

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

April 22, 2015

I. PLEDGE OF ALLEGIANCE

II. ROLL CALL AND SEATING OF ALTERNATES

Chairman Cathleen Hall called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:10 p.m. in Conference Room L101 in the Newington Town Hall, 131 Cedar Street, Newington, CT.

Commissioners Present

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

Commissioners Absent

Staff Present

- Craig Minor, Town Planner

III. APPROVAL OF AGENDA

Craig Minor: I recommend adding an item under Section X, Petitions for Public Hearing Scheduling. We received just yesterday an application for a "bouncy house" at 475 Willard Avenue. The applicant is Fun Quest Inc. and this is allowed by Special Exception, so I recommend that the public hearing be scheduled for your next meeting.

Chairman Hall: No other changes?

Craig Minor: No.

Chairman Hall: We will be holding to the time limits tonight, and also for public participation, so before you come up have it straight in your head what you are going to say. We need to keep to our schedule. Thank you.

IV. PUBLIC HEARINGS

A. Petition 10-15: Special Exception (Section 6.2.4: Free Standing Sign) at 2897 Berlin Turnpike (Firestone Complete Auto Care) National Sign Corporation, applicant, SB Newington 433 LLC, owner; Darcie Roy, National Sign Corporation, 780 Four Rod Road, Berlin CT, contact.

Tracy Becker: Good evening. My name is Tracy Becker, and I'm here for Darcie Roy, 43 Marriott Circle, Wallingford, CT. We are here tonight to request approval for a sixty square foot pylon sign

which meets the regulations for the area at that address, 2897 Berlin Turnpike, the Firestone Complete Auto Care Center. The sign will be 18 feet overall in height, and the dimensions of the sign are four inches wide by 3 feet 8 inches high. It shows on the site plan there. I have a color version of it. It's a red, white and blue sign, pretty basic. The "Firestone" and the top portion of the logo are red, and the "Complete auto care" on the bottom portion of the logo are blue. The background is white. Do you have any questions about it?

Chairman Hall: Mr. Planner, what do you have?

Craig Minor: We've reviewed the application, and at the moment there is no building so there is no issue of them exceeding the allowable signage. It meets the requirements.

Chairman Hall: This is just for the pylon sign. Any questions for the applicant from the Commissioners at this point?

Commissioner Camillo: You said you have sixty square feet. I came up with a little more, 62.32. I'm using your figures.

Tracy Becker: Did you count the retainer? I notice that they are showing a three inch retainer.

Commissioner Camillo: I'm going by the sign itself that you gave us. I'm going by your measurements.

Commissioner Camillo: When we measure a sign we measure the whole sign, including the retainer.

Chairman Hall: It can't exceed sixty square feet. Any other Commissioners questions at this time? This is a public hearing, so we will have the public speak at this time, and then at the end you will have an opportunity to rebut if necessary.

Tracy Becker: I realize that your agenda is quite full, but I was wondering if this could be voted on tonight. After the public hearing is closed.

Chairman Hall: We'll discuss that, but it is not usually our policy to vote the same night that we heard the application.

Tracy Becker: Thank you.

Chairman Hall: Anyone from the public wishing to speak in favor of this proposal? Anyone wishing to speak in opposition?

Tim Hollister: Good evening Madam Chair, I'm Attorney Tim Hollister. I represent several owners of property that is on the direct west side, and I will take a moment so that everyone has the presentation and you can follow along. Madam Chair, I think I can do this in about 7 or 8 minutes. I am representing....

Chairman Hall: You have three.

Attorney Hollister: I am representing six parties, and I'm speaking on their behalf only to the sign. As you know, this is a very controversial property, and I don't think I am abusing the privilege by asking for not more than eight minutes. I would like to work through so you understand what the issues are.

Chairman Hall: See if you can do it in five.

Attorney Hollister: If you look at the first page of what I have given you that illustrates the Firestone under construction in the lower right. I represent Colleen and Laura Bielitz, Ed and Laurie Dubowsky, and the Wescott property which is owned by the Dubowsky's. I also represent Modern Tire Recap with three objections specifically to the sign.

The first is, it cannot be approved as part of or an accessory to the 2013 special permit that was issued for Firestone, since that approval has been invalidated by actions of the courts. The sign needs to be judged under the current zoning regulations for motor vehicle uses and that use violates 6.11.3, 6.11.5 and 6.11.7. As you know, we put before the Superior Court expert evidence showing that the bay doors facing west, facing the Berlin Turnpike, were approved based on the issuance of a waiver, and by your own action in January 2015 you said that that waiver itself was beyond your authority. So your own minutes, and I've copied those and high lighted them in yellow, says expressly that you recognize that the court invalidated not just the approval, but the very authority that you exercised that granted that waiver.

Second basis is the need to determine if the sign is appropriate under the current set of regulations. Let me give you an analogy. If someone applied for a sign for an office building in a single-family residential zone, you would say, you can't have that sign because office buildings are not allowed in a single-family residential zone. We have the same issue here. This is not just a sign, this is a sign for a motor vehicle use in the PD Zone, and with the repeal of the waiver provisions the underlying approval has been invalidated. In addition, I just want to apprise you that this sign (and you say you are in the business of protecting residential uses from commercial encroachment), in court, in the month of March, we had a highly qualified noise expert who told the court that the standard at the property line is 55 decibels and his results which are attached to the last couple of pages of what I have given you, are that at the west property line, this facility will generate 93 decibels of noise. Sixty feet from the property line the facility will generate 93.4 decibels based on the tools that will be used, and that is with the doors open.....

Chairman Hall: With all due respect, we are talking about the sign. Are you saying that the sign is going to make noise?

Attorney Hollister: No, I'm saying that the sign attracts more cars and.....

Chairman Hall: We are talking about the sign.

Attorney Hollister: And I'm saying that the sign invites more cars into the site which results in more noise with the doors open. So the 93.4 decibels with the doors open, 84 decibels with the doors closed at the Bielitz property line, which is about 119 feet, 80 decibels with the doors open, 71 with the door closed, and at the Dubowsky property, and the Westcott property, 74 decibels with the doors open and 65 with the doors closed. So I just want the Commission to be aware that this sign will make a bad situation, an illegal situation, worse, and we're pursuing in court our belief based on our experts, which this facility is going to make the Dubowsky and Bielitz homes uninhabitable as a result.

Chairman Hall: Thank you very much. We appreciate you keeping it under five minutes. Anyone else wishing to speak in opposition? Seeing none, anyone else just wishing to speak to the matter? Not pro, not con, just to speak?

Jeff Zelek, 55 Welles Drive No. Would you please consider the impact to the character of the area with that sign going up? I know that the Bonefish Grill is close by. The Bonefish Grill is now offering outdoor dining. Please consider what that sign might do to that experience in addition to the noise that that garage will be generating. In other words, would you like sitting out there with air pumps going off all day long? Thank you.

Chairman Hall: Thank you. Anyone else wishing to speak to the sign? Seeing none, back to the applicant. Would you like to rebut?

Tracy Becker: I just did the measurement again, to double check, it is 196 inches,

Commissioner Camillo: I'll go with what you said.

Tracy Becker: I came up with 59.8, I was reasonably sure it was under.

Chairman Hall: Okay, thank you very much.

Craig Minor: I would like to read one thing into the record, from my staff comments which were available publicly, but I just wanted to put this on the record. This is from my staff comments dated April 15<sup>th</sup>.

The question came up during the scheduling of this public hearing as whether it was proper for TPZ to grant zoning approval to a project that is the subject of pending litigation. I asked the Town Attorney to address that question, and his answer was succinct: "Yes. An application has been filed and should be treated as all applications. No stay has been granted by the Court on that matter."

Chairman Hall: Thank you. What is the pleasure of the Commission at this time? Leave it open, or close it?

Commissioner Leggo moved to close the hearing and move the petition to Old Business for the May 13<sup>th</sup> meeting. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

**B. Petition 13-15: Special Exception (Section 3.11.6: Restaurant) at 464 New Britain Avenue, Allyn and Linda Brown, owner; Luigi DeNovellis, applicant/contact, 124 Two Stone Drive, Wethersfield, CT.**

Chairman Hall: Is the applicant present? State your name and address for the record, please.

Luigi DeNovellis, 124 Two Stone Drive, Wethersfield, CT: We would be more than honored to have your support in opening a restaurant in your hometown of Newington, CT. As many of you know, I come from a long list of family businesses established throughout Connecticut. Johnny's Giant Grinders, formerly of East Hartford Connecticut, Franklin Giant Grinders of Hartford Connecticut, and DeNovellis Family Restaurant of Rocky Hill. I would like to open something appealing and appetizing to our public, offering take out and delivery as well as some dining for all patrons. Our restaurants are well known for our giant grinders, spectacular dinners, and our fresh salads. I personally have over twenty years of experience in owning, operating and establishing a healthy and friendly work environment. I enjoy being self-employed and would love the opportunity to create new employment, give back to the community and keep this part of Newington happy, healthy, busy throughout the years. Thank you for your consideration, acknowledgement and thank you for your time.

Chairman Hall: We have a hand drawn plan; do you have anything else, or can you speak to this as to how you are going to set this up? This is all we have in our packet.

Luigi DeNovellis: As you can tell, I cut off the first 20 x 10 square footage. That would be open to the public. The rest of it would only be open to the employees and myself.

Chairman Hall: Then you have two rooms in the back, a 9 x 8 and a 7 x 5 bathroom.

Luigi DeNovellis: Right.

Commissioner Aieta: You don't have any seating inside this room?

Luigi DeNovellis: It will be mostly take-out.

Commissioner Aieta: Do you have any seats in front?

Luigi DeNovellis: As of now, I will have three bar stools.

Commissioner Aieta: The only concern I have is the parking requirement for a restaurant.

Craig Minor: It's based on public area, which is 20 x 10, 200 square feet, and for 200 square feet you need to provide two parking spaces. Technically he could have like twenty tables in there and still only need two parking spaces. In Newington we require restaurant parking on the basis of the amount of public area, not the number of seats, as some towns do.

Commissioner Aieta: You are familiar with the site and the businesses that are there currently?

Craig Minor: I can speak to that if you would like. I just prepared a memo this afternoon for this situation, and I sent a copy to Mr. DeNovellis.

"My only concern with this application is the amount of parking on site. Based on the applicant's floor plan sketch, this restaurant will have 200 square feet of "public area" which requires 2 parking spaces. The existing appliance store has approximately 2600 square feet of floor area, which requires 13 spaces. It is my understanding that there are two vacant residential apartments upstairs, which require 2 spaces each. The total amount of required parking is 19.

There are no painted stripes to delineate existing parking spaces in front of and behind the building, but by using the Town's GIS system, I was able to estimate that there is room for approximately 9 parking spaces in front, and a similar number in back. Clearly this is a problem.

A possible remedy is to approve the application with the following stipulations:

1. The apartments upstairs will remain vacant, or be used for storage by either the appliance store, the restaurant, or the property owner.
2. All employees of the restaurant and the appliance store will be required to park in back of the building.
3. The owner of the property will have the front area striped to designate parking spaces in accordance with Town parking specifications."

Chairman Hall: Is there any question on that before we go to the public?

Commissioner Aieta: That would be my only concern, the parking. I'm familiar with the property and an appliance store does not have a big turnover of people, they don't have people all day long, so if, as was suggested by the Town Planner, the employees can park behind the building, you probably would have enough parking if the landlord would agree to not rent out the upstairs apartments.

Luigi DeNovellis: On my lease, on the side of the building, I have four parking spaces for employees as well as myself.

Chairman Hall: Which side of the building, the east or the west? As you face the building?

Luigi DeNovellis: As you face the building, the left side.

Chairman Hall: Okay, because the driveway is on the right to get to the back.

Commissioner Anest: What are your hours going to be?

Luigi DeNovellis: 11-8, Tuesday through Saturday. Closed Sunday and Monday.

Commissioner Serra: The only concern I have with the parking is that when the appliance store is closed, they park their box truck in front of the building by the road which takes up a few spots there.

Chairman Hall: Then that would have to change. Anyone else?

Commissioner Aieta: Just a comment about the parking. We are concerned about the parking because your business can succeed or fail based on whether people can get in there and use your facility. If you don't have enough parking the business will not succeed. People won't be able to get in there to use your operation, and that's why we have standards. It's a tight site. I would like to see your operation there, but you have to be concerned about the parking yourself in that location.

Chairman Hall: Anyone else? This is a public hearing so we will be going to the public for comments. Anyone wish to speak in favor of this petition? Anyone wish to speak in opposition? Anyone simply wish to speak? What is the pleasure of the Commission?

Commissioner Aieta: We'd like to close the public hearing and bring it to the next meeting for more information for items that we brought up tonight.

Commissioner Anest: Shouldn't we leave it open if we want to get additional information?

Craig Minor: Yes.

Commissioner Anest: And then we can close it so we can vote on it.

Chairman Hall: We could always vote on it that night.

Commissioner Aieta: We asked him questions that need to be answered about the apartments and striping and we need answers, so we can't close it, otherwise we can't take any new information. I would make the motion that we keep the public hearing open.

Chairman Hall: That night we could close it.

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

**V. PUBLIC PARTICIPATION** (for items not listed on the Agenda, speakers limited to 2 minutes.)

Laura Bielitz, 2110 Main Street: Good evening, I live at 2110 Main Street. I'm here tonight to talk about the noise ordinance. As you all know, my home is very close to the proposed Firestone and the active construction of the Firestone right now. Just the noise from the construction alone, and I'm not talking about major construction noise, I'm talking about a simple hammer and nail, has been increasingly loud, and then some of the construction issues have been so daunting that

it has shaken my house. I have talked to the Zoning Enforcement Officer and he stated that he is not responsible for enforcing the noise ordinance, and that I need to call the police. So during the day when the noise was especially bad I called the police, they came by, fairly quickly, but by the time that they got there, the noise that was very loud was gone, and they said, there is nothing we can do. If the noise is still happening like a rowdy group of people or something, then we can take care of it, but because it is not happening at this very second, there is nothing we can do.

So, this is a little bit troubling to me considering if the Firestone does open, the bay doors, although they are supposed to be closed, they are going to be open for cars to get in and out, there's going to be large, loud bursts of noise that are going to be going from 7:00 AM to 7:00 PM, or whatever their hours are, seven days a week. That's a problem, and this warrants some discussion and it warrants a resolution to figure out how is this noise ordinance going to be enforced because I pay my taxes, I live in a residential dwelling, yes it's near the Berlin Turnpike, but I also now have an auto use in my backyard and I need to be protected. I have a ten month old son who we are sleep training, so he's sleeping during the day, he's hopefully sleeping at night, and we need to be protected and I just wanted to bring it to the Commission's attention that again, it warrants discussion and it warrants some sort of resolution as to how we are going make sure that they are within the sound ordinance of Newington. Thank you for hearing me.

