and the only other minor thing was the crossing area, I didn't see any signage that pedestrians are crossing here, for safety purposes, when they are crossing over the, in front of the drive through window. So if you.....

Jim Haig: That is a good point, there is no specific signage at the moment that shows that. We can stripe the ground, and we can put a caution, pedestrian crossing sign.

Commissioner Pane: Just something to make it a little bit safer for pedestrians and cars, that's all. Otherwise, it looks very nice. Thank you.

Chairman Pruet: Thank you.

Commissioner Schatz: I thought Commissioner Pane would pick up on this, but seeing that he hasn't I'll mention it myself. The air conditions up on the roof?

Jim Haig: No, the two condensing units will be sitting on the ground in the back, the air handling units themselves are up in the attic, above, one will be above the bank, one will be Newington TPZ Commission

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up in the parapet area in this here, the bank space, one air unit will be up, hidden behind this parapet here, above the bank space, the other air handling equipment will be located above, and in the attic of Dunkin Donuts, and the air conditioner, I should say the condensing units will be sitting down, on the ground, by this back wall.

Commissioner Schatz: Is that the same plan that they have in the West Hartford store, or West Hartford bank?

Jim Haig: West Hartford bank, yes, there is a very similar shape to this....

Commissioner Schatz: I make that comment because the air conditioner you can see, sitting up in that.....

Jim Haig: Well, you can see the top of it, from a distance. Those things are like five feet tall, and so we have created a four foot, so we couldn't quite cover it one hundred percent. That is quite a deep wall.

Chairman Pruet: Any other comments?

Commissioner Anest: I just want to thank you for the windows.

Jim Haig: Sure.

Commissioner Pane: Mr. Chairman, just one other thing, I think Ed's point on, afterwards trying to get a few additional parking spaces in the front is a good idea and as long as we have that somewhere in the motion, I think that is a good idea. Thank you.

Chairman Pruet: I think we can probably move this forward.

Commissioner Pane: Mr. Chairman, I move that we close this, and I'd like to make a motion that we move this to Old Business.

Chairman Pruet: I don't know if we would have a motion, with the additions, oh, okay.

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

Chairman Pruet: We are going to move that to Old Business and vote on it tonight.

Jim Haig: Thank you.

VII. OLD BUSINESS

- A. Petition 12-11 – Toll Brothers, 53 Church Hill Road Newtown, CT 06460 applicant, Balf Company owner request approval for open space subdivision development, 71 lots single family homes, 73.7 acres for property north of Old Highway and west of Russell Road, Assessor's Map Block Lot No. 11/329/000, R-20 Residential Zone District. Public Hearing**

closed August 24, 2011. Sixty-five day decision period ends October 28, 2011. Continued from September 14, 2011. Inland Wetlands Report required.

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- B. Petition 13-11 – Toll Brothers, 53 Church Hill Road Newtown, CT 06460 applicant, Balf Company owner request for Special Permit Section 6.8 Zoning Regulations for open space subdivision, 71 lots single family homes 73.7 acres for property north of Old Highway and west of Russell Road, Assessor's Map Block Lot No. 11/329/000 R-20 Residential Zone District. Public Hearing Closed August 24, 2011. Sixty-five day decision period ends October 28, 2011. Continued from September 14, 2011. Inland Wetlands Report required.**

Chairman Pruet: After conferring with my fellow Commissioners we decided that we would retain the services of a special council and that is Counselor Jack Bradley and Attorney Bradley is going to advise us of the present status of the two petitions, and their relationship to the current ruling by the Conservation Commission. Counselor Bradley?

Attorney Bradley: Thank you Mr. Chairman, Members of the Commission. I was asked to advise the Commission and I was advised that the Commission had a number of concerns regarding the fact that the Conservation Commission apparently denied the application and to address the issue of the effect of the Conservation Commission's denial. In this capacity I representing, solely representing the Commission here. It's important to understand that the report of the Conservation Commission which is also the decision of the Conservation Commission which also performs the functions of regulating Inland Wetlands is not binding on the Planning and Zoning Commission in considering a subdivision application. The statutes require that the Commission, the Planning Commission, is required to give, quote due consideration to the Wetlands report and by report they mean the Wetlands decision. The, I have a detailed legal memo which I can give to the Chairman afterwards, but in other words, the report of the Wetlands Commission is merely one of many factors that this Commission must consider and it's within your discretion to decide how much weight you will give to the Wetlands decision. This Commission has its own separate statutory jurisdiction. The Wetlands Commission has its own separate statutory jurisdiction. You each must perform your own duties. So, this Commission must make its own independent decision based upon whether or not the two petitions that have been before you for several months meet your regulations. Your decision has to be based on your own regulations and the factors that you are entitled by your regulations to consider. It could be said that even a favorable decision of the Planning and Zoning Commission would not allow, would not enable the applicant to proceed. In other words, if you were to approve the two petitions, if this Commission approves the two petitions, that doesn't mean that the applicant can start building by virtue of your approval. The applicant still needs to cure the problem that they have with the Wetlands decision. So, I guess in conclusion I would say that you need to focus in terms of answering the effect of it, it is one factor that you are entitled to consider, you must give it due consideration, but you have to decide the petitions based on what your own regulations say, and you cannot deny the petitions based solely on the fact that the Wetlands permit was not granted. I'd be happy to try to answer any other questions, but, to make sure that you are clear on that, but there's a number of cases which I have cited in my memo which take that position, but you have independent jurisdiction, in the same sense, they can't tell you what to do, you can't tell them what to do. You make your own decision based on the evidence and the testimony that you heard during your hearings.

Chairman Pruet: Thank you. Questions for Attorney Bradley? No questions?

Ed Meehan: Can I ask a question?

Chairman Pruet: Sure you can, I was just going to call upon you for staff comments.

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Ed Meehan: I need to make it clear, they can't tell this Commission what to do, and this Commission can't tell Inland Wetlands what to do, but I have had so many residents not understand that, and feel that the results of the Inland Wetlands decision earlier last week put the end to this. I tried to explain that to them, but Attorney, if I understand what you said, if Planning and Zoning were to apply its regulations and found that this development could be approved with several modifications, the applicant still cannot go on the site and begin to clear or do any work up there until he satisfies Inland Wetlands. Is that correct, is that what you are saying?

Attorney Bradley: That is my opinion, yes sir.

Ed Meehan: Thank you.

Attorney Bradley: There is a case law to support that, the Arway vs Bloom case, which is a decision of the Connecticut Court of Appeals, but the concerns, again, I have not received the decision or the report and you probably haven't either according to media accounts, one of the concerns had to do with blasting. For example, that's a concern that may be relevant to your deliberations but there may be ways, for example by virtue of conditions that you might consider to impose, a condition of establishing blasting protocol, or blasting plans such that it might satisfy that concern but the bottom line is that you have the authority by statute to regulate the subdivision of land. It's a subdivision application that is before you. It's an open space subdivision that requires a special permit. You are obligated to consider the evidence and the testimony in light of your own regulations.

Commissioner Pane: Does blasting fall under their purview? The Wetlands Commission's purview?

Attorney Bradley: Well, I really wouldn't want to talk about what may or may not be in their purview but rather, I would rather talk about the things that are in your purview, and that's under Section 5.2 of your regulations and Section 6.8. The Wetlands obviously regulates the Inland wetlands, the soils and the buffer areas and that sort of thing.

Commissioner Pane: From what I understand it's the blasting that they felt might drain the wetlands, but maybe Ed could answer this, isn't there a special soils types that fall into Wetlands that create the wetlands. It's the soils and that this type of rock is a fractured rock in general but it's the soils that create the wetlands and stop the water from draining. Is it the soils.

Ed Meehan: Well, I'll take Attorney Bradley's lead on this. They have their jurisdiction and their jurisdiction is based on soil types, that is the statutory requirements for Inland Wetlands, has to meet certain soil types to be eligible. The applicant showed the locations of those soil types, but relative to your regulations, the Commission when concerned about blasting, has used your subdivision regulations under the concern of safe guarding the neighborhood and compatibility of the surrounding area, to require a blasting plan, pre-blast survey, post blast survey, under the coordination of the Fire Marshal and that has been done as you may recall recently for two of the larger subdivisions in the last ten years, Rockledge down off of Culver Street and Sunrise Estates off of Griswoldville. Both with a considerable amount of rock and in Rockledge subdivision case in a very, I don't want to say dense, but a lot of residential,

existing residential homes already in the vicinity within a couple of hundred feet, Apple Hill developments to the north and Kowal Court and Little Brook to the south, so the precedent in Newington has been to require just exactly what Attorney Bradley said, if the Commission felt a condition was warranted to protect the neighborhood you have done that with blasting.

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Chairman Pruet: Further questions?

Commissioner Hall: Not really a question, it's more of a comment. I'm going to take the side of the public with their confusion because I brought three articles tonight that were written, one in the Town Crier, one in the Herald and another in the Courant that contradict one another. Now I know that the Town Crier and the Herald are one and the same, so that article was pretty much the same, but one says, it's over, it's done and the other one made the point that maybe not because the TPZ still has to make its decision, so you know, it was a little bit confusing to all of us. I woke up the morning after the decision and read this, and thought, where do we stand, so we have a lot to think about here. Now as far as the Wetlands Commission or the Conservation, because we don't really have a Wetlands Commission per se, it's the Conservation Commission, are we going to get that report?

Ed Meehan: There are two things that are going on, on the table tonight is a copy of the letter, a very brief letter that went to the applicant, and I have a copy for Attorney Bradley. That's basically a notice of decision. That was published today in the newspaper. The Inland Wetlands/Conservation members have asked for verbatim minutes of that section of the regulations. Our clerk, Norine has stepped up and she's going to prepare that. They don't normally do that so when that is ready, it will be available to your Commission and to the public. That came up under Old Business section of their regulations at the meeting that night, it was about an hour, so it will take a little while for Norine to do that, she's got yours to do first, so that will be available and the tape will be available. It was not video taped, they don't video tape their meetings, and that will be available to our attorney, but we are just concerned about your jurisdiction.

Commissioner Hall: I fully understand that.

Commissioner Pane: But, if I may Mr. Chairman, it's very important that we get the report, and read all of the minutes because as the attorney has informed us, we have to take due consideration on what happened in the Conservation Commission so besides the last meeting, you know, I'd like to see, I've been reviewing a couple of them on line, but some of the previous meeting minutes I've been reviewing and it will be nice to have verbatim minutes for the last meeting.

Attorney Bradley: That is correct, the decision of the Conservation/Wetlands is not binding on you, in other words, it doesn't force you to deny it. You give it such weight as you deem is appropriate in light of your own regulations.

Chairman Pruet: Any last comments for Attorney Bradley?

Commissioner Aieta: Just quickly for the Commission and maybe the Attorney can answer this. We are bucking a time period here when we have to act and non-action by this Commission would mean an automatic approval of the application would it not?

Attorney Bradley: I don't think Special Permits are usually entitled to automatic approval. It's a, I think that's the rule. A site plan certainly would be entitled to automatic approval, a subdivision, a traditional subdivision also may be subject to automatic approval. This is kind of a hybrid situation. You've got an open space subdivision with which a Special Permit is

sort of attached to it. Without fully researching it, I would, I think you know that you have, I believe, I was advised that you have until the 28th of October to make your decision.