Chairman Hall: Thank you very much. Anyone else from the public wishing to speak?

Jeff Zelek 55 Welles Drive No.: Good evening. On March 27<sup>th</sup>, the Hartford Courant published an article about the Healthbridge Convalescent Home at 240 Church Street in Newington. It's been sold to Eagle Lake Foundation, which is a non-profit group. I checked the Assessor's data base and that property is assessed at 3.2 million dollars. I called the tax assessor Mr. Juda, and I asked him if he was aware of this. He was not aware of the property transfer as it has not come onto the public record yet. I did ask him if this property would come off the tax rolls and come off of the grand list. He said that a non-profit would have to make an application to the tax assessor in order for that to happen and he would look at those on a case by case basis. This is a real world example of how a for-profit company can turn into a non-profit company and it has happened right here in Newington. Your Plan of Conservation and Development, page number one sets out the vision for the Town of Newington. It takes into consideration the limited supply of vacant developable property within Newington for the grand list. It makes an emphases on the re-use of existing commercial property and it says that that is essential for the continued grand list growth. When you voted on the text amendment for a continuing care retirement community were you aware at that time that eighty percent of CCRC's in the United States are 501 C-3 Tax exempt entities, you probably weren't. It was never brought up. So, I'm making you aware right now, that eighty percent of CCRC's in the U.S. are tax exempt entities. There is a very good chance that we may not ever see one penny of tax revenue from any type of CCRC that is approved within this town. At the last TPZ meeting, I stated that I was in favor of CCRC's because I thought it fell in line with the Plan of Conservation and Development, however at the time that I made that statement, I was not aware that eighty percent of these CCRC's are tax exempt. I now believe that this does not fall in line with our Plan of Conservation and Development, again, if you are ready to throw away ten acres at the top of Cedar Mountain that is on our grand list, and our tax rolls, you need to be aware of the 501 C-3 status of the majority of the CCRC's.

Last night the Town Council approved a three percent tax increase for the residents of Newington. If anything is going to be built, it should be built on the basis of taxes that are collectible. I as a tax payer do not want anything built that we can not collect taxes on, and is going to result in a burden to the taxpayers of this town. Thank you.

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

Lori Dubowsky, 2107 Main Street, Newington: I'm here because Firestone has been awful. I feel they are trying to shove this down my throat, it's constant noise, my house shakes at times, one morning they took a hammer and banged large metal objects for twenty minutes from 7:00 o'clock until 7:20. The Police Department did not come. I called the State of Connecticut and they said that it was up to you to enforce it, twenty minutes was way too long to listen to this. In addition, the Bonefish Grill now has a special exception, dumpster banging and dumping at 6:45 in the morning. Who gave them the special exception, I called the town, and that is what I was told. (Inaudible) noise levels at my property line. I called the State of Connecticut and they said it was up to you to enforce that if something happens. I called the Police, they said it was not their business. I don't want to see this giant sign, looking out of my picture window, and why is there a special exception, shouldn't a sign just be regular, why do you have to have a special exception for a sign, I'm disgusted. Thank you.

Chairman Hall: Anyone else wishing to speak?

John Bachand 56 Maple Hill Avenue: First of all, I was here for some of your earlier work, and I had some input that I would have liked to add to that. Will there be any time for that?

Chairman Hall: As soon as we are finished, everything will go to public hearing.

John Bachand: Being a one truck contractor, I had a lot of thought, interest in that. But anyway, at the last meeting I said something that I just wanted to elaborate on a little bit. I said that a decision that you made was flawed, and I wanted to clarify that I didn't mean that. In fact, my overall opinion of this Commission is very high but I still feel that the decision that you made on the text amendment was flawed, and I probably won't be able to explain it too well, so I printed out something. The thing that I was against was the density. The thirty units of CCRC density when we know that the multiple bedroom units which was discussed here, that has me concerned when you compare that to a hospital or a nursing home where a unit is going to have one person. These things could have who knows how many people, four or five. I had five people living in a two bedroom, 1200 square foot unit. So, it's potentially, or however you want to put it, the amount of people or population of that is way higher than just the thirty units per acre, so I explained it a little bit better there. I don't think anything in there is against your rules, I hope.....

Chairman Hall: Two minutes John. It goes fast. That's why I say, try to get it in your head, or practice before you come up because it does go fast.

John Bachand: That's why I did it this way.

Chairman Hall: We will read it, thank you. Anyone else?

Rose Lyons, 46 Elton Drive: I just would once again ask, and I know that I'm sitting in the back of the room, but even when I sitting in the front of the room, it's very hard to hear when your microphones are out like this, or when you turn your head like that, and I know a lot is going to be said tonight that the public is going to want to hear, so if you could please do that, and I'm glad to hear that you are going to have a public hearing on the regulations, something that I feel strongly about as well. I guess that's it for tonight, just so we can hear you.

**VI. REMARKS BY COMMISSIONERS**

None

**VII. MINUTES**

**A. Special Meeting March 25, 2015**

Commissioner Sobieski moved to accept the minutes of the March 25, 2015 special meeting. The motion was seconded by Commissioner Serra. The vote was unanimously in favor of the motion, with six voting YEA.

**B. Regular Meeting March 25, 2015**

**C. Regular Meeting April 8, 2015**

Craig Minor: They are not ready yet.

Chairman Hall: We will have those next time. They will be in the packet, so please read them before we come to the next meeting.

**VIII. NEW BUSINESS**

**A. Discuss Possible Moratorium on Higher-Density Residential Development in the CTFastrak Station Neighborhoods.**

Commissioner Anest: Have we received the Town Attorney's opinion or review of this yet?

Craig Minor: No. He is here tonight, but I believe he is waiting for the Commission to discuss it and decide if that's the direction that the Commission wants to go in before he reviews it for details and technical matters.

Commissioner Camillo: This moratorium will be on just high density housing, no other construction?

Craig Minor: That's what I've written. Let me give you a more thorough answer. If the Commission agrees in principle to move forward with it, it will be on the agenda in a month, because it is a zoning amendment. At that time I will ask the Town Attorney to review it, and his comments will be available for the public hearing on the actual moratorium itself.

Chairman Hall: And this will be on both station? We've been going back and forth that it would be for the Junction and Cedar Street.

Commissioner Serra: I thought at the last meeting it was going to be two separate ones, one for each location, and then we could lift one as needed.

Chairman Hall: That's what I'm trying to establish.

Craig Minor: Let's look at the draft to see if it reflects what you want. The last line, paragraph four of paragraph C says: "The TPZ reserves the right to terminate this moratorium at either location prior to the expiration date stated in Paragraph C 2." So, yes, you can certainly end one before the other if you feel that you don't need to keep it in place for one neighborhood longer than the other.

Chairman Hall: So everybody is okay? We are all on the same page with this?

Commissioner Aieta: I'm ready to move this forward to a public hearing based on the draft, and see what the public has to offer up on the proposed moratorium. Then we could make changes or modify it, or.....

Chairman Hall: So we will have this on our agenda for the first meeting in May.

Craig Minor: No, it might be the first meeting in June, depending on the timing. I'll put it on the next available agenda.

Chairman Hall: Just by consensus is enough?

Craig Minor: Yes.

**B. Petition 09-15: Site Plan Approval (Continuing Care Retirement Community) at 751 Russell Road, HDC ONE LLC, owner; Amara Community Living LLC, applicant, Kari Olson, Esq. City Place I, 185 Asylum Street, Hartford CT, contact.**

Kari Olson: Good evening, Kari Olson on behalf of the applicant. When we left off last time there were a few outstanding questions that the Commission was looking for answers to. We have had some back and forth correspondence with Town Planner Minor and your Town Engineer, and I believe you all have been provided with comments from the Town Planner. I thought I would just go through those and address each one in turn.

The first, and I'm looking at Mr. Minor to confirm this, deals with our offer to do a right in - right out access to the driveway along Cedar Street. The last comment from the Town Planner was that he had not yet heard from the Fire Marshal, so I don't know if there has been an update, but there was a meeting with the Fire Marshal.

Craig Minor: There is a memo in the packet.

Kari Olson: Okay, I just didn't have a chance to see it.

Chairman Hall: And the staff report we are referring to is dated April 14, 2015?

Kari Olson: Yes, April 14, 2015. Okay, so you have the response to that. The next thing I would like to go through while we are waiting for Attorney Harding is the building exterior materials. There was a question about what materials were going to be used in constructing the buildings.

Chairman Hall: Before we go any farther let's say what the Fire Marshal review was, because the public has no clue what we are talking about. We have it, but nobody else does.

Kari Olson: Okay, so do you want me to read it?

Chairman Hall: Please.

Kari Olson: "Chief Schroeder, Pursuant to our discussion this morning regarding the Truck Movement Plan drawing C-5 dated 4-16-15 for the above referenced site, Engineering acknowledges that the emergency vehicle depicted will not be encumbered in its traverse of the paved access." That was in respect to the truck movement plan and then.....

Chairman Hall: The results of the right turn in and right turn out

Kari Olson: Yes, where is that?

Chairman Hall: That is on that April 14<sup>th</sup> We don't have that, so we will let him take care of that.

Kari Olson: So the next one would be the building exterior materials, and I will turn it over to Nick.

Nick Michnevitz: Last time we spoke briefly about the exterior materials. We are using stone at the base of the building. We are using cement board siding and other materials similar to that and all fall under the same in terms of sustainability and in using recycled materials and obviously

it is sustainable from the perspective that this is long term usage so that it won't fail and require a lot of maintenance. Clapboard siding that is painted this color [pointing to the architectural rendering displayed on the monitor] and then accent certain pieces with white cornices and railings. We have some copper standing seams in some shed roof dormer areas as well as architectural grade shingles. I actually have some samples of that. This is the manufacturer of the architectural grade shadow line roof series that we will be using for the shingles....

Commissioner Aieta: Is that the color?

Nick Michnevitz: Yes, this is the color on the bottom here that has the shadow on it. Here is a sample of the stone material. These would be large stone blocks that come 12 and 24 inches, rectangular. These are actually a hammered face stone material so each one is sort of identical so it simulates natural brownstone. That that will be the two story base material.

Commissioner Aieta: That's a synthetic?

Nick Michnevitz: Yes, it's a cement base, recycled aggregate and then they hammer the face of the material. The pigment and color is all the way through. The clapboard siding that I was referring to basically has a grain face, to match. This is a "green" product and you don't have to paint this for every twelve to fifteen years. This will stand there for one hundred plus years, this material. So that is going to be the siding material, whether it is the cream color or white, that's the same and that is sort of the profile of that material.

Commissioner Aieta: Is that the color that you will be using?

Nick Michnevitz: This is similar; the color that we will be using is actually a custom paint color that is on our rendering. It's hard to get the manufacturer to give us that paint color at this point.

Commissioner Anest: Is it going to be like a golden, yellow, color?

Nick Michnevitz: Golden, mustard, yellow, cream color, depending on how the light hits it. It's different in the rendering because you are seeing shadows as the clapboard siding has a shift to it. The same company produces the smooth panel. This cement board will be used for all of the trim boards and some of the panels. The shadow panels that occur below the windows and some of the gable areas, so they made this material in a smooth finish so it would impact like a typical trim board that you would have in a regular gable in a residential house, and so again all the trim and all the siding is made out of the cement board material.

A couple of side notes: we have cut sheets on some of the material here; again I want to emphasize the materials are "green". Here is some of the technical material. The size of the blocks, 12 inches by 24 inches and then this is the panel system, again, it is a green building, material from Aristocrats. That is the stone material that we are referring to; this is the cement board siding, and this is the panel, obviously to commercial grade and these are the smooth pieces of trim board that we would be using. These are all sustainable materials that are LEED certified even though this is not a LEED project. We just wanted to give you that backup to clarify it a little more.

Back to the elevation if I can. Here, the windows, the window trim will be white but it will be a fiberglass material as well, so it will be maintenance free. The interior of the windows will be a natural wood jam, the glass will be a low A, slightly tinted to reflect a lot of the solar rays, as much UV protection as we can. Some of our other accents, the balustrades and the columns are all a cement type board material as well. We actually have a slide in here.....

Commissioner Claffey: Is the same stone color on that walkway wall and around the bend?

Nick Michnevitz: That's correct. Basically it will be a retaining wall and it will be faced with a thinner.....

Commissioner Claffey: Thinner, but the same color?

Nick Michnevitz: Same color, exactly. Regarding the building height, and average height of grade, it is a detailed calculation at each building façade. The average grade and the perimeter calculation - it's kind of tough here to see, that satisfies the requirement that we are under 75 feet.

Kari Olson: The pond, the question about the circulation?

Nick Michnevitz: It's not a pond. I know that it looks like a pond, but I think their reference is to this here. We made reference to being a "sensory garden/rain garden", and what we mean by that is that it is really a shallow depression in the ground that will have a variety of vegetation and flowers, some specifically picked to provide and enhance the sensory or senses of the residents. It will draw butterflies and a variety of floral smells. But the whole intent here is to create this environment that, when it does rain, and this depression is shallow, that for a short amount of time, meaning that during a deluge rain storm it would fill up with an inch or two of water, and then within 24 hours it would deplete and drain off site. We are showing that there because this would be a worse case scenario right after a rain storm, but it's not going to be any stagnant water or anything of that sort. It's just to sort of create that environment for the sensory part.

Kari Olson: We had proposed for the parking that the maximum at any one time would be 50 employees, are we satisfied on that front now? I don't see in your comments here, but there was an earlier e-mail.

Craig Minor: Right, I do have a concern with this, so you might want to discuss it with the Commission.

Kari Olson: Okay. There was some question about the parking, and I think we established last time that we exceed the parking requirements. There will be no more than 50 employees at the height of the shift, or shift change. That is the maximum number of employees that would be on site, which would be 50. We have supplied ten spaces of excess over the requirements for 50 employees plus the number of nursing room beds plus others needed for assisted living, so we believe that we exceed the parking requirements of your regulations.

Craig Minor: Are you going to address separately the question of parking for off-site individuals who might be coming for other uses?

Kari Olson: Yes.

Craig Minor: Not just visitors - you mentioned that school kids and other groups would be able to use the amenities, and the concern was what that will do to your parking supply.

Kari Olson: That's what I meant by visitations, including all of the transient visitors to the site.

Mr. LeGault: I know that the number of fifty sounds small, but we outsource dietary services, housekeeping services, delivery services and various other support services that are bused in and out of the property. The only staff that will actually be parking on the property are going to be administrative staff. The remainder of the staff will be using commuter lots, and we will be busing them to the building and back at the twelve hour shift change, which is the model that we have created. So there is going to be ample parking. I would say half of the site is going to be empty most of the time. As far as visitors coming, it's not, after working in this industry for the last 25 years, there are a lot less visitors than you think that actually come. Also most of the individuals in this facility, I'd say around ninety percent, do not drive, ever. They don't have cars on site.

Most of them have lost their licenses at that point. Those who do bring their cars, generally the tires deflate and they get towed away. They don't use them because we provide transportation services to all sorts of things. The all-inclusive resort model is that they have everything that they need in the facility, but we do provide services so they can get out and do things. Regarding the traffic: we're not taking people to doctor's appointments on a regular basis. We have a medical office building suite right in the building, so doctors will come to them. Apart from a periodic ambulance that's about it.

The intergenerational... I'm sorry for a misinterpretation about what that is. We will allow... say for example there is a 92 year old great grandmother, and she wants to have her granddaughter stay with her for a night, that's the extent of it. They are allowed up to 24 visits, two per month, where they can come in and spend a night, have breakfast with grandma, that type of thing. The pool, it's for kids who are going to come and visit their grandmother or grandfather, they can use the pool. It's not a summer camp, no one is staying there for the summer. The amphitheater is just, the kids get bused in, put on a show and the bus leaves to take them back to where the parents are going to be. We are trying to bring youth into the building, so that, for lack of a better phrase, you don't feel like you are living in a long term care home, you don't feel like you're living in a convalescent home. You are actively involved in the community. If the kids, the high school juniors are doing the play "Grease", they can come practice, so everyone benefits from it, but it's all pick-ups and drop-offs.

Kari Olson: Are there any questions from the Commissioners on this?

Commissioner Anest: I have a question about the commuter lot. I know that we have had issues previously about distance; does that pertain to this? The commuter lot that you are talking about having your employees park at and being bused in, where are you...

Mr. LeGault: It will be various locations, it's not only Newington. Some of our staff would come from out of town, so we would be using multiple lots.

Commissioner Anest: So they would park their car in a commuter lot and you would pick them up?

Mr. LeGault: That's correct.

Commissioner Sobieski: Mr. Planner, I realize the fire apparatus would get through; I had asked specifically about the 90 foot tower, if it could make that turn? I don't see that here. The 90 foot tower is a little longer than a regular fire truck.

Craig Minor: I asked the Fire Marshal to review the plans, this was all that he commented on.

Commissioner Sobieski: Could you just verify that for me please? I want to make sure that the tower truck will be able to navigate through there, that's all. It's longer than a fire engine. The drawing showed a regular engine, but a town truck is a little longer. My other question is, I heard several times in the past that residents will have the use of the facilities, and I want to know how many residents do they project and would there be a time slot they would be able to use the facilities? Or would it be open from say eight in the morning until eight at night, or whatever.

Patti LeGault: We wanted to display our want to become part of the community of Newington. I think it's premature to give you numbers or times, but we can assure you that we will regulate that so that we are in compliance with the number of cars that we have, and the traffic that we allow into the facility. We would be happy to say that Newington residents could not use the amenities if that is what we have to do; we just are trying to become part of this community.

Commissioner Sobieski: I understand, but I was wondering; in your master plan you say, if this takes off, open to the general public twelve to three.

Patti LeGault: I just think it's premature; we haven't really ironed all those details out.

Chairman Hall: Anyone else have a question?

Kari Olson: Just to follow up on Commissioner Sobieski's comments about the general public, I think the way that the site is we believe the parking that we have provided is going to far exceed, and I understand that you have regulations, and that we have to comply with the regulations, but in practice, and in my experience in working with a lot of nursing homes, generally speaking the parking exceeds the actual use. I think there will be plenty of room for them to have the kids come in and do the programs in the amphitheater and that kind of thing, without any significant concerns. We believe we exceed the parking requirements, both from a practical standpoint and a regulatory standpoint.

I do have a question for Mr. Minor. Did you specifically ask the Fire Marshal about the larger fire truck, or if there were any issues with any of the fire trucks? Obviously we would prefer to wrap this up tonight, hoping that everything has been addressed to the satisfaction of the Commission tonight.

Craig Minor: Let me go back to my office and look at my e-mails to see exactly how I phrased the questions, and I'll be right back.

Chairman Hall: I have a question for the attorney. You started to talk about right in - right out. I don't know whether we did a lot of discussion on that. I think we jumped into another category.

Kari Olson: Okay, I'm going to have them show you the revisions to the plans that they have made, and then just to check off the boxes. One of the other comments from Mr. Minor was the issue of the LID regulation. We have a comment from your engineer dated today, and that should be in the record as well, and it says,

"The applicant's engineer has incorporated L.I.D methods and techniques to the "maximum extent practical" for this modified site plan design. The hydraulics have been reviewed in accordance with the L.I.D and Stormwater manual. I recommend the site plan for consideration by the TPZ with the following condition: "The applicant's engineer will provide revised drainage calculations as necessary to the satisfaction of the Town Engineer." The other site plan comments are considered housekeeping and/or drafting in nature. Please contact me for any further assistance in this review process. Sincerely, Christopher Greenlaw, P.E."

We have no objection to that condition, nor do we have any objection to any housekeeping and drafting comments being part of the conditions of approval as well. With that, I'll turn it over to Russell and Stephen Ulman to talk about the right in and right out turn.

Chairman Hall: I think we had a question first.

Commissioner Aieta: We wanted to talk about the Jensen Machine driveway.

Kari Olson: Oh, absolutely, and we still have the wetland issue to address, and we intend to do that. I just have a question on the right in and right out, so I was jumping to it. The Jensen property access issue: I want to first begin by saying that when I represented that we thought we had an understanding on agreement the last time we were here, that was the understanding, that that was not going to be an issue. It was unfortunately to have that letter sent out today, there have been more than one, there have been several meetings between the

property owner, HDC ONE and Jensen, back and forth among their attorneys, and what I want to do at this juncture is assure the Commission that Jensen Machine will have reasonable access to the property. We are still communicating with them to see if we can come to some kind of an agreement. At this juncture we are proposing the access as per our site plan. We have increased the width of the existing access to the Jensen property from 11 feet to 20 feet, so we aren't changing anything; in fact, we are improving the existing access for Jensen Machine, in that we are widening that access point. While I appreciate that the Commission is concerned about Mr. Jensen and his concerns, again, I can only assure you that we are proposing what is on the site plan, which will not impede in any way Jensen Machine from accessing their property. We ask that you approve that. We understand that if we reach a different agreement with Jensen Machine we have to come back for a modification, but at this juncture, we would ask that the Commission approve that. I think probably many of you have been on this Commission long enough to know that old principle, that Commissions do not determine property rights and are not entitled to conditions of approval on a third party consent that is out of the control of the applicant. So again, I assure you that at a minimum what is on that plan will be provided to Mr. Jensen, which is reasonable access and we may be able to reach some other agreement including one of the options that was set forth in the letter providing a whole new separate entrance for Mr. Jensen. But at this juncture, without the approval, we don't know if that is reasonable. I mean that could be something that is just not feasible for us to do. We are asking that you approve the site plan that we have submitted, and if we need to modify that we would come back to the Commission.

I would also point out just in case you are wondering, the owner agency Amara does have a right to use the same area as the Jensen access, assuming that Jensen has any legal rights in that area. If it's a prescribed easement which again has not been determined by a court of law, the, what they call the survey of the estate, has every right to use that area as well as Jensen Machine, and I'm sure your attorney who is here tonight will confirm that. I have some case citations if I need to put them into the record if there is any additional concerns, I'm happy to do that, but I was hoping to sit here tonight and say that the parties have reached an agreement. There is not a complete agreement at this point, but they will be provided reasonable access, I'll make that assertion to you on the record, and ask that you approve the site plan in that regard as submitted. Do we want to go to the driveway right in - right out now, or do you want to go to the Conservation Commission issue next?

Chairman Hall: Conservation.

Kari Olson: I'm going to turn this over to Attorney Harding who was the attorney for the applicant in respect to the wetlands permit. I am going to hand out some copies of the prior wetlands permit for the relevance of discussion.

Attorney Harding: Good evening. My name is Nicholas Harding. I'm an attorney with Reid and Reige in Hartford, CT. I believe that members of the Commission received your town attorney's letter with respect to the 8-3(g) issue. Has that been distributed to the members of the Commission by the Town Planner?

Chairman Hall: Yes. We have it.

Attorney Harding: I don't know if you have an opportunity to review that.....

Chairman Hall: We just received it this evening.

Attorney Harding: Okay, would you like to take a short recess to look at it?

Chairman Hall: I think we should take a look at it, at least.

Chairman Hall: So, we have read the letter.

Attorney Harding: When I had appeared before you the last time, we reviewed the plan. If we take a look at the plan, on the plan there is the 100 foot buffer line, [pointing to the display monitor] that is being highlighted right now, it has the 100 foot demarcation, there is no activity under the existing wetlands permit, and there was no activity to be done in the wetlands. Under this plan there is no activity to be done in the wetlands. Under the existing Inland Wetlands approval the activities that are taking place of the 100 setback line are exactly the same activities that were permitted by the Inland Wetlands Commission in the existing permit. So we have no activity in the wetlands, we have the identical activity in the upland review area, and on the rest of the site there has been a reduction in the amount of impervious surface. I believe the engineering report is the Shoppes at East Cedar Street had about 210,000 square feet of impervious surface. This plan has a 193,947 square feet of impervious surface. So there is a reduction in the upland area that is totally outside of the jurisdiction of the Inland Wetlands Commission. There is identical behavior as currently permitted in the 100 foot review area, and there is identical no activity in the Inland Wetlands area. I think that, based on that, this Commission based on what your Town Attorney has told you, can come to the conclusion that this site plan should be approved as is.

Chairman Hall: Anyone have questions of the Attorney?

Commissioner Anest: I just want to get two things on the record for people watching as well, since they don't have access to this. I have a couple of questions. Do these permits expire?

Attorney Harding: They could, but the Inland Wetlands permit has not yet expired.

Commissioner Anest: Does it matter that it is a different applicant?

Attorney Harding: I believe the applicant includes the holder of the Inland Wetlands permit and he will have concluded his construction. I believe that makes no difference. You might want to talk to your Town Attorney about that. We approve land uses, generally speaking.

Commissioner Anest: I know, but the applicant on this application is different from the applicant on the previous development, so I just wanted to make sure.

Attorney Harding: I think you would have to take that up with Ms. Olson.

Commissioner Anest: Okay. Just to clarify, HDC ONE is the owner of the property? Was the applicant before the Conservation Commission, the co-app on this applicant? Do wetlands shift, move over a period of time?

Attorney Harding: They may shift over geologic time, and they may shift over other periods of time.

Commissioner Anest: So do we know if the wetlands have shifted?

Attorney Harding: I believe you asked me this question last time.

Commissioner Anest: I did.

Attorney Harding: We had a soil scientist review the property.

Commissioner Anest: And, one last question: does the height of the structure make a difference on what it does?

Attorney Harding: It doesn't. The structure is not in the buffer area, it's not in the upland review area, and the height of the structure conceptually has no difference on the wetlands than the stand of trees that exist there. There may be shadows that fall in the upland review area, at different times of the season, depending on the cloud cover. There may be no shadows, and the shadows may be fleeting based on the passage of the sun from sunrise to sunset.

Commissioner Sobieski: One question. There is no activity at all in the wetlands, no trails, no nothing.

Attorney Harding: No trails, no nothing.

Commissioner Sobieski: I wanted to make sure because they mentioned trails here.

Attorney Harding: In the original concept plan there were going to be trails in the wetlands, walking trails, etc. I believe those things got removed. So again, there is no activity at all in the wetlands.

Commissioner Serra: Are there walls or something to keep residents and employees from going into that wetlands area?

Attorney Harding: Part of this is going to be very practical. My in-laws lived in a similar community for a period of time, and having visited with them, most of the residents, when they went out for a walk, many of them were either using a walker or walking with a cane and were not inclined to go on rough terrain walks. They stuck to the walking paths which were paved. Nick is going to point out where there is a wall, but there is not going to be any motivation for anybody to visit that wetland.

Commissioner Serra: My concern was that residents, visitors, employees, somebody going out for a smoke break, you know.

Attorney Harding: I imagine that could be a management issue, trying to keep people out of the wetland. I'm sure management could do that. Nick, could you point out where the wall is?

Nick Michnevitz: As for the original application, there is a retaining wall here, and everyone I presume has gone out and seen the site, you can see where the cuts are. There would be a retaining wall here, then there is a retaining wall that goes up here as far as the previous application that would sort of prohibit someone from trying to navigate into the wetlands. But there are so many great amenities and courtyards and open areas and trails immediately accessible including the green roof over in this area that we spoke about. If those didn't exist there might be an attempt, but obviously I don't see that at all here.

Commissioner Anest: To kind of piggy-back off of Bob, I'm concerned too about people who may want to go and walk Cedar Mountain, just people who want to get out there, traverse the wetlands to get into the mountain. Is there a way to deter residents, anyone who lives in the area to use that as a parking lot to hike Cedar Mountain?

Unknown: You're suggesting that maybe the whole wetlands area should be fenced off?

Commissioner Anest: No, no, I'm just kind of piggy-backing off of what Commissioner Serra asked, if there is going to be some kind of a barrier to prevent people from going into that area.

Nick Michnevitz: I just mentioned that as part of the previous application there are two retaining walls. Here's part of it here [pointing to plans displayed on the monitor].

Attorney Harding: If it becomes apparent to the applicant that there are people using it that way, they are going to take steps to stop trespassers. I mean, they don't mind people coming to the facility and using the facility as they ask them to, but one of the things that they are not asking them to do is to come to the facility to trample the wetlands. That's not part of the permission that they are going to give to the general public when the general public visits the facility.

Kari Olson: If I could just ask one other thing too, because I do want to address your concerns. I think not only the wall and the topography will prohibit it, but when you think about what has been permitted on this site already, the likelihood of this type of a client getting into the wetlands is much less than say the shopping center or the other uses that were proposed here, should this not be approved, that's number one, and then, number two, everybody should be aware that actually walking in these wetlands is not a regulated activity so while there are no trails, I mean, clearing a trail would be a regulated activity, you would be displacing part of the wetlands, but actually walking in wetlands is not a regulated activity.

Attorney Harding: It may be a muddy and messy activity! You may get stuck, but it's not an activity that is regulated.

Chairman Hall: Does anyone have a question of our attorney about his letter, because he is here tonight. Does anyone have anything that you want to ask Attorney Boorman on that letter? Everyone comfortable? It was very self explanatory, very thorough.