Commissioner Aieta: I'm just concerned about getting the other reports from the Conservation Commission.

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Attorney Bradley: Well, I think the report, it's funny that they talk about, you're not to make a decision until you have it, you're not to decide an application until you have quote, a report from the Wetlands, from the Conservation, but the report is in fact, the decision so I guess you have the report right now, okay.

Chairman Pruet: Thank you for your council Attorney Bradley.

Attorney Bradley: Thanks very much.

Chairman Pruet: Okay, maybe if we can continue our discussion on this petition. We had some concerns from last meeting that our Town Planner is going to address. One of them was from Commissioner Pane about the drainage, maybe we can start on that Ed? We have a few issues to discuss.

Ed Meehan: I've been keeping kind of a running list and I'll start with the drainage as the Chairman mentioned. Domenic asked for better clarification on the drainage which flows westerly. There are two detention basins on the west side of this property, the subdivision. Water is retained there, it's designed for at least a twenty-five year storm, and the water then is released across the slope, down slope to a ravine, which eventually comes out the back and goes into the Brentwood neighborhood. The record minutes, I went through the minutes, there's a couple sections where the project engineer Raymond Bradwell said that the standard design is met for zero runoff and in fact he said there is a ten percent reduction. Our town engineer contacted BL last week to get confirmation of that. The reason that we want confirmation, I haven't got it tonight, but the reason that we are going to get it, is when they did their drainage design they aggregated the assumed flow rate for a twenty-five year storm, which is one of the most severe storms, and they combined the two water flows coming out of the two basins in one number, rather than showing them in sequence. So we would want to get the aggregate of those two numbers which we believe will result in less run-off, but we want to get the number for the lowest basin on the hill, because that is the one that is going to be, goes into this ravine last. That's the number we are looking for right now, to answer Domenic's question. But he's on the record, the project engineer is on the record as saying it is zero runoff, ten percent less.

We talked about blasting numerous times and rock removal, whether this will be a balanced job, or how much they might take off the site. On the record the engineer again said that it is a balanced job. They brought a geotech professional to your meeting, and he explained to you how they would do non-quarry blasting. As I mentioned earlier, this Commission has required pre and post blast reports under the auspices of the Fire Marshal and if there was an excess of rock the Commission has also required the applicant to come back and seek a special permit for the processing of that rock on site, so if they were to bring equipment on site to crush rock, and use it on site, the Special Permit would give the Commission the right to set time of day, noise, dust levels, if there were excess trips off of the site, the route the trucks would take, those types of activities. That was done for the Pulte Development on Fenn Road, and I also believe it was done for Rockledge.

We talked about additional buffering along Russell Road, better identification of the tree line cutting areas and also re-planting of the buffer areas around the three detention basins on Russell Road. Those areas were clear cut in order to build those basins.

At the last meeting, the applicant brought in revisions eliminating two more lots in the vicinity of the smaller 1700 foot wetlands, eliminating two lots in that area. I mentioned at that

meeting the plans need to be I think refined because they showed a part of a retaining wall and a (inaudible) system in the town right of way and it's been normally our practice, this is going to be associated with a basin, that we don't want the town to be responsible for that. This leads to the requirement that the home owners association would be responsible for the storm water basins. The Town, if we accept the roads as town roads is then responsible for Newington TPZ Commission

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all the storm water system within the town right of way, that's the catch basins, the storm lines. They are proposing what they call stormceptors, which are fairly elaborate catch basins which separate sand and silt and debris that goes into the catch basins and separates it and settles it out before it goes into the storm water basin. That would be part of the town's system. But the homeowners association would be responsible for clearing and maintaining, taking care of the lawn inside the basins and the liability of the basins.

Some other things on the list that we have talked about, open space. They verified that the 44 acres would be dedicated to the town. I would recommend and make sure that the Town Attorney agrees that we get a warrantee deed for that.

We talked about identification of trail systems, marking for trail systems. The applicant proposed at the end of a couple of the cul-de-sacs some small pull off areas for public parking where someone could part their car and then walk to Old Highway and get into a trail system. I know that was shown to the Commission members, I got the sense that some Commission members thought that may not be appropriate, that maybe it should not go on this part of the subdivision, we need to go back and look at that.

We talked about the standard subdivision, a conventional R-20 versus an open space subdivision. We talked about that the last meeting. That's a big part of this. The applicant did not present in the public hearing record what they thought should be a standard R-20 subdivision based on what I think we believe is the buildable area. They were asked to do that a couple of times, I know Mr. Aieta brought it up a couple of times, a conventional subdivision with the terminology that we use. They aren't required by the regulations to do that, they did submit a concept plan of 79 lots which I'm on record and the Commissioners talked about, is not feasible. It doesn't take into account about twenty-eight acres of steep slope area, I believe the conceptual plan that I talked about during the hearing and gave the Commission a copy of, 45 to 50 lots is a more practical lot yield for a standard subdivision on what I would say is the easterly third of the property which is the non-slope area, the non-wetland area, that I would say is more buildable.

They have moved the pump station out of the wetlands and open space up to Russell Road. That was a request, they addressed that.

There were some comments from the Town of Wethersfield regarding the drainage basins on Russell Road. I mentioned buffering. They also had some comments about the storm water control going into Russell Road. Russell Road is a state highway as you know so that goes into the state system, so we need to look at some of the comments that Wethersfield made.

I mentioned blasting. Details, details of retaining walls need to be added to the plan.

Street names, they did provide us with street names, a couple of the names I believe will be redundant, are very close to names such as Cedar Ridge is a name that they offered. I don't think our safety personnel would find that acceptable, we'll check with them. We need something more distinctive so that people don't get confused with that.

The last thing on the list was the revision to eliminate the lots in the 1700 square foot area.