Commissioner Aieta: I have something that the Town Attorney might get involved with. We had a speaker during public participation that a lot of these facilities are non-profit, I have to know, on the record, how their corporation is set up and what assurances they are going to give the Town of Newington that they are going to be paying taxes. Without tax revenue for this property, this is not an attractive thing for the Town of Newington.

Kari Olson: I appreciate that, and quite frankly, I'm a little disturbed that there was any discussion since the public hearing on the special permit was already closed, but I'm glad that I was here and have the opportunity to address the question since it obviously has weighed on your mind. First of all, what is proposed here is not a not for profit. I think what might have been a little misleading in the information provided is that while some nursing homes may be non-profit, the majority of them may be non-profit, that doesn't automatically entitle them to tax exemption. Just to let you know, under the current state of law, most health care facilities that do, assisted living, independent living, short term rehab, would never qualify for a tax exemption. What the Supreme Court has said is that you have to be providing, as a facility some type of care to individuals, either to take the burden off of the state, which means in the context of today generally you have to be a Medicaid facility, and then, and only then, will that part of your facility be eligible for any kind of tax exemption. So what happens is, if a facility like this went in for a tax appeal, and said, hey, we should be exempt, they are going to look at is that portion of the facility, and they are going to pro rate it, that is providing a benefit to the community that takes the burden off the state. This facility first of all is a for-profit facility, so that right there ends that concern, because they would never be eligible for it, but number two, even if they ever became a non-profit which again is not being proposed, the only portion of this CCRC that would even be arguably eligible would be the hospice and the nursing skill care beds. And then, only if those hospice and nursing skill beds accepted Medicaid patients could there even be an opportunity to apply for tax exemption. None of that is on the table here. They have already told you, they are not going to be accepting Medicaid patients, and they are for profit. Now I can't tell you what is going to happen in twenty years, or thirty years, or forty years, none of us has that kind of a crystal ball, but I can tell me, because I do these types of tax appeals for nursing homes, they would not be eligible for a tax exemption under what has been proposed here. I'm sure your Attorney would agree.

Commissioner Aieta: If he would like to come up, I'd like to hear from him if he has something to add.

Peter Boorman, Town Attorney: I'm happy to address whatever questions you have, but I was tasked to address the 8-3(g) issue, and the letter is designed to take you through that. I would love to come here and tell you yes, or no, but that is not how the law acts. I'm here to present the law to you folks. You folks make the decision based on the fact, so that is basically what is set out in the letter.

I'm a little concerned that you are even talking about tax assessment issues, in this forum, because that is really not your jurisdiction to be dealing with that issue at all. I will concur with what the previous Attorney indicated, and just because you are a non-profit doesn't qualify automatically under IRS regulations as a tax exempt. There has been some litigation in the State of Connecticut that deals with hospitals, and as the hospitals expand into for-profit roles, does that mean that all of the for profit rules that gage, are non-taxable? The answer is no. So it would, the Assessor, as he does not, would treat this piece in the future, or whatever, whatever you end up, would treat it within the law when he was doing his assessment, but it's not automatic. I'd be happy to address any other questions with you if there is anything else?

Commissioner Serra: Nice to see you.

Attorney Boorman: Nice to see you too.

Commissioner Serra: And I hope you feel that way after this next question. We don't have a problem with the project, we just want to make sure that we are doing what is right by the town, for the town, for our residents. I still have a little bit of a problem with the wetlands issue, our wetlands scenario, let's not call it an issue. I asked a while ago, since we are not the experts on wetlands, we have an Inland Wetlands Commission, if we could hear from them to get their input on this. I was told they were told that they couldn't speak on the issue. I'm not trying to put you on the spot, but can you tell me why?

Attorney Boorman: Sure. The way the law is set up provides that if there is a wetlands issue there must be an application that goes to Inland Wetlands. So that is the rule that is applied in the vast majority of the cases. The question that you are addressing here is an exception that was carved out in terms of the particular facts before you, and only you can decide that, by applying the law. In terms of issues that might be the expertise of the Inland Wetlands Commission in terms of addressing an issue before you, you may decide that you do need the expertise of the Inland Wetlands Commission, and one of the cases that I cited in the letter allows you to indicate that you want a further report from them. Unfortunately the only way to do that would be to deny this application, and make the process start over again. If that is what this Commission is interested in doing, that's available to you. On the last page, half way down, the paragraph that starts with

“however, if the TPZ determines that the instant applicant fails to meet the criteria for an exception, which was discussed above, or that the TPZ believes there are questions of fact that can be addressed only by the expertise possessed by I.W. as to the effect on the parcel's wetlands, then the TPZ may decide to deny the applicant for Applicant's failure to meet the requirements of Sec. 8-3(g).”

In terms of what happens to an Inland Wetlands report: that report comes to you, and you must get copies of it, you must read it, you must address it on the record, but you are not bound by what Inland Wetlands says to approve the application. It's one factor in terms of whether you approve the application or not. There are two distinct bodies that do the same function, but by case law, they are very cognizant of that, and they have gone to great lengths to define that what they don't want is this body being dictated to by another Commission as to how they proceed with

their applications. It's very clear with case law and interpretational statutes that are cited here that it is merely a report, and if you follow the proper steps of addressing those issues that may be in the report on the record, that's it's your decision that proceeds.

Inland Wetlands has an independent statutory authority; they do things independent of you. They can't be dictated to by you either. They have the ability to analyze the situation in terms of if a permit is necessary or not necessary. That is outside the scope of what you do. That would be me telling you that you can't tell Inland Wetlands what to do in terms of their jurisdictional issues. You may have heard that perhaps Commissioners on Inland Wetlands are concerned about discussing this matter, and I think one of the reasons they would be concerned is about pre-determination should something come back to them. I would applaud them if that is what is the motivational factor for them not to formally or informally express opinions that might jeopardize their ability to fairly hear an application if it came back to them.

Commissioner Serra: Part of what I was concerned with is, as you said, we are independent Commissions, but we also should be able to use each other as a tool when needed. For opinions, occasionally guidance, working together for the better of the town. I just thought by not having that tool available it hindered us a little.

Attorney Boorman: You have the tool available: the permit that was approved. You can refer back to that previous approval. The issue before you, based on the fact, is that sufficient? That is what you need to determine, whether that is sufficient or not. Whether the scope of this project addressed the concerns that go beyond your expertise. Does it require for example Inland Wetlands to participate as we said before, or whether you don't feel that the plan meets the criteria of the exceptions that we are talking about. The exception being if it is a minimal change, it is not going to affect the wetlands. The old plan actually has greater potential to affect the wetlands than the new one. So, questions like that I think are valid questions that are outlined for you to discuss and proceed.

Commissioner Serra: Thank you.

Attorney Boorman: Okay, I hope I answered your question.

Chairman Hall: Any other questions of the Attorney?

Commissioner Aieta: Just a comment, Mr. Boorman. I'm well aware of what we can and cannot talk about on this Commission, but I thought it was imperative that we get on the record about the taxes, because they quoted that as part of their application.

Chairman Hall: Anyone else? Thank you very much for being here tonight and giving us your opinion. We appreciate it. Getting back to.....

Kari Olson: I think the next thing, maybe we have confirmation from the Fire Marshal on the fire truck?

Craig Minor: The e-mail that I just passed out a few minutes ago. On April 9<sup>th</sup> I sent an e-mail to Chief Schroeder, the Fire Marshal at 4:24 p.m:

"Chief, did I give you a copy of the Amara site plan for your review and comment last month? Specifically the sheet showing the fire truck turning radii. If not, please let me know ASAP, and I'll send it to you. In addition to what you would normally look for I've been asked by a TPZ Commissioner to tell you that, "I also want from the Fire Marshal the statement that the tower truck can get around at the maximum use of the parking areas so the staff/visitors/residents are parked and if fire or whatever breaks out, if the

tower truck can get in and out of the property without any traffic issues". This will be back on the agenda on for possible action on the 22<sup>nd</sup>."

Then Chief Schroeder responded the next day at 12:35 p.m.:

"Craig, I did meet with the project engineer to review the apparatus movement plans and provided them with the specifications for our ladder truck. Revised drawings were supplied and I forwarded them to Chris Greenlaw for his assistance in reviewing the plan prior to approving them. I'll check with him and get back to you."

Then, on April 20<sup>th</sup>, Monday, I received an e-mail from the engineering department, actually they cc'd it to me, it was addressed to Chief Schroeder.

"Chief Schroeder, pursuant to our discussion this morning regarding the truck movements plan C-5, dated 4-16-15, for the above referenced site, engineering acknowledges that the emergency vehicle will not be encumbered in its traverse of the paved access."

Then I sent to the Chief:

"Chief can you send me a brief e-mail with your assessment of the design? A few words would suffice."

I then received from the Chief:

"Craig, as stated below in the e-mail message from the engineering department I did conduct a review of the fire truck movement plan for the Amara site with them and agree with their assessment."

Kari Olson: I hope that satisfies Commissioner Sobieski. Right in - right out: I'm going to turn it over to Peter Ulman and Russ Cyr.

Craig Minor: Can I interrupt before you start? We don't have this plan. I haven't seen this plan.

Russell Cyr: You haven't?

Craig Minor: No. The Town Engineer has, and the Fire Marshal has, but I have not.

Kari Olson: Oh you have not, okay, the engineer.....

Russell Cyr: I'm sorry.

Craig Minor: No problem.

Russell Cyr: This is the plan, C-5 which is the fire truck turning component, and it gives the best layout showing what we intend to do with the driveway. The right turn, right out, right in, right out from Cedar Street. That is the right in, the right out, the outside corner radii from the right in is set to 65 feet, the corner radii going out of the site is set at 50 feet. We did quite a bit of research in several publications and some of the things that they talk about is to resist making the radii too big because you increase the speed, especially exiting the site. People start to think they are exit ramps and they start to accelerate, but you want to make them big enough so that people don't turn. The recommended size is 50 minimum for both of them. The recommended minimum width of the aisles are 14 feet. That works well for residential and passenger vehicles. It does not work well for cars. The way that the island would be laid out is the center section hatching that you see there, would be raised and elevated just like a normal barrier, six inches elevated, the other hashed area the area around the perimeter is to be a concrete apron, roughly an inch to a inch

and a half high, very similar in design, actually we took the design from a roundabout. Where you have this roundabout with a concrete apron, it's a different color, a different texture, and it's there to allow trucks to run the grid over and not be nervous about doing it. It's different enough and high enough to discourage cars from driving on it. This is the shape that we came up with to accommodate the fire apparatus that you see. As we go further to design, if the Fire Marshal changes his mind and wants a bigger vehicle to get in there, we can change the shape of that raised island while keeping the apron the same dimensions, so that cars will be discouraged from doing anything other than right turn in, right turn out, but trucks, delivery vehicles, fire apparatus, ambulances won't be hindered by the apron, and the only reason the radius going in is 65 and not 50 is because when we swung that fire apparatus around, we had to put a compound curve in there, or increase to 65. I believe this will be sufficient to discourage people from turning left out of the site. It's not too severe so they can look over their left shoulder and can see turning right, but it's going to be severe enough and large enough to ensure that they don't really want to go left.

Chairman Hall: Is this Cedar Street?

Russ Cyr: Yes it is.

Chairman Hall: This is the truck route I assume, because this is a left turn.

Russ Cyr: That's for the fire truck. That movement for that diagram shows the fire truck maneuvering the entire site.

Chairman Hall: Going in left, and drivers will see that or delivery truck.

Russ Cyr: A fire truck will be going in, not a delivery truck.

Chairman Hall: You just said delivery truck.

Russ Cyr: Well, they turn right, when they turn right into the site they would be able to go on the apron if they had to, or exiting the site, turning right.

Chairman Hall: Okay, so only fire trucks you are expecting to come in this way?

Russ Cyr: That will be signed, there will be a no left turn.....

Chairman Hall: That doesn't work.

Russ Cyr: Well, that's all we can do. This is the problem that we have, we have to have access for the fire truck, and it's coming from downtown, so we are going to have to have them turn left into the site. So, however we make it so that the fire trucks can make that left turn, that raised apron would hopefully be enough to discourage people from doing it. It's a large apron. The raised area is 45 feet wide at Cedar Street with a total of 66 feet deep, so it's a very large area, it's not a little small area. That was talked about in the literature, if you make them too small, people will just drive over it.

Chairman Hall: Bituminous?

Russ Cyr: The apron itself I would envision would be concrete. We have bituminous driveways, concrete aprons to give you different texture and visual look, and then the raised island could be grass, low plantings, and you can't put anything large on it because you could affect the sight distances.

Commissioner Leggo: I know that we talked about this, I just want to clarify it: a vehicle other than a fire truck coming east on East Cedar Street wanting to get into the complex would have to go to Wethersfield or the Berlin Turnpike, turn around and come back?

Russ Cyr: Yes.

Commissioner Leggo: And a vehicle wanting to come out of the complex and go east on East Cedar Street, would have to go down into the center of Newington and find someplace to turn around and come back.

Commissioner Sobieski: We all know areas throughout the state where we have no left turn signs and people don't pay attention to them. I think you have to find a way to delineate that a little better, to make sure that somebody coming up isn't going to make that turn. Also, you might consider delineating that they can go onto Russell Road and in that way. Again, I don't know if you have actually studied the traffic patterns up there during the day, or whatever, but you have two lanes of solid traffic going up there. You have speedsters coming back down. I'm concerned, and I can't emphasize this enough, of the general public's safety there. We're not talking just residents of Newington, we're talking the general public here. I still have a concern, even though this looks one hundred percent better than what you had before. I still would like to see the main entrance on Russell Road, and the only reason that I am saying that is because of people slowing down to make that left and get in.

Steve Ulman: I would be extremely opposed to the entrance on Russell Road. This was something that I was going to address, so I will. I looked at the crash data over a three year period both on East Cedar Street and on Russell Road, and along East Cedar Street, a three year period from January 1, 2011 to December 31, 2013. There were 22 crashes, five of which (22 percent) were rear end, another 23 percent were fixed object, 27 percent were people turning left into Healthtrax. That was 22 crashes over three years. Russell Road from north of our site to East Cedar Street had a total of 59 crashes. You had 57 accidents as people approached East Cedar Street, you had a fatality there, a motorcyclist flip. So from that perspective, adding traffic to Russell is really going to make the crashes worse. In terms of people who ignore right in - right out signs, I'm caught in a bind of how I design this because I have to get fire apparatus in here. We can't force the fire apparatus to go up Russell to go in, so I have to make this driveway adequate for a fire apparatus, and in doing that, it is required to be wide enough where someone might be attracted. The only way around that is to do something like an apron roundabout to discourage the cars. We will sign it "right in - right out", and I know, I've seen the issues, but really this is where they're at. We have to go to the access for an emergency vehicle. And if we are going to have vehicles accessing this drive, whether it's the main access or not the main access, people are going to use it, even for something labeled deliveries, or emergency vehicles. It's basically a driveway. If they see a driveway, they're going to use it. Moving the driveway to Russell is not going to solve that issue. It's going to be there, if you have access they will use it.