They did that. They showed that to Conservation, they showed that to you. That area needs to be re-done. Those are some of the things that I had on my list.

Chairman Pruet: Okay, further questions for Ed on these or other concerns that Commissioners have? When are we going to address these, for example, Wethersfield's concerns?

Ed Meehan: I think what I am going to do is give you a written list rather than me just rambling on, I'm going to give you the whole list and where it is found in the record, and tie it

back to the plan so that at your next meeting on October 12th, you can begin focusing on those and if there are things that you feel should be addressed in the way of modification or a reason that you have a concern, it goes beyond the modification, it can't be addressed that way, then that is the time to discuss it. For example, if you want to eliminate the parking in the cul-de-sac, that's simply a design modification, or buffering near the basins, that's a
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design modification, but the issue of whether you approve a special exception for an open space subdivision versus a standard R-20 subdivision is a make or break on this project. It's a matter of the open space subdivision, they have to give you forty-four acres. The conventional subdivision, they don't have to give you more than eleven acres. They can give you more if they want, but they don't have to, and there is no guarantee what you are going to get later on.

Chairman Pruet: Okay, comments on this? Questions, concerns?

Commissioner Schatz: The question that I have, a regular subdivision, they don't have to give you, whatever, eleven, they don't have to give you any more than that, that forty-four acres, they would be passing over to the town?

Ed Meehan: Yes.

Commissioner Schatz: Most of it is wetlands and ridges and up and down, which they couldn't use in the first place?

Ed Meehan: That's correct.

Commissioner Schatz: So it's not really a gift.

Chairman Pruet: Other comments?

Ed Meehan: On the flip side, that's the part that you don't want developed. We don't want that developed.

Chairman Pruet: Under the R-20 though, say it came in as R-20, would that, could those lots be extended into that area by, say like we have up on Shady Hill, the long lots that are 600, 800 feet long, could that be something.....

Ed Meehan: They have the option of making that almost 33 acres part of a private home owners association land where they could divide it up into lots, large estate lots which would run from the middle of the site all the way down to the ridge line. They don't have to make it public. They would turn it over to private owners as part of individual lots, they could put it in a conservation easement for the home owners association which would be private, so they have some options there. But, they can't under the subdivision regulations they can't go in and build on it because it's, as this maps shows, it's over the fifteen percent slope.

Commissioner Pane: But not all of it is 15 percent slope. There is some.....

Ed Meehan: There are some areas, spotty areas that are less than fifteen, there's areas that are thirty-five, forty-five percent slope. When you get down to the area where the ravine is, and you follow that ravine to the north end of the site down into Mountain Road, it's probably fifty percent slope behind the back side of that ravine, and obviously it's a cliff on the front side. But, you're right, there are areas in there where the terrain on this site flattens out for ten, fifteen hundred square feet, but then it's irregular and runs down hill, or it runs into a wetland. The central wetland is quite large on this piece of property. It's like a big bowl, you

can walk all the way around it, so that, there's nothing uniform about this property at all. Maybe some of the frontage on Russell Road is somewhat uniform, but beyond that, there is nothing uniform.

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Commissioner Lenares: Ed, two questions for you, if you can just clarify? The open space subdivision versus the conventional R-20 from what you are saying, it seems like the open space subdivision has a lot more concrete characteristics, we know what we are going to get, if it's approved, or we know what they are going to build, or we don't know versus the R-20 because there is a little bit more unsettled. My other comment is, I've got to be honest, I'm a little bit confused over what the Counsel brought in, in terms of the Conservation comments. We waited for these comments to make our decision, and he specifically said, their jurisdiction is their jurisdiction, yours is yours. Do you think it's proper for us to read those minutes and consider those in our decision? Or do you think it should be, we, how we feel appropriate but not binding to what we do as a Commission here?

Ed Meehan: Well, I think you will have the verbatim minutes in a couple of weeks. Before your next meeting.

Commissioner Lenares: But should we even.....

Ed Meehan: I think you ought to read them. I mean, you can read them and then you can decide whether you want to give them due consideration or not. I was at the meeting of the Inland Wetland agency and the members were I think careful to deal with just the wetland requirements of their jurisdiction, and I think you should have knowledge of what some of the members said. I believe you will find it, it's not within your jurisdiction to necessarily take what they said, and put it into a motion that you might act on, because they are dealing, as Commissioner Pane brought up, they are dealing just with regulated soils and the impact on regulated soils, but they also talk a bit about the environmental review team report, some of the issues brought up there, when I do my list of comments, the environmental review team report which was part of the record, you had a little bit longer time to look at it than the Conservation/Wetlands members did, has some very good recommendations for storm water control for the whole impact development. Now a lot of the erosion control measures and mitigation measures that the environmental review team members put in their report are already in BL's erosion control mitigation plan, so if you read both, you will see that they echo each other, but there are some things there that would be beneficial to this development that could be done at the basin and could also, after it is built, if it is built, the management controls of the storm water areas, best practices for taking care of these areas after they are built. There is a lot of that in the environmental review team report.

The ambiguous first part of this, a standard subdivision versus the open space subdivision, if you deny this as an open space subdivision the applicant can, he could appeal your denial, or he could come back with a conventional subdivision. That's where the issue of how much open space you are guaranteed and how it is configured is unknown. I mean, they could design it so they just meet the fifteen percent, and set that aside. They could set that aside into a home owners association, doesn't have to be public. The forty-four acres that they are offering doesn't have to be public, but they have put on the record that it will be public. So I don't know, I don't know how that would work if this was denied or approved with modifications. You have three choices, approve it as submitted, approve it with modifications, or deny it. In all three cases, you are to state your reasons on the record.

Chairman Pruetz: Further comments, questions of Ed? Ed you are going to submit these nine items with some more items?