Commissioner Sobieski: All I'm concerned with here is people crossing, as you said, they are going to be crossing two lanes of traffic to get in there. I know what you are saying with the rear end collisions at Russell and Cedar, and that has to do with people in the right lane as you are coming off, they stay in that lane, people stop, and that's where it happens. I just have... if there was some way the general public could be moved that way I'd feel a lot more comfortable.

Commissioner Anest: What happened to the 2007 traffic study that was done for the previous tenant? Do we have to abide by any of that?

Steve Ulman: That would be for the traffic generated by that development.

Commissioner Anest: So do we have a new one?

Steve Ullman: When this development is approved and goes forward to the OSTA, what will happen is that traffic study, those recommendations, those approvals will all be voided and a whole new set of recommendations and improvements will be approved by the State. What we are proposing is what you see in front of you. The right in, right out here.

Chairman Hall: To carry that further, there is a possibility that the State may come back with a different plan. It's possible.

Steve Ulman: This is what we have proposed. This is about as restrictive as they will do in my experience. They have a philosophy about granting access to roads, and generally their fall back is, well, you can do a right in - right out.

Commissioner Aieta: The other option would be to put in a traffic light.

Steve Ullman: There is not enough traffic to warrant that.

Commissioner Aieta: But that would be determined by the Department of Transportation.

Steve Ulman: Correct.

Commissioner Aieta: And they could possibly ask you for a traffic light.

Steve Ulman: If they did, we would put one in.

Chairman Hall: But the bottom line is, the final decision for access to the property lies with the State of Connecticut. We can propose the best that we think, but the final plan is subject to review by the State of Connecticut.

Steve Ulman: Yes.

Chairman Hall: I remember the Hunter Development and I remember what that was all about. Any other questions?

Commissioner Sobieski: Do you have any other changes to any of the other sheets that we have not seen?

Chairman Hall: There are some drainage issues I think.

Russ Cyr: The other change would be the driveway off of Russell Road. It was commented on not being wide enough. We were asked to increase it from the 24 foot width that we had proposed previously to 28 feet which we have done, and there was another subsequent comment later on to inquire about the width of the driveway into the Jensen property. We had initially proposed a 16 foot wide driveway and that has been increased to 20 feet. I just want to point out that the existing width of the Jensen driveway nets down to about 11 feet and we are proposing 7 additional feet. I believe that is the extent of any changes. There are some minor drainage changes which the Town Engineer had commented on, but nothing planimetrically on the site layout.

Jack Jensen: I'm Jack Jensen from Jensen Machine. We've gone through and we've had some agreements....

Chairman Hall: We will wait for him to come back, we have a couple of questions for him, and that definitely is one of them.

Chairman Hall: Until he gets back, can we talk about the drainage?

Kari Olson: I can say that the Town Engineer's report has been read into the record concerning the LID part, and I'll have comments on the remainder.

Russ Cyr: I just want to reiterate that you got the engineering report. We submitted drainage calculations and design and he commented. He had some comments, we met with him, he told us what he was looking for and had already given us what he thought was a conditional approval, with drafting and housekeeping items that he mentioned in his report. We made some changes and we had some minor issues, things he was looking to correct, with the on-site storage that he feels is doable. I spoke with him at 5:20 tonight and he gave me (inaudible) if what he was asking was doable and I told him it was, and that is when he wrote that e-mail to Craig. He has signed off on the drainage subsequent to addressing his other comments, and final review prior to permits, so we will take a crack at it with a chance to review the final plan.

Kari Olson: I can say that we have addressed every comment that was on the Town Planner's check list of April 14<sup>th</sup>, his staff comments.

Chairman Hall: We will go through the Town Planner's report and everything that we have talked about and have him give his take on everything that we talked about just to make sure that we are all on the same page.

Craig Minor: Fire Marshal Review: you have the e-mails from the Fire Marshal. Conservation Commission Approval: we had the discussion with the Town Attorney. We have copies of the original permit and the original plans which I thought I had given to you but I guess I had not, so sometime tonight we will go through the wetlands permit and the plan that was submitted so that we can make a finding, or not, that this plan is consistent with that. Building Exterior Materials: the architect showed you the materials. Pond: that issue has been discussed. Public Use of Facilities: I told the applicants to discuss in more detail how the use of facilities (the pool and the auditorium) by outside groups will impact the amount of parking onsite. Is the Commission satisfied?

Chairman Hall: With their explanation, yes.

Craig Minor: Jensen Machine: this came up fairly recently. My concern is that, looking at the plans, not to relocate so much as to revise. I contacted Mr. Jensen and he did have some concerns about it. I know that Mr. Jensen had some discussions as recently as yesterday with Amara, so Attorney Olson, can I turn it over to you?

Kari Olson: Yes, again, there have been a number of meetings, and I want to reiterate what Mr. Cyr told you which is that what exists there today is 11 feet, we proposed 20 feet, so it's in the same location, it's wider and provides improved access to what is there today. I thought we had an understanding, but apparently after thinking it over Jensen Machine had a few more questions and pulled back on that. I just want to be sure that the Commissioners know that we didn't misrepresent the facts when we were here last time; things have just changed since we were here last time. There have been a number of meetings. There are three options that have been put on the table for discussion with Jensen Machine, and it is unfortunate that this was provided to the Commission because none of these have been fully fleshed out. We've been unable to commit to anything other than what we put on the site plan, but what we have committed to with Jensen Machine is to look at all of these options and to determine what is the most reasonable and feasible option of the three. These options were not discussed with the engineer Mr. Cyr present, or Mr. Ullman present. These were conceptually what the parties discussed, the three options that they could explore. I would urge the Commission, and I'm sure that he can confirm what I am saying to you, that however Jensen Machine might feel about this, they really don't have the right to insist upon any conditional approvals to their benefit based on any of these options. It's not within your jurisdiction, it's not appropriate, the Supreme Court has said so, and we're asking that you approve the site plan as we have presented it to you. There was a

commitment to work with Jensen Machine and there was a commitment to provide access and on the plans as we have proposed, and modified to the 20 foot width.

Craig Minor: I'm certainly not going to argue law with a lawyer, but I will say that the zoning regulations do give the Commission the authority to require an applicant make modifications to the access to address public safety concerns, such as this one here. I hear what you are saying, that you believe what you are doing will provide the same amount of access as previously, but if Jensen Machinery doesn't feel that way, then it's not that simple.

Kari Olson: If your regulations allow modifications based on public safety issues, that's not the same thing as saying we have to ease Jensen Machine's request, reasonable or otherwise. It's not the same thing.

Craig Minor: It's Jensen Machine, it's public.

Kari Olson: Right, but there has to be a safety issue. It can't just be a preference.

Craig Minor: I don't disagree with that. But the change that you are making to the existing situation will certainly affect the safety of Jensen's trucks that currently go up and down without having to worry about backing into, which they currently do, which is terrifying, but the trucks currently back down that way, and with the introduction of this additional traffic, to me that certainly raises at least a question as to safety. This could be fixed fairly simply from my understanding of the memo's that have gone back and forth. The so-called Option 2 is a fairly simple fix. Option 1 is the preferable one, but you could go with either option one or two, and I think that that would be the perfect way to have it fixed. If the applicant agrees with either one or two.

Kari Olson: I can certainly have the engineers address that. I think there is a difference between what you have just stated which is a safety concern, we are willing to address that, but our request here, our application can't be conditioned upon Mr. Jensen approving whatever option we provide.

Russell Cyr: I have reviewed the three options. Basically what we are proposing is Option 3. The access is pretty much the same as it is now, actually much wider there. There are three options. We can make them all work, from an engineering standpoint; it's a question of what is agreeable, what would be agreeable. We can do anything if you throw enough money at it, it's just a question of what the owner is going to do and what kind of an agreement is worked out with Jensen Machine. That's the bottom line. Option 1 is a driveway on the other side, on the north of his parking lot, and what would have to happen from a grade perspective is that the driveway would have to enter Russell Road from the frontage of the Humane Society which may not be acceptable to the DOT, although that is the current situation with the existing driveway. Like I said, from an engineering standpoint any of the three can work.

Commissioner Camillo: I have a question. The Jensen property, entering and exiting, for the Amara project the property where you are entering and exiting, is that an easement for you to go back and forth?

Mike Frisbie: I couldn't hear you.

Commissioner Camillo: The exits and entrance onto Russell Road, is there an easement there for Jensen to use the property?

Mike Frisbie, 751 Russell Road: The only easement on our property is right at the corner, right there [pointing to plans on display on the monitor]. For the record, there is no easement on the property. It comes off the right of way, comes over our property, even though it's a small piece, it

comes over my property into the Jensen Machine property. They have been using that for years. I wanted to come before the Board because I want you to know that I'm willing and trying to make sure that Jensen Machine has reasonable access to their property. We don't want to hinder their business. They are good neighbors, and we want to keep good neighbors. I met with the representatives from Jensen Machine. We walked the property with my engineer trying to devise a couple of different options to make sure that they have reasonable access. Whatever option we choose still has to go to the State and let them make the ultimate decision because that is a state road. Option 1 is to give them direct access from the lower portion of their property. That is the option that we prefer; both parties prefer it because it eliminates any conflict. The second option is to modify that existing driveway to make more of a right hand turn up into the Jensen property, but the trucks would still need to back onto our property; a safer turn than they do now. That would be option number two. Option number three would be to modify that driveway a little bit to allow cars coming out of our existing property and having a stop line there, so that when the trucks are backing down, the cars have to stop and yield to the truck that is coming down. Those are the three options that we pulled together and we still need to explore, but until we find out exactly what that costs, how much time it is going to take, what the State is going to allow up to do, we don't have the ability to do that here. I want the Board to know that I'm committed and I told the representatives from Jensen and my attorney has told them that we are committed to make sure that they have the access.

Chairman Hall: Any questions or comments?

Commissioner Sobieski: Correct me if I'm wrong, but that white line over here, that's the state property line and your property line, correct?

Mike Frisbie: The dotted line is the property line, yes.

Commissioner Sobieski: So we are talking about is in the state right of way, which is your problem. Is that correct?

Mike Frisbie: Correct, so it's up to the state to determine how that will work.

Chairman Hall: Any one else?

Commissioner Aieta: Jensen Machine, what option do they want? Does anyone know?

Craig Minor: I understand that they are amenable to either option number one or number two.

Jack Jensen: I'm the owner of Jensen Machinery and yes we had some questions, but the option that we would prefer would be to make a ramp going north off Russell Road. We wouldn't be near anybody else's entrances or exits, and so there would be no clash on traffic between Amara and us.

Chairman Hall: That would be the option north of your property.

Jack Jensen: Yes. That would be the best option. That would keep everything clean and we wouldn't be interfering with anybody. The driveway that we have now is steep, and especially in the winter when it gets icy. An eighteen wheeler backing out of there, if people are coming out of that driveway. I'm also afraid that with a right in - right out onto East Cedar Street, most of the people, if you are going to the Berlin Turnpike or you are going east, you are going out of that exit to come back, and that is where the majority of that traffic is going to be.

Chairman Hall: And again, the final determination will be from the State. For both entrances and exits.

Jack Jensen: I'm not sure why they would block it, but it is their decision.

Chairman Hall: Right, but thank you for your input.

Commissioner Aieta: If we show the other option here, can we show the other option rather than this and let it go to the State that way?

Craig Minor: I don't understand your question.

Commissioner Aieta: If we think that Option one is the best, can we show that on the plan and approve that as part of this? And eliminate this driveway?

Craig Minor: Yes.

Kari Olson: We're not prepared to agree with that. I mean, you could do that, but we're not prepared to agree with that at this juncture because we do believe that it is up to the State. We don't have enough information at this juncture.

Chairman Hall: Do we have to put Jensen in at all? I mean, the parameters of this property is a very small section that has anything to do with that driveway at all.

Craig Minor: The site plan that you approve is going to show how they access their property, and the way that they may do it is by making changes to the existing parking lot. I'm not sure what your question is.

Chairman Hall: Well, we're saying that we want to see the Jensen driveway on the plan, but that doesn't necessarily have anything to do with this plan.

Craig Minor: If all parties would agree with Option 1, which is to go north, then the revised plan would not...this would all be grassed and seeded. There would just be a driveway into Amara, if they went with Option 1. If Option 2 is agreed upon, Option 2 comes down like this [pointing to the plans on the display monitor] and then goes back. The trucks are still backing down, but at least it is safer. I know that the State is not going to consider any plan unless the town has approved it.

Kari Olson: Let's be clear. I'm told that the option that you are discussing has some significant grade issues. There are power lines that might need to be moved, and Jensen has requested that it be upgraded for a truck that is currently used within the property. We don't know if he is going to run through any of that, so we are not prepared to agree to that, and I mean, it's your decision. If you feel that we meet the regulations it's your decision, but we're just not prepared to agree to that as this juncture. We feel that the State is going to tell us what we are going to have to do, and the State is going to be looking at the safety issues as well, and as you point out, there is a very tiny minute piece of Mr. Jensen's purported easement that is directly on our property. Again, we are not going to deny him access. You heard, this is the lawyer talking, and I talk maybe too much legal and not enough of the practical, but you heard Mr. Frisbie. They are good neighbors. There is no intention here to harm them in any way, shape or form. We just don't have enough information to agree to any of these options other than what we have proposed here on the site plan. Sorry, Craig.

Chairman Hall: Do you have something to add to that, Mr. Jensen?

Jack Jensen: Yes. The proposal from Michael Frisbie, the option one from Michael Frisbie and perhaps this was an error, was to put a 20 foot wide driveway going north. We don't need 20 feet. We can have whatever the DOT requires. We are perfectly content to having the driveway

going north, going one way, the same as our current driveway. You can only go one way at a time for vehicles in and out, and that would work fine.

Chairman Hall: Thank you.

Craig Minor: The last item, Drainage: I have an e-mail from the Town Engineer, I got it this afternoon, and it should be in that stack. This is an e-mail from the Town Engineer dated 5:31 this afternoon.