Commissioner Pane: Ed, we changed a fifteen percent slope regulation some time ago, could I get a copy of it?

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Ed Meehan: Sure. That's a good point. There are two things, the fifteen percent limitations in the subdivision regulations have been in fifteen, twenty years. As a result of the Plan of Conservation and Development there was also put into the zoning regulations as a measurable standard in the site plan review section, so you have it both places right now, but that was passed back in March I guess.

Commissioner Pane: We made some modifications to it.....

Ed Meehan: They submitted a site plan, as part of the subdivision in conjunction with the special exception, so there is a double requirement for the fifteen percent slope. I'll get copies of that for you. I will make copies of Attorney Bradley's memo submitted tonight for Commission members and it will be available in my office for the public.

Commissioner Turco: Question for Ed Mr. Chairman. Ed, you had mentioned earlier that the blasting concerns would fall under, is it 5.2.6, subsection B, the existing and probable future character of the neighborhood in which the use is located? Is where the concerns that this Commission may have with blasting would fall under our regulations to deny this permit?

Ed Meehan: Well, I'm not sure that it would be to the extent of a denial. It falls under 5.2, safeguards to protect the neighborhood where you are taking the best you can as precautions to make sure that the pre blast studies and the post blast studies are done and they meet all the State Fire Marshal requirements. I don't know how you can deny an application based on what you think may happen in blasting. It's not like they don't meet a zoning standard, lot size and the frontage aren't met, those are measurable things. So if you are going to go that way, I think we should also get some legal advice on that.

Commissioner Turco: Just to follow up, if you don't mind, Mr. Chairman, so if this application was denied under that section and then a standard R-20 application was submitted, would this same language pertain to that or we are not able to use this language in considering a standard R-20?

Ed Meehan: Where a standard R-20 comes in, you are correct, it wouldn't come in as a special exception under 5.2. It would just come in under the subdivision regulations as a as of right R-20 subdivision.

Commissioner Turco: So blasting, concerns over blasting.....

Ed Meehan: Well, there is language in the subdivision regulations about, you know, protection of neighborhoods, safeguarding neighborhoods, again, I think an out of hand denial based on something that may happen in the blasting, in my experience, it hasn't been done. What normally happens is that the Commission does its best to make sure that you are doing what you can in the regulations and applying requirements to the developer complying with town standards, Fire Marshal's requirements, and notify the neighborhood of the pre-blast studies.

Commissioner Turco: Thank you.

Commissioner Pane: And that would all fall under the jurisdiction of our Fire Marshal who's done an excellent job with some past blasting experiences such as Rockledge and several other ones and I've been on the Commission quite a few times and I don't think we had any problems with the Rockledge blasting and some of the other ones. He's done an excellent job of controlling it, he's been in charge of it for a long time. Thank you.

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Chairman Pruet: Open for other comments from Commissioners on this, as we are progressing through the petition. Anybody else wish to comment?

Commissioner Hall: The only thing I would say is that this is a very tough decision because there are lots of facets to take a look at, not the least of which is the Commission has already made a decision and we can't help knowing that that's been done. We can't use it as a factor, I mean, we do use it as a factor in our decision, but just because they denied it doesn't automatically mean that we do. All of the documentation that the developer gave us, the engineering company, the geo-engineer, I mean, just a lot of information. I don't remember anything in the past couple of years that was this detailed and that will be really such a monumental decision for the future of this town. This is a really, really tough thing and we have to work together to try to make the best decision we can and the best decision for everybody involved. Not an easy one by any stretch.

Chairman Pruet: Other comments? Okay, we are going to have some work to do. Ed, we're going to continue on this and we have our next meeting on October 12th.

Commissioner Anest: Ed, are we going to have this information in our packet, or will it be on the table that night?

Ed Meehan: No, I'm going to put it out.

Chairman Pruet: There is a lot of material that we have to digest here. Okay, if there are no other continuing comments on this, we have a draft suggested motion.

Petition 25-11
Site Plan Development
Farmington Bank 1095 Main Street

Commissioner Pane moved that Petition 25-11 – 1095 Main Street, New Center Corp. 1095 Main Street owner, Farmington Bank applicant represented by Dale Bertoldi, Tecton Architects Inc., One Hartford Square West, Hartford, CT 06106 bank use with drive-up window-service, B-TC Zone District request for Site Plan Development and Section 3.12A Town Center Village Overlay District be approved based on revised Civil Site Plan layout and Architectural plans dated September 14, 2011 as prepared by Civil Engineer, Ecodesign, LLC and architectural design by Tecton Architects, Inc.

Prior to the Chairman signing the plan mylars, the following shall be required:

1. Zero lot line agreement between Church of Christ Congregational Church and New Center Corporation shall be submitted to the Town Planner for approval and recording on the land records.
2. Notation shall be added to civil site plan sheets stating "Changes to the Main Street Driveway aprons and curbing that affect streetscape brick pavers and granite curbing shall be reviewed by the Acting Town Engineer and if required, the new construction shall be installed to match streetscape materials."

3. Prior to the Chairman signing the site plan mylars recording the project, engineer shall coordinate with the Acting Town Engineer regarding modifications to the drainage design to reduce sheet flow onto adjacent property of Shunpike Associates, LLC.

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4. Prior to the issuance of a Certificate of Occupancy for the bank use, the project engineer shall submit written certification to the Acting Town Engineer that the site's storm drainage management system has been constructed in accordance with the approved plan.
5. Prior to the signing by the Chairman, the site plan shall be modified to add:
 - a. dumpster enclosure detail
 - b. pedestrian crossing signage at the drive through window
 - c. re-locate one of the handicapped spaces from front of the building to the rear parking area in place of the former handicapped space design if possible. Two standard parking spaces would be added to the front.