"Craig, the applicant's Engineer has incorporated LID methods and techniques to the "maximum extent practical" for this modified site plan design. The hydraulics have been reviewed in accordance with the LID and Stormwater manual. I recommend the site plan for consideration by the TPZ with the following condition. "The applicant's engineer will provide revised drainage calculations as necessary to the satisfaction of the Town Engineer." The other site plan comments are considered housekeeping and or drafting in nature. Please contact me for any further assistance in this review process."

This e-mail was in response to my request that he give some level of comfort that although the drainage has not been designed to the hundredth of a percent, that in his opinion the LID regulations could be addressed without having to reduce the parking or the building footprint. That was my concern: that you approve the plans tonight subject to working out the details, and it turned out the details involve losing 20 parking spaces. That would be a problem. So the e-mail that you got from the Engineer tells me yes, the Town Engineer and the applicant's engineer can work out the remaining differences. I am no longer concerned with that issue. That's all I have from my memo.

In the Town Attorney's four page letter, on the last page under Finding, paragraph five, there is one sentence that is the crux, what the Commission has to do. Second paragraph. This is what the Commission has to do if the Commission is inclined to approve the request.

"The TPZ may approve the instant application should the TPZ after careful review of all submitted information, with specific reference, on the record, to the February 20, 2007 Inland Wetland permit, determine that the current Application presents essentially the same effect on the parcel's wetlands as the previous application because it is a downsized plan when compared to the previous approved plan and the changes made are "minor" and it maintains or reduces the previously authorized wetland activity."

The way you do this is look at the Wetlands Permit, and I have copies for you, go through it. Look at the original plan which I have for you, compare it to this plan, and then come to your own decision as to whether the approved plan is consistent with the new plan, and whether any of the conditions of the wetlands permit that was issued in 2007 are being contradicted by this plan. I don't think they are, but you need to go through that, and it will take a few minutes.

We'll start by comparing the old plan to the new plan. The new plan shows the 100 foot wetlands buffer line and it shows the driveway, retaining wall, parking spaces in the upland review area; the old plan shows the same thing, it shows the retaining wall, the parking spaces, a building further this way, but still outside of the upland review area; this building is slightly closer, but still out of the upland review area. The Wetlands Agency regulates activities within the upland review area and the new plan appears to be the same as the old plan as far as activities in the upland review area. I'll stop here in case anyone wants to disagree.

Now we will turn to the permit from 2007. This is a three page document. Some of these conditions of approval are standard, they apply to every wetland application, but some of them are unique to this project.

1. Based on actual field conditions, The Town Engineer in consultation with the Chairperson may direct that certain modifications or amendments be effected or constructed to accomplish the intent of the permit.

2. Failure to comply with any condition of this permit shall automatically revoke this permit and/or subject the applicant, heirs, successors and assigns to the enforcement authority of the Commission.

3. This permit shall be valid for 60 months from the date of this action.

I don't know if that is relevant or not.

4. The Permit shall automatically expire if work has not been completed within two (2) years from the date of initiation of site improvement and prior to expiration of permit unless said permit is renewed by the Commission.

I don't know if this condition would apply to the applicants or not. I would say this is not really relevant.

5. No permit shall be assigned or transferred without written permission of the Commission.

6. All conditions of permit must be satisfactorily incorporated onto approved plan (s) within six (6) months of the report issued by the Commission. Plan (s) must be presented for signature within (6) months of the report issued by the Commission; otherwise the permit becomes invalid.

7. All excess material and debris generated from construction activity shall be removed from the property.

8. All areas disturbed by construction activities shall be stabilized with suitable grass cover. Permanent turf establishment shall be done on a property prepared surface prior to October 15<sup>th</sup> of the calendar year of any operation. Temporary seeding shall be done prior to November 1<sup>st</sup> of the calendar year.

That is nothing that TPZ has been asked to approve tonight that would prevent the applicant from complying with.

9. Applicant will incorporate "Official Notification Action" onto original tracings.

10. No work shall be performed on site until written certification from a Connecticut licensed land surveyor is provided to Town Engineer that:

- a. Limits of clearing have been defined in field in accordance with approved plan.
- b. All soil and erosion control measures are in place in accordance with approved plans.

That is something we have to be sure that the Town Engineer does.

11. All sedimentation and erosion control measures will be installed and approved by Town Engineer before commencement of any work on the project site. Additional erosion sedimentation control measures shall be installed as required by field conditions.

That still applies.

12. Hay bales may be used in lieu of silt facing for sedimentation control.

13. There will be no rock blasting performed on the site without the provision of additional data presented to this commission that fractures will not intrude within the 100 foot buffer around the limits of the wetlands. In the event the developer finds that the field conditions warrant blasting with 100 feet from the nearest wetland, the developer will come back to the Commission for approval via separate permit.

That is still valid, and this plan assumes that no blasting will be necessary. If it turns out that they have to blast, they will have to go back to the Wetlands Commission.

14. All exposed rock at the area of the retaining wall and any construction before the estimated high water table is to be sealed with hydraulic cement or other appropriate materials/procedures as approved by town engineer prior to its application.

So in other words, the retaining wall has to be parged with a special kind of material to prevent water from coming through, and frankly I don't remember if the details on the plan showed they were going to do that, but they have to do that. That's a requirement.

15. No excavation shall occur along the 50 foot buffer without Connecticut licensed Surveyor being present to certify that there is no intrusion into the 50 foot buffer area.

That is another condition that there is no conflict with.

Those are the conditions of the wetlands approval. If the Commission finds that there is no conflict with them, they should say so on the record. The Town Attorney's letter says:

"However, if the TPZ determines that the instant Application fails to meet the criteria for an exception, or that the TPZ believes there are questions of fact that can be addressed only by the expertise possessed by Inland Wetlands as to the effects on the parcel's wetlands then the TPZ may decide to deny the application for Applicant's failure to meet the requirements of Sec 8-3(g)."

Chairman Hall: Any questions?

Commissioner Anest: The permit shall be valid for sixty months from the date of this action.  
(Inaudible)

Craig Minor: Yes. Five years was how long permits were good for back in 2006. There have been some statutory changes since then; state law now gives old applicants nine years, and it's a principle of law that the Town cannot limit a right that the State grants, so I will hazard to say that their permit is good for nine years.

Commissioner Anest: I just wanted to be sure that everybody knows what is going on. The permit shall automatically expire if work has not been completed two years from the date of the initiation of site improvement.

Kari Olson: As far as the site improvements are concerned, what I can tell you is that the permit is currently enforced, it's currently valid and indeed, most of the regulated activities are already underway and/or nearing completion. So we are already, this is a valid permit for a regulated activity that the applicant had the right to pursue. I can have him speak to what level we are at. I'm sorry, which condition were you referring to?

Craig Minor: Number four.

Kari Olson: I can assure you that as far as my plan is concerned, it has been in complete compliance with the permit, and the permit is valid and they are still moving forward pursuant to that permit as we speak.

Mike Frisbie: To address your question about the work in the regulated area: we have done the grading and we are prepared to install the retaining wall as soon as we get a determination as to where we are with this application. All the work in the regulated area has been graded and that extra material has been removed. It will take a couple of weeks for the retaining wall, and everything will be done in the regulated area.

We are within two years of the initiation. It wasn't in 2009 when we started the project. The site work was only started a year and a half ago, so we're still within the two year period. I guess there is some confusion. When we initially cut the trees down to make it more marketable, we came to staff and asked if it was okay to do that, and they made the determination that the two year period did not start at that time. So we started to do the site work.

Commissioner Aieta: If they started in '09 they would be out of compliance. They started within the last two years, so they are in compliance because they are still within the two year period.

Kari Olson: I want to point out that we are certainly time sensitive to making a decision that is effective.

Chairman Hall: Any other questions? This is the last blast. Anything that anyone has that needs to be clarified? We have gone through everything in the packet, we have gone through and up and down the staff report, answered by two sides, every question that we had we allowed both sides to answer, so this is it folks. Any questions at this point? Anything that you are unclear on? Anything that needs more explanation?

Commissioner Camillo: I make a motion to move this to Old Business. The motion was seconded by Commissioner Aieta.

Commissioner Anest: I don't have a problem with closing it. I would like to wait until May 13<sup>th</sup> to vote on it. I know they want to rush on it, but this is a very important decision, and I think, I know for one am probably going to come up with more questions that I'm not going to be able get them answered.

Craig Minor: Let me just throw out a housekeeping thing. Moving it to Old Business is a good thing in that it will commit you to acting on it tonight, but I recommend you talk about the special exception and vote on the special exception before you vote on the site plan.

Commissioner Sobieski: Mr. Planner, I'd like to make sure that for the next meeting we have all the up to date plans.

Craig Minor: Well, it depends on what happens tonight.

Commissioner Sobieski: I understand that, but Engineering gets a set of plans but we don't get them? You don't get them? I don't think that we should be moving forward until we get to look at them. I'm not comfortable with a bunch of stuff dropped in front of us tonight and them saying, here, you have to act on them.

Chairman Hall: The motion is to move it to Old Business and the motion included voting on it with the discussion phase. The discussion phase at this point is that it was brought up that some

Commissioners are not comfortable voting on it tonight. They don't mind moving it to Old Business but don't want to necessarily vote on it tonight. That's where we are at this point.

Commissioner Serra: I have to agree with not voting on this tonight. I have no problem with moving it to Old Business, but there's still some things I'd like to think about. There's some things that balance us, I'm still not one hundred percent convinced on the wetlands issue, I still think there are questions, and I for one am not going to rubber stamp this and rush to judgment.

Chairman Hall: It's been moved and seconded to move it to Old Business and to vote on it tonight. We will take that vote now. All in favor of moving it to Old Business and voting on it tonight. Motion fails.

Chairman Hall: I'll entertain another motion of what we will do with it tonight.

Commissioner Aieta moved to move Petition 09-15 to Old Business and act on it at the next meeting. The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion with six voting YEA.

Chairman Hall: It will be moved to Old Business and be voted on the first meeting in May.

**C. Petition 11-15: Extension to Site Plan Approval (Section 5.3.8: Time Limit) and Special Exception for Hunter Development at 751 Russell Road. HDC ONE LLC owner/applicant, Kari Olson, Murtha Cullina LLP, 185 Asylum Street, Hartford CT, contact.**

Chairman Hall: This is for the extension for site plan approval.

Kari Olson: We discussed this the last time that we were here. I will reiterate what I said last time. This is extremely time sensitive, and we need to have an answer from you so that we can decide which project we are going forward with. There are a whole host of issues, weather-related, season-related and frankly lender-related that are putting a lot of pressure on us. We asked for the extension so that the owner could pursue the possible Amara development as an alternative with you, and I appreciate the Commission very seriously considering it, but we certainly need an extension at this juncture with respect to the already approved project in order to keep the window open for us and to consider the Amara project going forward. We're really at that, we're up against the wall. We really are.

Chairman Hall: Questions or comments from the Commissioners? Craig?

Craig Minor: I've prepared a memo for the Commission, in the agenda package. Does the Commission want to me read it?

"Section 5.3.8 of the Zoning Regulations reads as follows:

**5.3.8 Time Limit**

The Commission may grant additional extensions provided that all work in connection with such site plan approved on or after October 1, 1989 shall be completed with five (5) years after the date of approval of the site plans. Failure to complete all work within such five (5) year period shall result in automatic expiration of the approval of such site plan. The Commission may grant one or more extensions of such five year period, provided the total extension shall not exceed ten years from the date such site plan is approved. "Work" for purposes of this subsection means all physical improvements required by the approved plan.

This "five year" limit is based on Connecticut General Statutes Sec. 8-3(m) which was amended in 2011 as follows:

Section 8-3

(m) Notwithstanding the provisions of this section, any site plan approval made under this section prior to July 1, 2011, that has not expired prior to the effective date of this section, except an approval made under subsection (j) of this section, shall expire not less than nine years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided no approval, including all extensions, shall be valid for more than fourteen years from the date the site plan was approved.

There does not appear to be much case law or guidance on granting an extension request. In my opinion, the Commission should take into consideration the following:

1. Changes to the character of the surrounding neighborhood, such as an increase in development intensity.
2. Changes to the zoning district that the site is in.
3. Changes to the zoning regulations that apply to that site plan, such as changes to allowable density, minimum parking and permitted uses.

If there haven't been any significant changes to the neighborhood or to the zoning, I would recommend approval of an extension request. A copy of the approved site plan is in the agenda packet."

Chairman Hall: Discussion? Pretty cut and dried.

Commissioner Aieta: We made those zoning changes before this application, right?

Craig Minor: Not that I know of.

Commissioner Aieta: The text amendment

Craig Minor: Oh, right. But that doesn't affect the hotel or the restaurant. The question that you should consider is if the changes that you adopted to the zoning regulations are such that you might not want to grant an extension to this application. When I say "changes to the zoning regulations", I mean things like, the regulations used to require 20 parking spaces and now they require 40 parking spaces and the plan only shows 20. Maybe you wouldn't want to give that an extension. I don't think there is anything along those lines involved here.

I do not have a draft motion for you, but if the Commission is inclined to do this, at some point I'll run back to my office and draft one.

Commissioner Aieta: Are there any conditions?

Craig Minor: I wasn't going to recommend any.

Chairman Hall: It's a question of time, they need the time. No matter what they are going to do, they need the time. There is no reason not to give them the time.

Commissioner Serra moved that the Planner draw up the motion and we vote on it tonight. The motion was seconded by Commissioner Leggo.

Commissioner Anest: I have a question. We are extending this for one year?

Craig Minor: The request is for one year, so what you are doing is you are approving their request, and that is the way that the motion will read. There are some different opinions on what their expiration date is, so that's why the approval letter will say "twelve months".

Commissioner Leggo: Can we have it read instead of going back and typing it up?

Craig Minor: Exactly, since there are no conditions involved I don't really think you need a draft motion.

Commissioner Sobieski: Excuse me Mr. Planner, twelve months from today?

Craig Minor: Twelve months from the expiration date.

Commissioner Sobieski: Which is when?

Craig Minor: We're not sure, because there is a difference of legal opinion as to what the "approval date" was.

Chairman Hall: We're assuming that it is from May 16<sup>th</sup>, from what I understand.

Craig Minor: Well, that is their position, but the other position is that the expiration date is based on the previous November.

Chairman Hall: Well, the pressure is going to be on them, not us. We're going to grant them twelve months from the time of the expiration. It's up to them to decide when that is, and do whatever they have to do to get it done.

Commissioner Aieta moved that Petition 11-15: Extension of Site Plan Approval Section 5.3.8 Time Limit Special Exception for Hunter Development at 751 Russell Road HDC ONE LLC, owner/applicant, Kari Olson, Murtha Cullina LLP, 185 Asylum Street, Hartford CT contact be approved, that the extension shall be approved for twelve months from the time of expiration with no conditions.

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

## IX. OLD BUSINESS

A. **Petition 06-15: TPZ Approval (Section 3.23.1: Accessory Outside Use for Fireworks Tent Sale at 56 Costello Road (T-Bowl Lanes) Keystone Novelties Distributors, LLC, applicant, CMB Inc., owner, Chris Cook, 201 Seymour Street, Lancaster PA, contact.**

Craig Minor: I have a staff report: This applicant has been approved for this use at the same location for the past three years.

The Fire Marshal and the Police Department have informed me that there were no problems last year.

Nothing derogatory came up at the previous meeting, so I recommend approval with the same conditions as last year.

**CONDITIONS:**

1. Prior to use of the tent, the applicant shall obtain approvals from the Newington Fire Marshal and Building Department.
2. The applicant shall not place any temporary signs on the ground anywhere in the Town of Newington.

Commissioner Leggo moved to approve, with conditions, Petition 06-15: TPZ Approval (Section 3.23.1: Accessory Outside Use) for Fireworks Tent Sale at 56 Costello Road (T-Bowl Lanes.) Keystone Novelties Distributors LLC, applicant; CMB Inc., owner, Chris Cook, 20 Seymour Street, Lancaster PA contact.

**CONDITIONS:**

1. Prior to use of the tent, the applicant shall obtain approvals from the Newington Fire Marshal and Building Department.
2. The applicant shall not place any temporary signs on the ground anywhere in the Town of Newington.

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

**B. Petition 08-15: Special Exception (Section 3.2.5; Continuing Care Retirement Community) at 751 Russell Road, HDC ONE LLC owner, Amara Community Living LLC, applicant, Kari Olson, Esq. City Place 1, 185 Asylum Street, Hartford CT, contact.**

Craig Minor: Section 5.2.6 of the zoning regulations requires the TPZ to "consider" the following special criteria, and to "record its findings in the record of the meeting."

- A. The need for the proposed use in the proposed location.
- B. The existing and probably future character of the neighborhood in which the site is located.
- C. The size, type and location of main and accessory buildings in relation to one another and in relation to other structures in the vicinity.
- D. Traffic circulation with the site, amount, location and access to parking and traffic load or possible circulation problems on existing streets or proposed streets and driveways considering impact on existing streets are affected. For large scale retail development in excess of 40,000 square feet of gross floor area a traffic impact analysis report with proposed mitigations measures shall be submitted with the application.
- E. Availability of public water and sewer, and possible overloading of water and sewer systems and the adequacy of the existing off site storm water system serving the property to safely accommodate any increase in drainage.
- F. Location and type of display signs, lighting and landscaping and the impact of type signs on adjacent properties.

G. Safeguards to protect adjacent property, and the neighborhood in general, from detriment including but not limited to proper buffering.

The applicants spoke to each of these special criteria items during the public hearing and addressed them in their application. I suggest the TPZ discuss each of these individually, briefly, or for as long as you need, and make a "finding" on each.

Craig Minor: Let's take the first one. The burden is not on the applicant to prove the need for the proposed use in the proposed location; the burden is on you to consider the need, and hopefully the applicant has given you enough information for you to make an informed decision about that. I know that is a little complicated. The regulations just require that you consider these criteria.

Commissioner Anest: This is the one that I don't think the need is there, based upon what our town has done with the housing needs survey. I wish the petitioner would tell us about the unit affordability, because if they are relying on what we have in our town to show that we have the need, it's not the same type of need. I just have a reservation about this.

Commissioner Aieta: I think they showed with the information they provided that there is a need because of the overwhelming majority and the change of age and the population, and that this type of facility is needed because the number of people in their senior years is more than the amount of this type of location, places like this. I think there is a need and I thought that they presented that when they made the case.

Chairman Hall: Everybody all set on that one? Is your hand up Commissioner Serra?

Commissioner Serra: It's up but it's not up. I can see there is a need for a type of facility. As I mentioned before, being part of the Housing Needs Study Committee and seeing the results, I don't know if a facility of this magnitude is what our residents are looking for. They are looking for affordable, they are looking for where they can still have their independence. What they were saying in that study was they still want their houses. They wanted smaller, but they still wanted their houses. I understand that everybody can't do that. There are needs that as we get older that we are all going to have. As Commissioner Anest said, I would have liked to have seen a study done where the residents are on this. I realize this isn't for just Newington residents, this is open to anybody, as it should be, so let's make sure when we do this that we're concerning the needs of the entire town of all of our residents. Not a few or however many are going to use it from Newington, and the rest from wherever. Based on that I just cannot say that there is a need for a facility of this magnitude.

Commissioner Aieta: I don't think that they profess that the people who are going to live there are going to come from Newington. I don't believe that the amount of people from Newington is going to be close, I think it's going to be a reasonable type facility, and people who have the whereabouts to afford to live there, are going to be the people that, I'm sure they are not taking a sixty million dollar roll of the dice. There must be some kind of marketing study to determine whether this facility after they build it is going to be filled, other wise I don't see people putting that kind of money out without knowing that there is a market for it, and a need for it.

Commissioner Serra: I don't want to get into a debate, but just to clarify it, I was not insinuating that it was going to be one hundred percent Newington residents. I believe I said a few, or however many Newington residents, and I did say, other people coming from where ever they are coming from. So, if that was mis-stated or misunderstood, I did not mean it that way. Again when this public clock on this project, it has been presented throughout this whole process, to benefit Newington residents. The representatives from Amara, everybody who has come up there, has said that numerous times, to benefit Newington residents.

Commissioner Aieta: To benefit Newington residents with the jobs and the tax money.

Commissioner Camillo: I agree with Frank. It's not having a place for them to go, but keeping them where they are by paying taxes, having a tax base. Do you know how many homes you would have to build to get that amount of money? You don't have the room for it. This is good for Newington and good for the residents.

Chairman Hall: I think what we have to keep in mind is that this is a special exception for a continuing care retirement community, which we have not had before. One of which there does not seem to be currently in the area, so if you want to talk about a need, there may be a need for a different type of living arrangement. I don't want you to be thinking of the ones that we already have. The operation of, whether it be assisted living, nursing home care, whatever, this is a different object, and therefore a special exception for a new concept, so is there a need for something different? At this point there probably is because I think the upper type of living arrangement that are anywhere in the surrounding towns pretty much are saturated. This is something different, so if you look at it as a need for something different this is our opportunity. It needs a special exception for to forward. The only way it's going to is by a special exception. We need to consider this. Anyone else?

Craig Minor: Number two: the existing and probably future character of the neighborhood in which the use is located.

Commissioner Aieta: It's obvious by looking at or knowing that part of Newington that this would not greatly change the character of the neighborhood because it really is not a neighborhood, it's a major thoroughfare that unfortunately has become the east-west highway to get from points east to points west without the benefit of I-291. So, is there a neighborhood there that would be affected or adversely affected by this type of use? I don't believe so. It's obvious by looking at what is there now.

Chairman Hall: Anyone else? I think what we need to consider on B, is other things that could possibly go there. We know what this Continuing Care Retirement Community would be, we have to think of other things, the existing and probable future character of the neighborhood, let's keep that in mind. The future of that spot, we all know it is not going to remain blank. That's a given. Anything else?

Commissioner Aieta: Well, the flip side to that is we know what the option is if this doesn't go through, we know we will have a gas station, a strip mall, a hotel, and I don't know what else.

Commissioner Leggo: At the last couple of meetings we've heard, if this doesn't happen, all that is stated to go there, not that's what is going to go there.

Chairman Hall: It is approved, and that would probably be the easiest and quickest way to develop the property. Probably. But again, nothing is set in stone.

Chairman Hall: C: The size, type and location of main and accessory buildings in relation to one another, and in relation to other structures in the vicinity.

Commissioner Camillo: I just want to repeat what I said before, it's a benefit.

Commissioner Leggo: It's a nice structure.

Commissioner Anest: I was going to say that the applicant has demonstrated the location of the building in relation to the structures in the vicinity to the south and to the east of the roadway, and it fits well there.

Chairman Hall: D: traffic circulation within the site, amount, location and access to parking, and traffic load for possible circulation problems on existing streets or proposed streets and driveways considering impact on existing streets are affected.

Craig Minor: Can I suggest that we break this down? Start with the first phrase: "traffic circulation within the site".

Commissioner Leggo: The site seems to be well laid out.

Craig Minor: "Amount, location and access to parking"....

Commissioner Aieta: The information that they provided, the number of people and how these facilities are normally housed, the people that are housed there; they have shown that there is adequate parking. The amount of people who are on any shift, as far as employees is going to be, is fifty, and they are saying that they are going to be different schedules and busing people in, and that most of the residents there do not drive. It seems that with the parking regulations that have been established, they do have adequate parking.

Craig Minor: "traffic load for possible circulation problems on existing streets or proposed streets and driveways considering impact on existing streets are affected."

Commissioner Leggo: I still feel the same way I did.

Commissioner Sobieski: I'm still not comfortable with the traffic issue up there. It's a major roadway, you have about 28,000 cars per day up there, only about seven or eight thousand are going on 5 and 15. On Russell Road itself, the traffic has slowed down with the departure of Cedarcrest employees, but I'm still not comfortable with the flow of traffic up there. This is going to have an impact on an already bogged state highway. I believe you are talking eleven hundred generated traffic trips, I believe that is what the gentleman said, but that is still an awful lot to put into that area.

Commissioner Serra: I just want to agree with what Commissioner Leggo and Commissioner Sobieski said as far as the traffic. We've beaten this to death, we've gone over and over it, and although there have been some improvements, I still don't think we are there yet.

Chairman Hall: There's no good answer on that one, but no matter what goes there, traffic is going to be an issue, no matter what. I don't care if it's an ice cream shop, it's not going to be easy.

Commissioner Sobieski: I agree with you, however, I believe under the old plan there were going to be some traffic storage lanes put in there, there was going to be a signal put in there. I think we've come a long way with the right turn in and out only. My concern is that somebody still coming west, or eastbound on 175, would have to go to the next street and turn around. That's what I'm concerned with. I understand that whatever you put up there it's going to be traffic, and some would have a lesser impact, such as this has, versus what was proposed up here. I'm still concerned with the traffic.

Commissioner Anest: I just want to echo what the others have said. I'm also concerned about the traffic. I'm concerned that if people leave from Russell and head south on Russell, they can't take a left turn and head east, because there is no left turn, even though everybody takes left turns when there are no left turn signs. I'm concerned, and I think it needs to be part of this record that we do have concerns about the traffic situation there.

Chairman Hall: I think no matter what goes in there, as time goes on, enforcement has to increase. I think one of the big problems that we have had all along is that essentially that traffic

directs itself. There doesn't seem to be anything stopping it, so something like this, at least for the initial six months, there has got to have a lot of enforcement up there to make sure that things are done the way that they are supposed to be. No matter what goes up there.

Commissioner Aieta: I have a question for Stanley. We know your background with the Department of Transportation. Do you see, is there something that would make you more comfortable? Is there a solution that you see? Improvements that you would like to see, that you think would alleviate the problems? What do you think, is it insurmountable?

Commissioner Sobieski: No, it's not insurmountable. The State Traffic Commission is going to tell them what to do. I think there is going to be, if I'm not mistaken, a plan for some type of modifications at Russell and Cedar that would probably help the situation a little bit. Probably the biggest issue is, no matter which way the traffic comes in, you are going to have a queue backing up that is going to be unbelievable. Whether it's going into Amara or going into Jensen Machine, because the tractor trailer has to back down. I think that has to be looked at very closely. I know the attorney said they weren't prepared to do something with Jensen at this point in time, but you have to look at the queuing issue in the area, especially the Russell Road area. There's a lot of suggestions, but I prefer not to do that. Let the STC do its job. But it would make me more comfortable if the main entrance was on Russell Road.

Chairman Hall: Anyone else?

Craig Minor: E: availability of public water and sewer, and possible overloading of water and sewage systems and the adequacy of the existing off site storm water system serving the property to safely accommodate any increase in drainage.

Chairman Hall: We're good on that.

Craig Minor: F: location and type of display signs, lighting and landscaping and the impact of type signs on adjacent properties.

Commissioner Aieta: They haven't come in with a sign yet. They would have to come back to this Commission for approval of their signage. The lighting and landscaping plan seemed more than adequate for what they are doing.

Chairman Hall: As far as impact on adjacent properties, there wouldn't be much.

Craig Minor: G: safeguards to protect adjacent property, and the neighborhood in general from detriment including but not limited to proper buffering.

Commissioner Aieta: I think that goes along with F. They provided landscaping that buffers the adjacent property. The adjacent property is Jensen Machine Shop, to the west is vacant land, town-owned property, and across the street are commercial type establishments. I think this will probably be the best-looking piece of property in that area.

Commissioner Anest: I just want to say that, I believe when we do the special exception that we should not be taking into consideration the taxes that this is going to generate for the town, as well as jobs that it is going to bring into town. I think people have been emphasizing that, and that's not part of the A-G on the special exception. I just wanted to make it clear that we don't consider that.

Chairman Hall: So at this point.....

Craig Minor: I have a draft suggested motion. You have the site plan draft motion on one side of the page, and the draft motion for the special exception on the other side. It was on the table when you came in tonight. And, I left lots of room for conditions, in case you have any.

Chairman Hall: What is your pleasure people? The silence is killing me, come on.

Commissioner Aieta: Were there any conditions that you felt applied to the special exception, Mr. Minor?

Craig Minor: No, that's why I didn't post any.

Commissioner Aieta: We have already determined that the site plan would be acted on at the next meeting.

Commissioner Aieta moved to approve Petition 08-15: Special Exception (Section 3.2.5 Continuing Care Retirement Community) at 751 Russell Road. HDC ONE, LLC, owner, Amara Community Living LLC, applicant, Kari Olson, Esq., City Place I, 185 Asylum Street, Hartford, CT, contact.

**Findings:**

1. The applicant has addressed items A-G of Section 5.2.6 (Criteria for Special Exception") to the Commission's satisfaction.

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

**X. PETITIONS FOR PUBLIC HEARING SCHEDULING**

Chairman Hall: We have one.

Craig Minor: The bouncy house at Willard Avenue. Just that one.

Chairman Hall: Can you give us some information?

Craig Minor: They want to host birthday parties, party parties, and they are talking about having two or three different stations so when the first groups of kids exhaust the first station, they will move onto the second, and another group of kids will come in for the next birthday party. They mentioned that most of their business is not during the summer because kids are doing other things during the summer, so mostly fall, winter, and spring. They will cover all of that during their presentation.

Commissioner Aieta: This is not a trampoline?

Craig Minor: Not a trampoline, it's an inflatable.

Chairman Hall: Oh, okay a bouncy, inflatable.

**XI. TOWN PLANNER REPORT**

Craig Minor: Things are quiet in my office these days so nothing new to report on those items.

**XII. COMMUNICATIONS**

**A. Labs4rescue adoption event at 745 New Britain Avenue**

Craig Minor: Apparently in accordance with the Connecticut Animal Import Regulations, the Labs4rescue organization is required to notify you if they are planning on having an adoption event, which they want to have on May 9<sup>th</sup> at the Pet Spa at Twin City. No action is required by you. They are just required to let you know.

**B. Letter from Office of Police and Management re POCD dated April 13, 2015**

The next item is a letter from James LeVasser at OPM. The reason for this letter is that some towns are not updating their Plan of Conservation and Development in a timely manner. The State does not really have much in the way of teeth to force towns to do it, so this letter is warning you that if you don't update your plan you are not going to be able to get discretionary state funding, STEEP grants, those kind of grants. Right now we're fine, but I wanted you to know that it's important to keep updating your Plan every ten years like you are supposed to do.

**C. CRCOG Referral on Proposed City of Hartford Zoning Amendment**

The last item is the referral from CRCOG from Hartford. Apparently they are in the process of adopting some TOD regulations which caught my eye, and I asked my colleague up there twice for a copy of the regulations and he still hasn't given it to me. I'll leave it at that. I got the impression from reading the referral that the transit oriented development overlay district that is being proposed would only be in the B1 Zone in Hartford, and I don't know where the B1 Zones are. Is the zone right next to Newington, in which case this overlay district would be eligible to be applied right next to Newington? The process of adopting an overlay district Hartford requires them to let us know if they are going to adopt an overlay district adjacent to Newington, so we would get notice, but still I would like to get a copy of the regs. I'm going to keep reminding my colleague up there, please give me a copy of the regs so I can share them with you and so I can read them. That's all I have.

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

John Bachand, 56 Maple Hill: Some discussion on wetlands went on, but it wasn't on the agenda, so I'm going to feel free to go into that regarding that site up there.

Chairman Hall: No, because the site was on, so...

John Bachand: There was nothing on the agenda about the wetlands. That seemed to be a separate discussion.

Chairman Hall: They were talking about wetlands tonight, several times it came up during site plan.

John Bachand: Well anyway, I just think it's wrong that you are going to let them exempt themselves from wetlands, I think that's very wrong.

Chairman Hall: We're not exempting, we're not going to talk about wetlands. Do you have something else?

John Bachand: Yes. I'd just like to say that if you guys appreciate the work that some of us do here, and that you should, is this two minutes written in stone?

Chairman Hall: Yes. It is, it's in our regulations.

John Bachand: I know that, but I mean, is it like a federal regulation? Can we increase it to five minutes or something? I'm overall pleased with the way that the meeting went tonight, and I don't have anything to say that you were flawed about, but going back to the flaw from the last meeting, it was all about the density and I think that is a big issue here. You know, during the amendment process the applicant mentioned that they are modeling themselves after that Masonic Care in Wallingford. They are at three units per acre. That's ten times lower density than what we have approved here, and the only reason I bring it up is that they brought it up, they compared themselves to Ashlar Village which is Masonic Care. The Masons are the oldest charity in the nation, and they do get a significant discount on their property tax. They have the education component taken out of their mill rate, so can you imagine. Something to think about.

Chairman Hall: Thank you John. You have to practice at home, because you are always very well prepared, you know exactly what you want to say. Set yourself a timer for two minutes.....

John Bachand: How do I make a proposition to increase that two minutes?

Chairman Hall: You don't.

Commissioner Aieta: The Town Council...

Chairman Hall: And I can tell you that when I sat on the Town Council it came before us. They were going to cut it back, and actually they did. At one point it was higher, and they cut it back.

John Bachand: I just think that some people in the audience, some times we pick up things that are said...

Chairman Hall: You have two minutes at the beginning and two minutes at the end. Thank you. Anyone else from the public wishing to speak?

Rose Lyons, 46 Elton Drive: I just want to say thank you for all you have done, all the questions that you have asked, and I want to thank the Lord that I made it down Cedar Street today at 4:30. I have not been on that road in probably twenty to twenty-five years. I got stuck in East Hartford at 4:30, and I couldn't get out of the left lane to get into the right lane to take a right onto Main Street, so I went to Best Market and my brother benefited from that because I picked up the meat that was there, and I think I beat the guy in front of me back down to Main Street, so, the traffic there, I don't know how you are going to work it out, but God bless you. Thank you.

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

#### **XIV. REMARKS BY COMMISSIONERS**

Commissioner Anest: I have a couple of quick things. Did we get the report on the town lot that was discussed at the Conservation Commission meeting, or they wanted us to see a copy of what they approved?

Craig Minor: I haven't gotten anything from them.

Commissioner Anest: Okay, that's one thing,

Craig Minor: I know about the CL&P property that the Town wants to use for an impound lot, which became controversial because the public works department went and made some improvements without getting Wetlands approval first, and so they were ordered, like any property owner, to come before the Wetlands Commission and either get a permit or restore it to the way it used to be. I don't recall whether the Town restored it, or whether they got a permit.

Commissioner Anest: I think they went and got the permit, but I think it was that Wetlands wanted us to have a copy, just a copy of what they approved.

Craig Minor: I'll contact the Town Engineer to get a copy of that permit.

Commissioner Anest: I noticed last night that they approved the grant for charging stations in the town center. Those aren't in the regulations yet, right? I know that the town is exempt.

Commissioner Aieta: They are not exempt from an 8-24 referral.

Commissioner Anest: Right. So if they get the grant and they are going to install a charging station, does that need to come before us as an 8-24?

Craig Minor: No.

Commissioner Aieta: Why are you saying no?

Craig Minor: Because it doesn't.

Commissioner Anest: It's an improvement to town property.

Commissioner Aieta: The only thing that doesn't come to the Plan and Zoning Commission for action or review and a report back to the Town Council is maintenance work and this is no maintenance. Plus, this is an item that isn't even in our regulations. We realize that the Town is exempt from zoning, but they are not exempt from the state statutes that requires us to have input to the Council.

Craig Minor: The way that you just described the 8-24 process is a useful rule of thumb, and that is how I would describe it at a cocktail party, but when you actually parse the exact words of Sec. 8-24 and compare it with this project, this project does not require an 8-24 referral.

Commissioner Aieta: I don't believe it. You're not an attorney, so I want an attorney's opinion whether this, and I want it in writing. We're getting far away from, the Town is doing stuff, like the impound lot, like this, other things that they do, the Young Farm on Church Street, there is a whole bunch of stuff that should have come to the Town Plan and Zoning that doesn't, and that only happened since you became the Town Planner. We've always gotten reviews on everything. The only thing we don't have review on is maintenance of town roads, anything else that is anything, if they drive a nail into a wall they are supposed to come to the Town Plan and Zoning. That's the way that 8-24 ordinance, state statute reads. I don't know how you can read it any other way.

Craig Minor: Does the Commission want me to ask the Town Attorney for a ruling?

Commissioner Aieta: Ask for a referral from the Town Council to the Town Plan and Zoning on the charging station. It's something that is not even in our zoning regulations.

Craig Minor: Right, and the reason it is not in the zoning regulations is because after I did the research we felt there was no need for it.

Commissioner Aieta: Who made that determination?

Craig Minor: Judging by the fact that I only found one town in the entire state of Connecticut, Bristol, that actually.....

Commissioner Aieta: It's a new concept....

Craig Minor: It's not that new any more.

Commissioner Aieta: Well it's new to the point where no one is going.....

Craig Minor: What I found is that a lot of towns are doing it without making a big deal about it.

Commissioner Aieta: There is one at Best Market, and now the Town is going to do it.

Craig Minor: There is nothing to regulate.

Commissioner Aieta: Excuse me?

Craig Minor: It's just a fixture. You don't need to do this.

Commissioner Aieta: You are putting it in a Town parking lot. We want to know who is determining the location? Is it going to interfere with handicapped parking? There are a whole litany of questions that you could ask to make sure it is done in the proper way. Who's going to do that? Is it going to be done administratively? Everything administratively?

Craig Minor: It's already been done.

Commissioner Aieta: Yeah, illegally.

Craig Minor: No, I mean the plans, the site plan has already been developed.

Commissioner Aieta: By who?

Craig Minor: By staff.

Commissioner Aieta: Maybe we can tweak it a little bit. We don't even have the opportunity to do this, plus this is not an allowed use in the Town of Newington.

Chairman Hall: When we get to that part of our regulations, and if we feel strongly enough to add it, we will add it.

Commissioner Aieta: We talked about that, that we were going to add it. That will come up.

Commissioner Camillo: When we are not so busy, there was a plan from DOT, 5 and 15 from Wethersfield down Russell Road, down Jordan Lane down onto Hartford Avenue. Where you come off of I-91, head west, Route 5 and 15, the Berlin Turnpike, just as it crosses the Berlin Turnpike, it was to bear right, and come down the old Jordan Lane and end at Hartford Avenue. It would be in and out too, you would be able to access 5 and 15 and head back towards I-91 from there. That is a where a lot of our congestion comes from in the center of town. You have people coming from West Hartford, down Willard Avenue, then they have no where to go, and then you have people getting off of Route 9 to get onto I-91. The guy from DOT got moved out to Danbury, about 15 years ago, and that's all I know about it. Did you know about that?

Commissioner Sobieski: The only one I heard about was to extend Mountain Road, come up by the water tower, onto Russell Road by the Humane Society, cap off this end where the ramps are, and then force all the traffic onto Arrow, that I remember hearing about that. That was about 15 years ago.

Commissioner Camillo: If Rose hadn't brought up Cedar Mountain, I wouldn't have remembered....

Commissioner Sobieski: There seems to be a rash of these things that have to be approved right away. You know, I find it hard to believe, maybe I'm just naïve, that somebody doesn't know what they need to do to get these things done, as they did tonight, that it has to be done tonight. I don't particularly like that, I've said that several times. I don't know if that is something that you can enforce, Mr. Minor, or not, by I think when these applicants come in, they need to be told that it's not going to be rubber stamped, it's not going to be approved tonight. It has to go through the process. We want to think about it, to make sure we are making the right decision, and I'd like to see that come to a stop as soon as possible.

Craig Minor: As part of my standard explanation to applicants, I tell them the first night the Commission discusses it, don't expect a decision, because the Commission does not like to act on anything the first night. And in case of a public hearing, doubly so, for a number of reason. One, you want to consider what you have just heard, but also, and this is a good reason, you don't want to send a message to the public that your minds were already made up. If you vote on it the same night, it might send a message that, we already knew what we were going to do, so there was no need for the public to even bother talking to us. I think it's a good policy that you have. I warn people of that. I tell them that if time is of the essence, like fireworks sales in late June, you can always ask the Commission to make a decision that night, and sometimes the Commission will if it's a legitimate emergency, but I warn people not to expect action the first night.

Commissioner Sobieski: It's like tonight. The attorney was saying we have to approve this tonight. We have a lot of things to digest. We find out that there are changes to the plan that you didn't even know about. I don't think they are dealing very fairly with us. They submit it to Engineering, they should submit it to Planning, and it goes before Planning and Zoning. We didn't know about that island they were putting in there until tonight. There is apparently an issue with the snow and Jensen Machine, and that they want to go somewhere else with the driveway. All of this has to be brought out so we can make an intelligent and correct decision. It seems like it started with the text amendment. We had to do that right away because of financing. Then we went to, well, this has to be done right away because of financing. This is what I'm saying. It's as if we are being pushed, and that is not the way to do this.

Chairman Hall: They can ask, but we say no most of the time.

Commissioner Sobieski: I understand that, but it seems like everyone who comes in, it has to be done right away, right away. We have a set of standards here and that's what we should stick to.

Commissioner Aieta: Well on this one, we pushed it off until the next meeting. When the motion is made, you can put conditions on to the things that satisfy you as far as the special exception.

Commissioner Sobieski: I understand that, I was just saying, it seems like we started with one and then another and another, it's constant.

Chairman Hall: They will ask, because everyone wants it right away, so it's up to us to decide which ones we want to, and which ones we don't. Don't feel bad about it. If you decide that you are not going to vote on it, tonight...

Commissioner Sobieski: I understand that, it just seems like the perception out there is they come in and right away they need it done.

Commissioner Claffey: Is there a time deadline for town employees to get a response back when we have questions?

Craig Minor: No, but we all work for the Town Manager.

Commissioner Claffey: It seems that every time you have asked for the Town Attorney's opinion, it's like 30 days out, or it doesn't come. I just didn't know if there was a set time frame to get a response back.

Craig Minor: It depends on what is needed. I image like everyone, he probably turns things in when they are needed, and not too much before that.

Commissioner Anest: Just one more quick one. When we took the CTfastrak bus we noticed there were a lot of buildings that had a lot of junk behind them, and it's giving a bad impression of Newington. I don't know if that is something we could put in our regulations. Maybe we should consider allowing them to put signs on the back of their business so that people could see. That might be helpful.

Craig Minor: We currently allow buildings that have multiple frontages to have additional wall signage allowance. Maybe we should extend that to properties that abut the busway.

Commissioner Anest: Just a small sign, just to advertise it.

Commissioner Leggo: I just wanted to apologize to everybody here and everybody watching for my up and down and all around, but my back, I have issues with it. I apologize.

Chairman Hall: No, we felt bad for you, you shouldn't apologize. We appreciate the fact that you stuck it out with a bad back.

**XV. CLOSING REMARKS BY THE CHAIRMAN**

Chairman Hall: I just want to thank you all for the time and effort that you put into all of the petitions that come before us. In the interim week period I get phone calls from people. You are thinking about this all the time, driving past sites, trying to think of different ways to do things, and I really appreciate that. The town should be very happy with the fact too that you are not just spending, well in this case it was five hours tonight, but that's beside the point, a couple of minutes on these things. You are spending a lot of time and trying to make the right decision, and I do appreciate that.

We have to do something about the heat in this room. About half way through the meeting it goes up to about 85 degrees. There is no need to have the heat on at all. It's oppressive. If they don't do something, we are going to have to start opening the door, we're going to have to prop it with a chair, and have that door open.

Commissioner Anest: And we have to have the batteries checked in the microphones.

Chairman Hall: I know he was in here tonight checking them.

**XVI. ADJOURN**

Commissioner Leggo moved to adjourn the meeting. The motion was seconded by Commissioner Sobieski. The meeting was adjourned at 11:07 p.m.

Respectfully submitted,



Norine Addis  
Recording Secretary