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

Petition 62-06
Site Development Plan
Request for Extension

Commissioner Hall moved that the date of site development completion for Petition 62-06 approved November 20, 2006, be extended from November 20, 2011 to November 20, 2013.

This approval is granted for the 6,500 square foot retail pad building located in the parking area in front of L.A. Fitness Club, 3563 Berlin Turnpike.

Extension of the site plan completion work is granted pursuant to Connecticut General Statutes Section 8-3(i) and is based on property owner's request for additional time for marketing because of uncertain economic conditions.

The motion was seconded by Commissioner Schatz.

Commissioner Pane: Mr. Chairman, I know we probably have to vote this in because it's an approved site, but I have some real concerns with the parking over there, and also the parking area was stripped of it's pavement and it is a disaster area down there now. People just, they don't have anywhere to park so they pull right in there, there are large potholes, it's very unsafe. We talked about this in the past, where maybe it should have been seeded and grassed and maintained until a use goes in there, and then when a use does come there, I would hope that the Town Planner looks at it very carefully and the Commission because there is absolutely zero extra room for parking with L.A. Fitness. Thank you.

Chairman Pruet: Just to follow up on what Domenic said, Ed, is there something we can do with the property owner to eliminate those ruts or make them more suitable.

Ed Meehan: We can ask them to grade it out and put a binder course in before winter, now that they're around. They sort of disappeared for a while, now they're coming back so we can get them to, so it's plowable and it doesn't get worse over the winter season.

Chairman Pruet: Would it be recommended to add that to the motion?

Ed Meehan: Yeah, that's a good idea. Put it on the motion, sure.

Commissioner Aieta: I just want to echo what Domenic said, that area is probably not conducive for a pad site in light of what L.A. Fitness has done with the parking because they

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are using that full pad site as part of their parking. You are a member there, you've seen, and particularly at the time of day between six and eight at night, when that whole lot is full, and in the morning when it is full, and they use that for parking so obviously there's not enough parking for the L.A. Fitness for the amount of membership, so if this site is ever developed into a building site, they would be eating into the parking for L.A. Fitness. There is no parking to have this site as a pad site.

Ed Meehan: Do you want to express that in a letter to the.....

Commissioner Aieta: Well, I would put the owner on notice that the Commission feels that L.A. Fitness is taking up that whole site as parking. It might be, if they did come in for a pad site for a 6500 square foot retail building, you might not have enough parking, or something has given there, because it doesn't work the way that it is now.

Chairman Pruet: Okay, we have a motion and an addition for having a binder....

Ed Meehan: A binder and put the applicant on notice concerning the limitations for parking.

The vote was unanimously in favor of the motion, with seven voting YES.

VIII. **PETITIONS FOR SCHEDULING** (October 12, 2011 and October 26, 2011.)

Ed Meehan: There is a petition that I believe will be ready for public hearing at your next meeting if the Commission wants to put it on. It's for McGuire's Sports Bar, it's already before Inland Wetlands for a wetlands permit. They are proposing to demolish the building and create about a 15,000 square foot retail store and two out buildings, one is a drive through coffee shop, I believe it might be a Starbucks, and the other one is a bank with a small restaurant. A lot of the site, they are asking for waivers of the front yard setback, so the plans might be ready for scheduling, probably take a couple of nights of public hearing on this. I know you have Cedar Mountain to talk about next time so how do you want to do it?

Chairman Pruet: How do you feel on this? Think we could discuss this at the next meeting or put it into November once we clear Cedar Mountain?

Commissioner Aieta: I think you could probably start the hearing and continue it, at least get them in here to see what their plan is. I don't think that would take that much. I don't see anything else on the agenda but that and Cedar Mountain petitions, but at least if we get them started. You have to remember, that that site is designated in our Plan of Development as a gateway site, so what we do on that site is going to have to be, I think that this Commission has to take a really good look at it, but in first blush, when you look at it, anything that they do to that site will eliminate what is there now would probably be a tremendous improvement to the gateway site, so I think we should not impede them. Let them come in and at least start the public hearing process.

Chairman Pruet: I agree with you. Any other comments on that? Okay, I think we are going to put that on the agenda. Any other petitions?

Ed Meehan: Not right now.

Chairman Pruet: Good.

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IX. REMARKS BY COMMISSIONERS

Chairman Pruet: We're winding down on these petitions on Cedar Mountain. We're going to need dialogue from each Commissioner. As Ed mentioned too, the possibility of this going to court, or whatever, could be strong, and we are going to need everybody's input as to how they feel on this as we go forward and get our questions answered. We have two more meetings to go, October 12th and October 26th. I don't think we will be ready to vote on the 12th, I think we've go too much to look at, but that vote is going to take place the end of October and we need, I need everybody's input on that, how you are feeling towards it, we need strong language on what we are doing, why we are for it, why we're against it, and I think we are obligated to do that, correct Ed?

Ed Meehan: You have to state your reasons on the record and as I said before, I think the first thing to look at is the Commission's reaction to the open space subdivision. Do you want the open space subdivision and if you do, okay. What are the things that need to be done to make the proposed 62 lot subdivision better? If you don't want the open space subdivision, then we need to have some reasons that are tied back to the record. Observation by Commission members, why you don't want it. It is a special exception and that would take care of the second petition. So, that's the first place to start. I can certainly, and I already started to talk about it tonight, there's a lot of things that can be done to suggest to you modifications to the proposed plan, to make it better. There's things we can pull from the environmental report, things we have done in the past, with other requirements for blasting and drainage certifications of buffering and so forth, that would make this a better subdivision, but need to know how you feel about 62 lots versus a conventional R-20 subdivision.

Commissioner Schatz: You know, there is a place in our regulations where you are kind of stuck, where your personal feelings are what you don't like, and that doesn't count. One of my concerns is you have four bedroom houses, a lot of youngsters in there, and no sidewalks. There are sidewalks in the development, and that's it. There's nothing on Russell Road, and everybody would have to be, and it's not our jurisdiction. Everybody would have to be bussed. Let's take a leap and say it was townhouses, the town wouldn't have a road, they would take care of the road themselves....

Commissioner Aieta: You would need to change the zone to a different zone, you would have to change the zone from this type of a zone, from a residential R-20 or R-12 zone to a different zone to accommodate townhouses.

Commissioner Schatz: Commissioner Aieta made a comment that was very good, that somebody wants R-12 lots....

Commissioner Aieta: On the other hand, with this open space subdivision, you'd have to weigh it whether we get the 44 acres, if that is important to you, or not, or if the applicant comes in with a standard R-20 subdivision with 45 to 50 lots and decides that he is going to go strictly by the regulations, give the town eleven acres of open space, and deed the rest of the property to the homeowners or extend the lots, extend the lots so the town residents who had strong feelings about being able to use that mountain as a trail system, and going up there and using it, that would end. It would not be a public open space. It would be open

space, but it would be privately owned and not accessible to the public, so you have to weigh that. I think there are three areas that this Commission has to look at. One is traffic, the blasting and the storm water drainage. Those are the three key factors that you have to determine whether this applicant has adequately presented the case that he has been able to satisfy the health, safety and welfare of the public with the experts that he brought in on this subdivision that proves that this subdivision will not adversely affect the public. You've got to
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look at, this is a privately held piece of property. It's been zoned R-20 for the last, whatever, since the time zoning began. It's always been R-20, a lot of the traffic studies that were done by the State of Connecticut have taken into account this piece of property as an R-20 or developed as some type of housing up there, so you can't say that the traffic has never, that the road systems are not designed to accommodate this, they have, they have taken into account this particular piece of property in all of the studies that I have seen that the State has done and the Town has done. I think you basically have to determine whether those three issues, the traffic, the blasting and the drainage will adversely affect the Town that you should build on the record enough evidence that you can substantiate a denial or approval, one way or the other, you have to build a record to substantiate your decision here.

Chairman Pruet: Do you have a personal input on that, or an opinion on those three that you have mentioned so far?

Commissioner Aieta: Well I think, like Ed said, I've never seen, I've been on this Commission on and off for years and watched this for years, in my political life, that I've never seen an application like this come in on any other subdivision, or any other development in the Town of Newington with as much professional input that these people have put in because of the outcry of the public. I think that they did an overkill just to satisfy and prove to the public that this would not adversely affect the public. So, I, Ed, you have been around quite a number of years, no one has ever come in and presented this amount of documentation and expertise and, I've never seen it before.

Ed Meehan: No, I've never seen it either, but this is a very unique piece of property, and it's always been on the town radar, either to protect some of this area, or to protect all of it. Obviously we belabored it on the Plan of Conservation and Development because of the public's concern over this area, so it's a tough decision. As Commissioner Hall said, this is a big decision. I think you have all of the information on the record, some of the meetings, as you start going through the minutes, you will see that they didn't present, because they weren't ready to present, they were responding to staff reports, they didn't finish some of the information so there is really only about, you could probably go through this record here in about an hour and a half, two hours and you know, after the second meeting, all of the comments about the Marcap piece are gone, so you don't want to read those records anyway. But, it's unfortunate that this is an area where single family homes are cleared by right, because when you look around, from a community planning point of view, it just doesn't make any sense. Everything on the Russell Road side in Wethersfield is zoned commercial except for the condos at the end. So you have business on the east side, you have business on the south side in Newington and you have an institution on the north side. So, is it really a place for single family homes? Probably a better use could be found there other than single family homes, maybe another type of residential use, but that is what we are stuck with and so, as much as.....

Commissioner Aieta: Ed, I don't think you would want to have the public know that this piece of property was zoned PD where they could have.....

Ed Meehan: I'm not saying change the zone.

Commissioner Aieta: I'm saying, I hear what you are saying, but you think the outcry was great with the residential, if this piece was zoned commercial, and they put a commercial development on that piece, the outcry would be even greater, stronger opinions, stronger public participation.

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Ed Meehan: But, it is what it is as far as the R-20 zone, and as Attorney Bradley said, it's almost like an administrative decision, it's a permitted by right as long as they meet your regulations. The issue here is the special permit for the open space subdivision and you know, what the difference is between 50 lots and 62 lots, is it measurable as far as traffic, is it measurable as far as impact on the greatest development, it's the same footprint, whether it's 62 lots, they are going to work the same area with roads and clearing whether it is 50 lots. The drainage is probably about the same, so as far as the impact on the land, I don't think the impact is going to be any different. The impact is going to be on the yield, you know, different number of lots, and maybe the traffic may be different, but not that much. But that is a decision that the Commission has to make, the flip side is the 44 acres of open space. That's a big issue.

Chairman Pruet: That is the exact dialogue that I'm hoping to get from everybody, that's good.

Commissioner Hall: That was my big, when you look at that map, that's what we are looking at, that whole space, that's that 44 acres that would become the Town property. We did see an overlay at one point for the R-20. There was one night that they showed, and it went all the way out which.....

Ed Meehan: That was the 79 lots.

Commissioner Hall: We know that can't be, but with eleven acres, versus the 44, that is what it is going to come down to essentially. Do we think it's a good idea that the town, and the townspeople have access to that 44 acres, versus eleven, and if it is eleven, you can be sure it's going to be way over on the slope, it's going to be totally useless.

Commissioner Aieta: They are going to give you the eleven.....

Commissioner Hall: They will give us the stuff that they can't use, which is nothing, so, our big decision is, does it fit the regulations, do we want to have a special exception condensed development versus the R-20 which would be more spread out. The condensed version gives us more town space so to speak, public space, that's what it is going to come down to, or you simply don't agree with the building at all, but you have to have good reasons for that, you just can't sit here and say I don't like it, I don't want it. That's not going to fly.

Commissioner Aieta: That's why you have to go to the record if you are leaning toward denial of this application, the R-12 open space subdivision, if you are leaning that way, you have to build a record that you know that, after all of the money that was spent by the applicant that, you know, with the legal forces that they have working for them.....

Commissioner Hall: Yeah, we know what the next step is.

Commissioner Aieta: Yes, we know what the next step is.

Commissioner Pane: They could come in and apply for a straight R-20 and I think Ed's fifty lot net yield might be a little on the low side to be honest with you, and I think their 79 was a

little on the high side, but I think that they could squeeze some more in there, so, and that 44 acres of open space, that's a big accomplishment towards our 2020 Plan when you really think about it, and it ties all the trails in, and everything, so it's a hard decision.

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Commissioner Turco: Ed, am I correct that if it was a standard R-20 the eleven acres of open space could be deeded just to the homeowners association and the public would not have any legal access to any open space on this site?

Ed Meehan: That's one of their options.

Commissioner Turco: But with the petition before us, it would be written in that the 44 acres would be public access, not just for the homeowners association.

Ed Meehan: Right, coming to the Town of Newington.

Commissioner Turco: Thank you.

Commissioner Hall: And then it's the town's decision as to what they are going to do.

Ed Meehan: Yes, it's the town's decision and responsibility and maintenance. It's another piece of town open space like the Young Farm or Mill Pond Park, or anything else.

Chairman Pruet: Anything further on this? I think we are kind of zeroing in on what is before us, how we are going to make that determination.

Commissioner Hall: I just have one more comment. I know that part of the, I don't want to say, opposition, but part of the fear I'm going to call it, on the part of the public is that all of a sudden this mountain is going to be filled with structures. I think, I just wish there was a way that we could have put up some kind of a height indicator, as to what the closest house, what the height would have been, so that they could have seen that with this big space between the development and the ridge, there really is a good amount of space and tree cover. It isn't as if you are going to be driving down and see as you do Cedarwood Lane with the houses right there, and I think a lot of people's fear is that as you drive through town all you are going to see are structures up there. After a period of time, I would bet that you wouldn't even know that that was up there, with this 44, because it is going to be so close to Russell Road and the contour of the property is such that I think it would be far enough away, you might see a few things, that cul-de-sac at the top, that's on the northwest side of the development, but all the rest of this, it's down below.

Ed Meehan: At this point, the land starts breaking easterly, and sloping toward Russell Road. The highest point is right here.

Commissioner Hall: Right.

Commissioner Aieta: There might be some elevations on that that are pretty high elevations that, I looked at.....

Ed Meehan: From Eagle Drive, Fennwood Apartments, you might

Chairman Pruet: So this will be a pretty good buffer then?

Ed Meehan: Yeah.

Commissioner Aieta: You won't be able to see this from the center of town.

Commissioner Hall: Oh, no.

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Commissioner Aieta: There is no way, I think some of the public had the idea of driving on Main Street, and looking up and being able to see the houses.

Commissioner Hall: Or being able to see them from their own yards, you aren't going to be able to see that.

Commissioner Aieta: And I don't think you will be able to see it driving up Cedar Street until, I don't think you will see, you've got the Marcap piece blocking it, and the sheer wall of the mountain there.

Commissioner Anest: I think people are, when they presented the Marcap piece, and they showed the elevations that you can see from the street, I think that made.....

Chairman Pruet: You're right, because they did show the rooftops and everything else.

Commissioner Lenares: You know, I said this before, I don't know how many meetings ago, and I'm going to say it again, what you guys just talked about, Cathy and Gary, Domenic, Frank, you brought up some pretty good points that have to be considered when you make your decision. My point is it's too bad the public didn't stay, because some of these things are huge, like the view from the street. Gary talked about the 44 versus the 11, public versus private, legal deeded land of the open space to the town, those are key factors that you have to consider. Look at the audience, with the exception of Mr. Spencer, and our attorney, there is no one here. All of the public left and they don't really get to see, under Remarks by Commissioners, our agenda item, what we are thinking, or just dialogue that we are putting on the table which is important when we are making our decision.

Chairman Pruet: Couldn't have said it better myself.

Commissioner Anest: But we say that every meeting, if the people would just stay.

Commissioner Lenares: But there was some great stuff discussed tonight.

Chairman Pruet: Further comments? I think this has been a very informative discussion, exactly what we need, exactly what we will continue on at our next meeting, Ed is going to get that out to us so we can do our diligent duty, come prepared, ask further questions, hopefully resolve these issues as we go forward for our final vote. Any other remarks?

X. STAFF REPORT

- A. Request for Site Plan Approval Extension – Petition 62-02 Newington Fair (Caldor Plaza Extension to November 20, 2013 to complete 6,500 square foot retail paid site.)

Discussed under Old Business

XI. PUBLIC PARTICIPATION
(For items not listed on agenda)

None

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XII. CLOSING REMARKS BY CHAIRMAN

Chairman Pruet: I think I've already said, I'm very impressed with what the Commission has done so far, I'm impressed with the public. I've never seen the public so involved in an issue. Some of the remarks and the studies and the reports they put forth gave us a lot of food for thought, and also the work that you Commissioners have done, and Ed too, on this, I think it's the most in depth petition I've seen, and I've been here close to ten years too.

XIII. ADJOURNMENT

Commissioner Turco moved to adjourn the meeting. The motion was seconded by Commissioner Camerota. The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary