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- 14 4. Special Permit (Location of Use) / P. Taylor / Washington Street - NO ACTION #409-09
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- 28 18. Special Permit / C & W Builders / Main Street, Yalesville – NO ACTION #415-05
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PLANNING AND ZONING COMMISSION
Town of Wallingford
SPECIAL MEETING
Monday, November 30, 2009
MINUTES

The Special Meeting of the Wallingford Planning and Zoning Commission was held on Monday, November 30, 2009, at 7:00 p.m. in Room 315 of the Town Hall Municipal Building, 45 South Main Street, Wallingford, Connecticut.

In attendance were Commissioners Mr. James Fitzsimmons (Chairman), Ms. Marci Baxter (Vice Chairperson), Ms. Stacey Voss (Acting Secretary), Mr. James Seichter, Mr. Patrick Birney (arrived after the start of the meeting), Mr. Chris Smith (alternate), Mr. Jon-Paul Venoit (alternate).

Absent was Mr. David Fritz (Secretary)

The Town staff persons attending were Assistant Town Planner Ms. Kacie Costello, and Recording Secretary Sonja Vining.

Chairman Fitzsimmons called the meeting to order at 7:09 p.m. The Pledge of Allegiance was given to the Flag. Chairman Fitzsimmons introduced the Commissioners and the Town staff persons to the audience of approximately 25 people.

Chairman Fitzsimmons announced for the public that Items 4 and 6 on the agenda would not be heard until the January meeting.

APPROVAL OF MINUTES:

October 13, 2009 - Regular Meeting – Action Minutes

Ms. Baxter made a motion to approve the Action Minutes from the Regular Meeting of October 13, 2009 as submitted. The motion was seconded by Mr. Seichter and passed.

October 13, 2009 – Regular Meeting – Minutes

Ms. Baxter referred to a letter from Timothy J. Lee to Linda Bush, Town Planner, dated November 4, 2009 (Att. 15). Kacie Costello, Assistant Town Planner indicated that the correction had been made to the Minutes. Ms. Baxter made a motion to approve the Minutes of the Regular Meeting of October 13, 2009 as submitted. The motion was seconded by Mr. Seichter and passed.

August 17, 2009 – Special Meeting - Minutes

To be taken up at the next meeting.

Election of Officers - Chairman Fitzsimmons noted that since all of the regular members were not present the Commission would not be able to elect officers at this meeting.

Approval – 2010 Meeting Schedule

Ms. Baxter made a motion to accept the 2010 Meeting Schedule as submitted. The motion was seconded by Mr. Seichter and passed.

Voting on the following applications were: Ms. Baxter, Mr. Seichter, Ms. Voss (voting in place of Mr. Fritz), Mr. Fitzsimmons and Mr. Birney. All votes taken were roll call unless noted otherwise.

PUBLIC HEARINGS:

7:00 p.m.

1. Zoning Amendment / PZC / Temporary Signs #909-09

Ms. Voss Acting Secretary, read the 7:00 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Draft Proposed Amendment, Wallingford Zoning Regulations (Att. 1A); Minutes from October 13, 2009 (Att. 1B).

Chairman Fitzsimmons stated that this issue has been discussed at several regular meetings and workshops. Kacie Costello, Assistant Town Planner indicated that her office has received several inquiries about the proposed amendment.

Mr. Seichter discussed 2a and 2j. Kacie Costello, Assistant Town Planner indicated that her office would consider it a registration. If someone wanted to install a temporary sign he/she would register with the Planning Office once a year and then he/she would notify the Office every time they put up the signs through the course of that year. Mr. Seichter stated that he is not a supporter of the A-frame style of signs and would not be in favor allowing them. He is concerned that there may be an enforcement issue but he believes that if the Commission sees in the future that it is being abused the Commission would have the ability to take the regulation off of the books. With that being said he stated that he would support the regulation but would like to hear other thoughts on the A-frame signs.

Chairman Fitzsimmons stated that in its present state he would support the regulation but also feels that you have to wait and see how it is really going to work. It is an attempt in an area that was of significant concern by a number of businesses and he feels it is a good first step.

Chairman Fitzsimmons asked for public comment.

Speaking from the public was:

Craig Fishbein, Grieb Road, stated that he is against this regulation. It is his position that there has been noncompliance and in the face of that the Commission is just bending the rules. Mr. Fishbein stated that once this gets put on the books it is not an easy thing to just take it off of the books, it would be very difficult. He suggested putting some sort of time limit or review period on it. Mr. Fishbein discussed 2d of the Proposed Amendment. He asked how it is to be determined where the Town or State ROW is. Mr. Fishbein has concerns with this dovetailing into a possible ordinance that might be passed by the Town Council having to do with enforcement. He does not think it would be prudent for the Commission to address this without some sort of enforcement measure in place. He questioned the size of the freestanding signs being allowed to be 8.5 sq.ft. Mr. Fishbein feels that is quite large and that is not what he envisioned. He stated that there has been noncompliance in the past and now to give into that would be inappropriate. He suggested that perhaps there should be a moratorium on the people that have not been in compliance. Have a moratorium on them filing there permit for a sign and give the people that did follow the law the ability to take and use this regulation.

John Letourneau, Regent Court, asked if anyone has contacted the Town of Cheshire to see how its regulations have been working. Kacie Costello, Assistant Town Planner stated that her office has some concerns with enforcing the regulation. She doesn't know how the enforcement has been in the Town of Cheshire. Mr. Letourneau stated that Wallingford has essentially copied the regulations from Cheshire without knowing how they actually work. Mr. Letourneau understands the Commission's feelings on A-frame signs but if anything he would like to see restaurants exempt from not using them. Restaurants often post their menus on those types of signs. He has concerns with this permitting process that has been adopted from Cheshire. He thinks the two weeks time frame is going to be a problem. These regulations will be very difficult to enforce and he also feels that once it is on the books it wouldn't be so easy to take off.

Kacie Costello, Assistant Town Planner stated that Cheshire happened to be a near by town that had this regulation so that is why it was chosen. She did not know if Linda Bush, Town Planner, had spoken to people from Cheshire regarding how the regulation has worked.

Wes Lube, Montowese Trail, asked if the amendments have been posted on the Town website so the public would have the opportunity to review them. Kacie Costello, Assistant Town Planner indicated that they have not been posted on the website but it is available in the Planning Office. Mr. Lube does not feel that is sufficient.

Kacie Costello, Assistant Town Planner stated that the Town doesn't have the Staff to post everything on the website but the Legal Notice was posted. If anyone had interest the Planning Office would fax the information to make it as available as possible.

Mr. Lube pointed out that in several locations in town there are businesses that have people holding signs out by the street directing people to their services. He asked how that is handled under the regulations. Chairman Fitzsimmons stated that this amendment is only relating to temporary signage. Kacie Costello, Assistant Town Planner stated that the regulations really don't speak to that type of situation and it would be very difficult to write a regulation that would enforce or prohibit that type of sign.

Kacie Costello, Assistant Town Planner stated once again that she has some concerns with enforcement and the amount of signage that may occur in town if this is allowed. Record keeping would be involved and it would be much more difficult to keep track of who is complying and who is registered and who isn't and if they are within their allowed time frame. Additionally, she feels this could cause some real sign clutter.

Chairman Fitzsimmons stated that later in the agenda the issue for the potential for the Town Council passing an ordinance violation would be discussed and it is not a part of this discussion. This is just an amendment to the Zoning Regulations. Chairman Fitzsimmons stated that this is an attempt to qualify and quantify signage, it is not meant to be a burden to the staff. People would be required to register and the Town would be entitled to collect a fee.

Mr. Seichter stated that at this time he would support this regulation. He does not feel that once it is on the books it would be difficult to take it off if the Commission finds that it becomes unruly and impossible to enforce. He feels that enforcement would be an issue. Mr. Seichter doesn't believe this is perfect but there is a need to assist businesses and this is a start. He doesn't feel that A-frame signs are appropriate. The downtown restaurants probably don't have enough land to place a sign because according to this regulation the sign may not be in a Town or State ROW.

Ms. Baxter stated that she is concerned with signs being placed where it creates a sight line issue. She would support Mr. Seichter in not allowing A-frame type of signs. If the Commission chooses to exempt restaurants she would be fine with that. She would like to see something added to the Proposed Amendment regarding sight line issues and A-frame signs.

Mr. Birney stated that the Commission has met several times to discuss this issue and he feels it has a solid framework of an amendment that he could support. He agreed with Mr. Lube that at some point this should be posted on the website to allow members of the public to view it. He is in support of the proposed amendment as it appears today.

The Commission decided to add to the end of 2f "and shall exclude A-frame style signs."

After some discussion the Commission decided to add to the end of 2d "or within a sight line."

2j was revised to read "Any business that violates any of the requirements within Subsection 1 & 2 regarding temporary signs shall not be granted a temporary permit registration for one (1) year following the date the violation is recorded."

2a was revised to read "The Applicant must register prior to the placement of a temporary advertising sign."

MS. BAXTER: MOTION TO CLOSE THE PUBLIC HEARING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

MS. BAXTER: MOTION TO AMEND SECTION 6.9C OF THE ZONING REGULATIONS TO PERMIT TEMPORARY SIGNS FOR LIMITED PERIODS OF TIME AS DISCUSSED THIS EVENING AND AS AMDENDED IN OUR PROPOSED AMENDMENT TO THE REGULATION BASED UPON ALL OF THE EVIDENCE THAT HAS BEEN PRESENTED AT ALL OF THE HEARINGS

AND WORKSHOPS ON THIS MATTER MANY TOWNS AND BUSINESSES EXPRESSED THE NEED FOR ADDITIONAL VISABILITY DURING THESE MORE DIFFICULT ECONOMIC TIMES AND AFTER A GREAT DEAL OF RESEARCH AND MULTIPLE PUBLIC HEARINGS AND WORKSHOPS THE COMMISSION HAS DETERMINED THAT THIS AMENDMENT IS CONSISTANT WITH OUR REGULATIONS AND IS AN ATEMPT TO ADDRESS THESE CONCERNS ON A TEMPORARY BASIS SO THE COMMISSION CAN REVISIT THIS ISSUE IF IT DOES NOT SEEM TO BE WORKABLE.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

2. Zoning Amendment / PZC / Downtown Signs #912-09

Ms. Voss Acting Secretary, read the 7:00 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Proposed Amendment, Wallingford Zoning Regulations (Att. 2A); Map (2B); Linda Bush, Town Planner, to Steve Lazarus dated October 15, 2009 (Att. 2C)

Kacie Costello, Assistant Town Planner indicated that there have been many inquires about this proposed amendment to the regulations. She pointed out that DOT would have to grant approvals for most of the properties and most of the signs that are proposed under this regulation.

Chairman Fitzsimmons stated that he supports this change.

Chairman Fitzsimmons asked for public comment.

Speaking from the public was:

Craig Fishbein, Grieb Road, stated that moving eastward there are similar restaurants and businesses as there are in the downtown area. He stated there is a fairness issue that has to be addressed. Chairman Fitzsimmons stated that changes are done by zone and he is not aware of any request asking the Commission to expand what Linda Bush, Town Planner, had proposed back in October. He doesn't want to limit it but these changes are tied to a zone. Mr. Fishbein suggested that perhaps it could be crafted differently to include those competing businesses.

Steve Lazarus, Wallingford Center Incorporated, thanked the Commission for working so closely with WCI to address the downtown zoning regulations. He stated that if temporary signs were requested downtown DOT would have to approve every sign on a case-by-case basis. That process would also have a fee involved. Mr. Lazarus stated that the attraction of the blade signs is that they can be mounted high enough so they can be seen over the parked cars along Center Street. He does not believe that the blade signs would require DOT approval. Mr. Lazarus had no objection to businesses in other locations being allowed to use blade signs.

John Letourneau, Regent Court, stated that the downtown business district isn't really something that is on the books. He gave some history on the development of that district. It was originally developed so the businesses in that district could get a low cost loan to start a business. He doesn't believe that the DOT would have anything to do with the blade signs.

Chairman Fitzsimmons suggested that if this amendment is approved it be referred back to the Planning Office to see if it would be appropriate in any other zone. If it could be expanded he would be in favor of referring it to a future workshop agenda.

Mr. Seichter supports the regulation as proposed.

Ms. Baxter suggested that a size limitation be included for the hanging signs in Section 1a. Kacie Costello, Assistant Town Planner stated that the current regulation limits the size of hanging signs to 6 sq.ft. The Commission added on to the end of 1a "and a size no greater than 6 square feet."

MS. BAXTER: MOTION TO CLOSE THE PUBLIC HEARING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

MS. BAXTER: MOTION TO APPROVE AN AMENDMENT TO SECTION 6.9.4.H OF THE ZONING REGULATIONS TO ADOPT STANDARDS TO PERMIT ADDITIONAL SIGNAGE IN THE DOWNTOWN BASED ON THE TOTALITY OF THE EVIDENCE AND COMMENTS IN WORKSHOPS AND HEARINGS THIS AMENDMENT WILL ENHANCE THE DOWNTOWN IN A POSITIVE MANNER AND MAINTAIN THE DOWNTOWN ATMOSPHERE.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

7:15 p.m.

3. APA Text Amendments / PZC / Regulated Activity and Vehicle #913-09

Ms. Voss, Acting Secretary, read the 7:15 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Linda Bush, Town Planner, to Planning & Zoning Commission dated 9/14/09 (Att. 3A); Linda Bush, Town Planner, to Amey Marrella, CT Department of Environmental Protection dated October 15, 2009 (Att. 3B); Proposed Amendments Wallingford Aquifer Protection Areas Regulations (Att. 3C); Minutes from October 10, 2007 (Att. 3D); Suboena Duces Tecum to Vincent Mascia (Att. 3E); Janis Small, Town Attorney to Vincent McManus dated November 20, 2009 (Att. 3F); Linda Bush, Town Planner, to Planning & Zoning Commission dated 9/6/07 (Att. 3E1); Linda Bush, Town Planner, to Adam Mantzaris, Corporation Counsel dated 7/13/07 (Att. 3F1); Adam Mantzaris, Corporation Counsel to Linda Bush, Town Planner, dated July 25, 2007 (Att. 3G); Paul E. Stacey, Linda Bush, Town Planner, dated September 5, 2007 (Att. 3H), Roger Dann to Wallingford Aquifer Protection Agency dated July 2, 2007 (Att. 3I); Paul E. Stacey to Linda Bush, Town Planner, dated September 5, 2007 (Att.3J); Aquifer Protection Task Force dated February 15, 1989 (Att. 3K); Environmental Protection Water Resources (Att. 3L); 4.12. Aquifer Protection (APD) District (Att. 3M); Supplement B.1 DEP dated April 1997 (Att. 3N); Overview Report Oak Street Wellfield (APA 139) November 2000 (Att. 3O); Robert Hust to Linda Bush, Town Planner, dated June 7, 2007 (Att. 3P); DEP Model Municipal Regulations Aquifer Protection Areas Revised on October 1, 2007 (Att. 3Q); Linda Bush, Town Planner letter dated August 31, 2005 (Att. 3R); Thomas Morrissey to Roger Dann dated January 31, 1997 (Att. 3S); Ruling for Administrative Appeal dated September 8, 2009 (Att. 3T)

Chairman Fitzsimmons stated that in October 2007 this group acting as the Aquifer Protection Agency for the Town amended the APA Regulations to clarify that small engine repair is a regulated use. That was challenged and the Judge found that the amendment was proper but ruled against the Town because the word transmission was not included in the required legal notice. As a result of the Judges decision and upon advise of the Town Attorney it has been recommended that another public hearing be held this evening. Chairman Fitzsimmons noted for the record that Senior Engineer for the Water & Sewer Divisions Vincent Mascia was present.

Kacie Costello, Assistant Town Planner gave some history on the Aquifer Protection Regulations. An issue came up as to whether or not small engine repair was regulated. The State had always considered it to fall under their definition of vehicle. The regulation was put on the books and it was challenged in court and the Judge has since overruled it so now the Commission is looking back at putting small engine repair on there. Kacie Costello, Assistant Town Planner indicated that the State has always considered it regulated.

Chairman Fitzsimmons asked for public comment.

Speaking from the public was:

Attorney Vincent McManus, 116 South Main Street, spoke representing John Herasimovich. He asked that the change not be adopted because it will broaden the scope of the regulation, which he considers to be ill advised in the first place. Attorney McManus asked that Vincent Mascia, Senior Engineer, Water & Sewer Divisions come forward so he could be questioned through the Chairman. Attorney McManus wanted to demonstrate why he does not believe that adding Mr. Herasimovich's business to the scope of this regulation does anything to achieve the purposes that the regulation was adopted for, which was for the protection of the Aquifer. He believes that his client's business is the only business that is going to be impacted by this regulation. He feels that bringing the Herasimovich business into the scheme of the regulation will not achieve the stated

purpose of the regulation as set forth in Section 1A of the regulation itself. Attorney McManus would establish some fundamental points, through Mr. Mascia, that are generally unknown.

Attorney McManus asked questions to Mr. Mascia through Chairman Fitzsimmons. Mr. Mascia indicated that he believed that he brought the materials that he was asked to produce. He brought the final report for the Level A mapping project that the Town undertook to map the aquifer areas in accordance with DEP regulations that define the process and the criteria for mapping aquifers. He stated that the study was conducted and completed in 1995 and resulted in the Level A aquifer maps which are the basis for the Aquifer Protection Area that is defined on the current zoning map. The study was conducted by a consultant hired by the Public Utilities Department, Atlantic Geo Science Corporation, out of New Hampshire. There is a report and a series of maps contained in the report. There are a number of maps that show various activities and data that was gathered to produce the final report. Attorney McManus asked if the establishment of the Aquifer Protection area for the Town of Wallingford took into account all of the developments within that area. Mr. Mascia indicated that the study was based on the accumulation of all data related to the aquifer and any supporting data. The study does not take into consideration any man made development. All of the data is related to the natural terrain. Attorney McManus stated that the study ignored all manmade developments within this area. Mr. Mascia stated that by design it is mandated through the DEP regulations that define how the study is done that those features be ignored. He stated that the study defines the Aquifer in terms of what is there today, in terms of natural features. It represents conditions, as they exist today ignoring manmade development.

Attorney McManus asked how many test wells were dug to establish the perimeters of this Aquifer Protection Area. Mr. Mascia did not know the exact number of wells that were dug. There were numerous test wells that were dug as part of the study and wells that were in the record were looked at and compiled into the study. Mr. Mascia indicated that the study is a compilation of all available data through DEP, the Town of Wallingford, private records and other sources. Whatever information could be gathered was compiled into this study. The study results in a computer model of the behavior of the aquifer. It is the net of all of the data that was available including wells that were specifically drilled for the study. Attorney McManus asked how many test wells were drilled within 200 yards of his client's property. Mr. Mascia indicated that he didn't believe there were any. Attorney McManus asked if the Aquifer Protection area was established by actual tests or was it done by a computer model. Mr. Mascia explained that it is a combination of both. The data that is collected is compiled into a computer model that simulates the actual structure and behavior of the aquifer. It is calibrated on the basis of actual pumping tests and that is where the test wells are utilized to measure the change in water levels in the aquifer in response to actual pumping tests that were conducted as part of the study. The model is calibrated to reflect real conditions that were actually measured in the field. Attorney McManus asked where the closest actual test well to his client's property was. Mr. Mascia believed it would be adjacent to the Quinnipiac River on Oak Street.

Chairman Fitzsimmons asked Attorney McManus what direction he was going in. He read for the record the letter that Attorney McManus received from the Town Attorney regarding keeping the discussion to the subject matter of the amendment. Chairman Fitzsimmons stated that the Commission established, acting as the APA, this amendment based on professional input from the Town Water Division. He stated that Attorney McManus was getting too technical for this Commission. The Commission does not want to get into the mapping of the Aquifer Protection Area. Attorney McManus stated that what is before the Commission is whether or not his client, for the first time in his business, would be brought within the scope of this regulation. His client is seeing this for the first time at this meeting.

Mr. Birney asked Attorney McManus if his line of questioning intended to address certain parameters of the regulations including the mapping of them. Attorney McManus answered "of course". Mr. Birney feels that is beyond the scope of what this amendment is about. Attorney McManus stated again that his client is having the whole load of this regulation put on him not just this one paragraph. He asked the Commission to be patient and things would go much faster. Attorney McManus asked Mr. Mascia what type of peer review the study was subjected to and what type of computer model was used to establish this aquifer. Mr. Mascia stated that the review was done by the State of Connecticut. The report was done to produce Level A mapping of the aquifer in accordance with the regulations of the CT state agencies, specifically for aquifer mapping. The results of this study and the map that was produced were submitted to the DEP. Prior to the undertaking of the study the method and the plan for data acquisition was submitted as a report to the State. The State reviewed that report and approved the methodology for the Town to proceed and for the consultant to proceed. The results were ultimately approved by the State of CT. Mr. Mascia stated that it was not up to the Town to do a peer review. It

was done in conformance with State regulations and reviewed and approved by a State agency that wrote those regulations. Mr. Mascia stated that the only peer review would have been done in house through staff of the Water Division. Mr. Mascia stated that the review would have been done by Roger Dann, Eric Kruger and himself.

Attorney McManus asked that the report and maps brought by Mr. Mascia be offered as exhibits. Mr. Mascia only had originals and no copies. Mr. Birney objected to the introduction of any exhibits for purposes of the limited purpose of this amendment, which is to expand the definition to include transmission. In opposition to a position that Attorney McManus made Mr. Birney does believe a Connecticut Superior Court Judge has ruled that the regulation is proper. He quoted from the courts decision (Att. 3T). Mr. Birney objected to the entry of the documents as exhibits for purposes of this amendment. Attorney McManus stated that the Commission is depriving him from making a record in this case. He stated that he has the right to make a record and he wishes to make a record with the fundamental documents by which this Aquifer Protection Area was first made. Chairman Fitzsimmons referred back to the legal notice pointing out that it does not mention the discussion of mapping. He asked Attorney McManus to keep his comments to the issue before the Commission, which is related to the regulated activity and the definition of vehicles.

Attorney McManus asked Mr. Mascia what studies have been done on lawnmower sales, snow blower sales, lawn maintenance equipment sales and those activities to establish how dangerous they are to the aquifer. Mr. Mascia stated that the Water & Sewer Divisions have not undertaken any studies in and of itself. Attorney McManus asked what studies Mr. Mascia has read regarding the dangers of lawnmower sales, snow blower sales, etc. Mr. Mascia indicated that the Department did have access to many of the documents that were entered into the record for this application. He has seen documents from the DEP, the Connecticut Aquifer Protection Taskforce, and other agencies that have all either made recommendations or have offered guidance as to what should be regulated in an Aquifer Protection Area. The position of the Water & Sewer Divisions is based on what it has seen in those documents that lawnmower sales and repairs, or snowmobile sales and repairs, small engine sales and repairs are all activities, which represent a potential threat to ground water quality. Attorney McManus asked that the Chairman take notice of the fact that in the proposed regulations by the DEP that this Commission adopted it did not mention any of the material that is before them tonight. He stated that the proposed regulations adopted by the DEP, before the statutory authority to regulate in this area expired, did not mention lawnmowers, snow blowers, lawn maintenance equipment, etc. in their model regulations that were adopted by this Commission. Attorney McManus stated that the suggestion that the W&S Division relied on the study of the DEP, such studies do not exist. He asked if any staff from the W&S Division has gone out to the Herasimovich property to look at the layout. Mr. Mascia could not answer specifically. He believes that it falls under the oversight of the Watershed Protection Inspectors who have visited the site.

Attorney McManus asked that Chairman Fitzsimmons rule on accepting the maps and report as an exhibit in this hearing. Chairman Fitzsimmons stated that he would ask for input from the Commissioners before making that decision. Ms. Baxter feels that the originals should not be submitted for the record but she has no issue with copies being submitted although she does not see the direct connection to this amendment clarification. Attorney McManus gave a sequence of events that led to this hearing. Mr. Birney pointed out that Attorney McManus has already addressed before this Commission the issue of whether the term vehicle was going to be included in the regulation. This Commission ruled that the definition was going to be included. Attorney McManus appealed that decision and the Connecticut Superior Court has issued a decision. Attorney McManus stated that the question was what was the definition of vehicle and did it include lawn mowers.

Attorney McManus asked Chairman Fitzsimmons again if he is going to allow the maps and report to be submitted as exhibits for the record. Chairman Fitzsimmons suggested that when Attorney McManus was finished with his presentation the Commission would make a decision on that matter.

Attorney McManus stated that he would like to question his client, John Herasimovich for the Commission. Chairman Fitzsimmons asked if Attorney McManus was finished questioning Mr. Mascia. Attorney McManus stated that the only fair thing to do would be to rule on the exhibits at this time. Chairman Fitzsimmons stated to Attorney McManus that he would like to get all of his testimony on the record and allow him an ample opportunity to present his case. Chairman Fitzsimmons would like Attorney McManus to finish up with one speaker before moving on to another. He pointed out to Attorney McManus again that the focus tonight is on the amendment. Attorney McManus stated that the Commission has to have a sound legal reason for keeping something out of evidence. He indicated that if the material is not accepted into evidence this evening he would

file to supplement the record and it could be made an exhibit at that time. He feels it would be easier just to put it into evidence at this meeting.

Attorney McManus stated again that he would like to question his client and have him testify and describe his premises. Mr. Seichter pointed out that this hearing is not a court of law. If Mr. Herasimovich would like to make some comments he is free to do so. Mr. Seichter feels it would be inappropriate to have a back and forth with Attorney McManus questioning Mr. Herasimovich. Chairman Fitzsimmons once again asked Attorney McManus if he was finished questioning Mr. Mascia before the Commission moves on to hear Mr. Herasimovich. Attorney McManus asked Mr. Mascia one more question. He asked how close was the closest test well to Mr. Herasimovich's business. Mr. Mascia estimated using the map, that the closest well was approximately 4,500 sq.ft. from the property to a well that was installed in Pragman Park to the east of Hanover Street. Attorney McManus stated that he was finished questioning Mr. Mascia. Chairman Fitzsimmons thanked Mr. Mascia for appearing.

Mr. Herasimovich stated that the area where he conducts his business is paved and any water that runs off of it runs out into Route 68 and down Route 68 into the State storm catch basins. He believes that nothing he is doing is having any effect on that aquifer.

Roger Dann, General Manager, Water & Sewer Divisions, spoke in favor of the proposed amendment to the regulations. He believes that these amendments are needed. From the record that the Commission has in front of them it is obvious that this is a needed amendment to deal with a clarification of the intent that was always a component of the DEP regulations. The concern of the DEP dealt with the maintenance and repair, not the sales, of internal combustion engines. There is no reason to believe that the potential damage to the aquifer from repairing an internal combustion engine in a vehicle would be any different than if it were a part of a lawnmower, snow blower, etc. Mr. Dann gave some history on the issue of the definition of vehicle. With respect to the mapping of the aquifer that was a process that was done in accordance with very strict guidelines that were established by the DEP and those guidelines were followed by the Town of Wallingford and it was ultimately adopted by the DEP. Mr. Dann indicated that if someone feels there was an error in the mapping process there is a clearly delineated process by which they may make an appeal to the DEP with respect to the accuracy of the map. He stated that this is simply a clarification that is entirely consistent with the intent of the regulations and for the purpose of protecting the drinking water supply whether that relates to a business that is existing or apply to another business seeking to perform the same or similar functions within the Aquifer Protection Area. Mr. Dann strongly endorses the adoption of these amendments and requests that the Commission approve them.

George Adair, Director of Utilities, feels that this matter is very straightforward and very well focused. The Connecticut DEP has clearly indicated that activities related to small engine repairs do fall under the category of regulated activities for the Aquifer Protection Regulations. These amendments would simply make that clear in Wallingford's regulations. He urged the Commission to adopt the amendment.

Chairman Fitzsimmons doesn't believe this is a clarification. He thinks this is a "do over" because the issue of defective notice is why this discussion is taking place this evening. Chairman Fitzsimmons pointed out that the Judge in this case spoke to the notice not the regulations. He feels the Commission has received ample documentation and correspondence and the regulation amendment as proposed is appropriate because it matches the intent of the original regulation that was first adopted back in 2007. Chairman Fitzsimmons would be supporting the amendment as proposed.

Mr. Birney pointed out for the record that this Commission is acting as a legislative body. The Commission is being asked to make a technical amendment to an already clear regulation and a regulation that a Superior Court Judge has already opined is valid and would be proper if adequate notice had been provided with the issue of the term transmission. Mr. Birney is in support of the amendment.

Mr. Seichter indicated that he would support the amendment.

Ms. Baxter stated that she is in support of the amendment.

Chairman Fitzsimmons asked that the Commission discuss the request by Attorney McManus that the maps, records and test results of Mr. Mascia be entered as exhibits for this hearing.

Mr. Seichter did not see the relevance of those exhibits given the narrow scope of what the Commission is looking at and what the amendment is.

Ms. Baxter and Ms. Voss both stated that they do not see the relevance either but don't have a problem if Mr. Mascia wants to submit copies.

Mr. Birney believes he stated his position for the record earlier.

Chairman Fitzsimmons stated that he would not be in favor of having the materials entered as exhibits. He doesn't feel that the maps and report that Mr. Mascia have are necessary for this Commission to enact this amendment.

MS. BAXTER: MOTION TO CLOSE THE PUBLIC HEARING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

MS. BAXTER: MOTION TO APPROVE A TEXT AMENDMENT FOR THE WALLINGFORD AQUIFER PROTECTION AGENCY TO SECTION 2 OF THE AQUIFER PROTECTION AREA REGULATIONS CONCERNING THE FOLLOWING DEFINITIONS: "REGULATED USE RELATING TO VEHICLE REPAIR" AND "VEHICLES" TO CLARIFY THAT THE REPAIR AND MAINTENANCE OF ALL INTERNAL COMBUSTION ENGINES IS A REGULATED ACTIVITY BECAUSE BASED UPON THE TOTALITY OF THE EVIDENCE PRESENTED AND COMMENTS MADE DURING THIS HEARING THE AMENDMENT IS CONSISTANT WITH OUR AQUIFER PROTECTION REGULATIONS AND OUR DIRECTIVE AS THE AQUIFER PROTECTION AGENCY.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

(The Commission took a 5-minutes break)

7:30 p.m.

4. Special Permit (Location of Use) / P. Taylor / Washington Street #409-09

To be heard at the January 11, 2010 meeting.

8:00 p.m.

5. Special Permit / C. Huizenga (WPAA)/South Orchard Street #410-09

Ms. Voss, Acting Secretary, read the 8:00 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Kacie Costello, Assistant Town Planner to Curt Huizenga dated November 17, 2009 (Att. 5A); WPAA Planned Use Summary (Att. 5B); Curt Huizenga to Wallingford Planning & Zoning Commission dated October 8, 2009 (Att. 5C); WPAA Community Building TV (Att. 5D); Vincent Mascia, Senior Engineer to Linda Bush, Town Planner, dated November 24, 2009 (Att. 5E)

Presenting the application were Susan Huizenga and Curt Huizenga.

Ms. Huizenga stated that currently the WPAA is located on Center Street. The new location would be considered a community building and be used in the same manor as the current location on Center Street. The building would be opened predominately in the evenings from 5 p.m. to 9 p.m. The conference room would serve as a boardroom. The most recent use at 28 South Orchard Street was a retail store on the first floor with some manufacturing on the 2nd floor. There would be less foot traffic and daytime vehicle traffic with the WPAA than with the prior retail and manufacturing use.

Kacie Costello, Assistant Town Planner pointed out that a more intensive retail use could replace the one that was there without any approvals.

Chairman Fitzsimmons asked for public comment.

Speaking from the public was:

John Letourneau, Regent Court, stated that he is in favor of the move for WPAA. He has been a neighbor of theirs on Center Street for several years. They are great neighbors and the activity that they generate is in the evenings. It would be a good move for them because they would be staying in the downtown area and it would also open up another storefront on Center Street.

Ms. Baxter asked if the retail use and manufacturing use would be abandoned at 28 South Orchard Street. Ms. Huizenga stated that the organization is non-profit and must be non-commercial so there is no retail intent of any kind. She intends to abandon the retail and manufacturing uses.

Mr. Seichter would like to see the parking lot lined.

Mr. Birney asked if the Zoning Board of Appeals granted the previous owners of this property variances, could the Applicant waive or abandon the variances that were previously granted as part of this application process. Kacie Costello, Assistant Town Planner indicated that they could choose not to use them. Mr. Birney pointed out that the variance is on the land records. Kacie Costello, Assistant Town Planner stated it depends on what the variances were. If they were specific to the business she supposes but otherwise the variances run with the land. Mr. Birney believes there have been variances on the sideyard and backyard of this property.

MS. BAXTER: MOTION TO CLOSE THE PUBLIC HEARING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

MS. BAXTER: MOTION TO APPROVE A SPECIAL PERMIT FOR HUIZENGA TO PERMIT 28 SOUTH ORCHARD STREET TO BE CHANGED FROM ONE NON-CONFORMING USE, RETAIL STORE AND PRIOR USE OF THAT AS MANUFACTURING, TO ANOTHER NON-CONFORMING USE, THE HOME OF WALLINGFORD PUBIC ACCESS TV, SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. THE CONDITIONS SET FORTH IN THE NOVEMBER 24, 2009 INTEROFFICE MEMORANDUM FROM VINCENT MASCIA, SENIOR ENGINEER TO LINDA BUSH, TOWN PLANNER REGARDING THIS APPLICATION.**
- 2. THE APPLICANT MUST DELINIATE THE PARKING SPACES AT THE FRONT OF THE BUILDING.**

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

8:15 p.m.

6. Zone Change / Ichi Ban Properties / South Turnpike Road #506-09

To be heard at the January 11, 2010 meeting.

8:45 p.m.

7. Special Permit / Greene-Woronick / Quinnipiac Street #411-09

Ms. Voss, Acting Secretary, read the 8:45 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Department of Engineering to Planning & Zoning Commission dated November 17, 2009 (Att. 7A); Kacie Costello, Assistant Town Planner to Greene-Woronick Builders, LLC dated November 17, 2009 (Att. 7B); Vincent Mascia, Senior Engineer to Linda Bush, Town Planner, dated November 24, 2009 (Att. 7C); Department of Engineering to Wallingford Planning and Zoning Commission dated November 24, 2009 (Att. 7D)

Presenting the application were Land Surveyor Rosalind Page, and the Applicant David Woronick.

Ms. Page stated that this parcel is approximately .79 acres. There is an existing multifamily house and garage on the property. What is proposed is that the existing buildings would be taken down and a new 11 unit condominium project constructed. There would be 25 parking spaces with the access being off of Bull Avenue only. Ms. Page presented an architects rendering of what the streetscape would look like. There are four handicap style units proposed that would be facing Quinnipiac Street. The handicap units would be two stories. In the back of the handicap units would be the three story units with the garage located on the ground floor. The property would be served by municipal water and sewer, which would both come in from existing utilities on Bull Avenue. Stormwater would be collected in the parking lot and piped out to the existing storm drainage system in Quinnipiac Street. Sidewalks will be brought together from the front of the handicap buildings to the existing sidewalk on Quinnipiac Street. A sidewalk will be run parallel to the entrance driveway to serve the rear seven units and connect to the Bull Avenue sidewalk system. Ms. Page indicated that the driveway radius would be increased as suggested by the Engineering Department. That change would involve the removal of two street trees and perhaps one other. The turnaround area in the parking lot would also be increased by two feet. She indicated that she has no issues with comments from the Engineering Department or the Water & Sewer Divisions. Street trees are proposed along the front along with plantings. There will be a line of 4' high trees planted along the rear of the parking lot as a screen. A 6' high solid white vinyl fence would be installed along the abutting property owner's entire property length on Bull Avenue. Some shrubs and small trees would have to be taken out to install that fence. Trash removal will be provided by individual containers, there will be no dumpster on the site. There are no fences proposed other than for the abutting property on Bull Avenue.

Ms. Baxter asked how the issues on Garden Road are being addressed on this property. Ms. Page gave some history on Garden Road. The FEMA maps were updated in 2000 and the actual flood elevation in the area is between elevation 36 and 37. This site is partially located geographically in that zone. Ms. Page stated that the regulations show that the lowest livable floor area must be 2 feet above the 100-year flood elevation. The lowest floor elevation on this project would be at elevation 39. The handicap units will have a small concrete patio at ground level and the 7 units will have small decks off of the first floor living space facing north.

Mr. Seichter questioned the trash pickup. Ms. Page explained that each unit would have its own trash container that would be picked up by an individual hauler. Mr. Woronick explained that the trash containers would be picked up from each individual in front of their garage and would not be placed at the street. Mr. Birney asked about several large trees on the site. Mr. Woronick indicated that the only trees that are coming down would be where the building and parking lot are being placed. There is a 4-foot maple and a 30-inch maple that would be saved.

Mr. Venoit expressed concern that the 29-foot elevation would be adequate given the history of the area. Ms. Page stated that if a flood elevation certificate needs to be submitted for flood insurance purposes they only have to demonstrate that the buildings were constructed at the flood elevation. Any certificate that needs to be provided in this case would show that the floor elevation is two feet higher than what FEMA requires. Mr. Thompson gave some history on Garden Road stating that the flooding that occurred took place on the west side of the road and never reached the other side of the road or Quinnipiac Street. He believes this area is high enough and far enough away that it would not be a concern. He feels that the elevations as stated by Ms. Page are adequate.

Ms. Page stated that there would be no runoff to the abutting property on Bull Avenue. All of the water will be contained on this site and will be tied into the existing drainage system. The drainage computations would be provided to the Engineering Department as requested.

Ms. Voss asked where the snow would be placed and how it would be removed. Ms. Page stated that normally the condo association would contract with a snowplow operator to take care of all the snow removal in the parking lot and the sidewalks. Chairman Fitzsimmons pointed out that there are no snow shelves shown on the drawing. Ms. Page indicated that she would add a designated snow storage area to the drawings.

Mr. Woronick indicated that there is no outdoor recreation space planned.

Chairman Fitzsimmons asked for public comment.

Speaking from the public was:

Wes Lube, Montowese Trail, asked about parking being allowed in front of the condominiums. Ms. Page indicated that there is no on street parking proposed. All of the parking would be on site. Mr. Lube clarified that the ground floor elevation would be at elevation 39. Ms. Page confirmed that elevation 39 is correct.

MS. BAXTER: MOTION TO CLOSE THE PUBLIC HEARING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

MS. BAXTER: MOTION TO APPROVE A SPECIAL PERMIT FOR GREENE-WORONICK TO PERMIT AN ELEVEN-UNIT, MULTI-FAMILY DEVELOPMENT AT 331-325 QUINNIPIAC STREET AS SHOWN ON PLANS ENTITLED "SITE LAYOUT PLAN, SILVERSMITH COMMONS, #331 QUINNIPIAC STREET, ALSO ON BULL AVENUE, DATED 11/2/09 SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. A \$5,000 SEDIMENTATION AND EROSION BOND.**
- 2. THE CONDITIONS SET FORTH IN THE INTEROFFICE MEMORANDUM (DATED NOVEMBER 24, 2009) FROM VINCENT MASCIA, SENIOR ENGINEER TO LINDA BUSH, TOWN PLANNER REGARDING THIS APPLICATION.**
- 3. A \$16,000 PERFORMANCE AND MAINTENANCE BOND.**
- 4. THE CONDITIONS SET FORTH IN THE NOVEMBER 24, 2009 MEMORANDUM FROM THE DEPARTMENT OF ENGINEERING TO WALLINGFORD PLANNING AND ZONING COMMISSION REGARDING THIS APPLICATION.**
- 5. A \$6,000 CONSTRUCTION BOND.**
- 6. THE ADDITION OF A SNOW SHELF SHALL BE SHOWN ON THE FINAL MAP.**
- 7. THE ADDITION OF A 6 FOOT HIGH SOLID WHITE VINYL FENCE ALONG THE PROPERTY LINE OF CANESTRI FROM THE STREET LINE BACK TO THE REAR OF THE GARAGE.**

Mr. Birney would like to include a provision in the conditions of approval that would state that if there are any changes to the final construction that the Applicant must appear before the Commission before making those changes.

MS. BAXTER ADDED CONDITION #8 TO HER MOTION:

- 8. IF THERE ARE ANY CHANGES TO THE FINAL CONSTRUCTION THE APPLICANT HAS TO COME BACK TO THE COMMISSION BEFORE MAKING ANY OF THOSE CHANGES.**

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

8. Special Permit / Mesite Family Limited Partnership / North Colony Road #412-09

Ms. Voss, Acting Secretary, read the 8:45 p.m. public hearing legal notice. She acknowledged the correspondence received for the record from: Department of Engineering to Planning & Zoning Commission dated November 17, 2009 (Att. 8A); Wallingford Department of Engineering to Fred Greenberg, Director of Traffic Engineering dated November 13, 2009 (Att. 8B); Kacie Costello, Assistant Town Planner to Mesite Family Limited Partnership dated November 19, 2009 (Att. 8C); Inter-Departmental Referral Fire Marshal dated November 11, 2009 (Att. 8D); Dennis Ceneviva Special Permit (Att. 8E)

Presenting the application were Attorney Ceneviva, the Applicant Robert Mesite and John Mansini, BL Companies.

Attorney Ceneviva stated that they did not plan on a lengthy presentation. They are in front of the Commission because their plan presupposes that the waiver that was provided back in 2003 and again in 2005 with respect with the 50-foot landscape along Route 5 would remain in effect for this development. Attorney Ceneviva stated that the parcel is 3.55 acres in size and has an unusual shape. The proposal is to develop the sight over time. The north end would have the first building to be built which would be the Sonic Drive In Restaurant. The other buildings would be a 5,700 square foot retail building and a two story 17,734 sq.ft. office building. The plan has been filed with the IWWC because to the north and west of the site there is a watercourse.

Attorney Ceneviva pointed out that the primary issue is that without that landscape waiver this project doesn't fit because the property line along Route 5 is not parallel to Route 5. Mr. Mansini reviewed the map showing where the property line runs for this site. Mr. Mansini pointed out what was approved in 2005.

Attorney Ceneviva stated that to the west of property they are restricted by Meeting House Brook, which has a 50-foot review area. There are issues that will be addressed at the next IWWC meeting on Wednesday night. Between the skewing of the property line along Route 5 and the meandering of Meeting House Brook to the west there is a pinch point on this site. Attorney Ceneviva stated that since this area is very well developed there is a very small likelihood that this road would be widened in that area. What is proposed should remain for many years to come.

Mr. Mansini stated that the area is very well developed and he doesn't foresee any changes being done on Route 5 in that area. If the Commission holds the conditions of approval from 2003 and 2005 that 50-foot of streetscape would always be there. Mr. Mansini stated after everything in the area was opened the current traffic has been counted and the peak hour traffic never exceeded what was projected for this area. Attorney Ceneviva stated that in 2003 there was green space of approximately 17,000 sq. ft. and the proposal that is being considered at this time there would be approximately 18,500 sq.ft. of green space. The parking that was near the road on the 2005 approval has been pulled back in its entirety so it would be a consistent greenbelt along Route 5. Mr. Mansini discussed the traffic study that was done when the BJ's was built and at that time there was a third party peer review.

Chairman Fitzsimmons asked Mr. Thompson if he felt that a peer review of the traffic study would be warranted. Mr. Thompson stated that it is clearly the prerogative of the Commission. He has spoken with the Applicant about Engineering comments that were produced on November 13th. The Applicant indicated that they were looking at the numbers provided by the Engineering Department. Mr. Thompson pointed out that the Sonic is new and has very limited historical prospective. His department is working on figuring out how to best deal with that issue. He stated that if BL Companies and the Engineering Department can agree on an approach to calculating trip generation then he feels there would be the capability within the Town Staff to deal with it rather than have a peer review. Mr. Thompson is confident that they will be able to work out the numbers. He agreed that what is out there is what is going to be there in the foreseeable future.

Mr. Birney has not looked at the traffic study. He pointed out that the Engineering Department recognizes that this is not a typical restaurant model. Mr. Birney has been to a Sonic and feels it is very important to take a close look at the trip generation that will be generated from this new site. He believes that because of this unique model there needs to be a peer review done on this traffic.

Mr. Mansini stated that the trip generation number provided was conservative and if they use the numbers suggested and the access mitigation would give them the ability to make the numbers work. Mr. Birney strongly urges the Commission to have a peer review study done on this property in light of this model and in light of this street. Mr. Mansini stated that a peer review of this issue would not create any new data. Mr. Birney believes that it would be possible to get a hold of trip generation from the people at Sonic. Mr. Mansini stated that he has asked but there aren't enough in the New England area to be able to draw the necessary data from. Mr. Birney stated that in the memo from John Thompson dated November 13, 2008 he believed that it is important to get trip generations from Sonic and he echoes that request. Mr. Mansini stated that is a different subject than getting a third party peer review.

Chairman Fitzsimmons clarified that the site was originally approved for a 50 foot setback from the curb line rather than a 50 foot setback from the street line at the July 8, 2002 P&Z meeting. Attorney Ceneviva wants the Commission to reconfirm that before they move forward. Chairman Fitzsimmons stated that he is not opposed

to this because it is a mature street. He appreciated Attorney Ceneviva coming to the P&Z before approaching the ZBA.

Kacie Costello, Assistant Town Planner clarified that this is not actually a waiver of the zoning regulations it is a determination that was based on the pre-existing parking configuration.

Mr. Seichter is looking at this as a completely new site. It is his position that the Applicant should go before the ZBA. He is looking at it as a new site and would not support it.

Mr. Mansini pointed out that the parking that existed when Calcagni was there went right to the street line, there was no landscaping.

Ms. Baxter clarified that what is being discussed is 50 feet of landscaping along the entire frontage. The question being is it 50 feet from the street line or 50 feet back from the property line. Ms. Baxter would support that on this property only.

Mr. Birney agreed with Mr. Seichter that the ZBA is the route that the Applicant needs to go because this is a new development of a new parcel.

Chairman Fitzsimmons stated that the other issue is the peer review of the trip generation traffic study. He feels that the Commission has been very well served in the past by peer reviewers. He indicated that he would be in favor of requesting a peer review of this traffic study with a special request that information be gathered from Sonic. The Commission unanimously agreed that there should be a peer review done on the traffic study. Mr. Thompson would work on coordinating a peer review.

**MS. BAXTER: MOTION TO CONTINUE THIS HEARING TO JANUARY 11, 2010 AT 7:00
 P.M.**

**THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE
VOTE.**

NEW BUSINESS:

9. Site Plan / Practical Energy Solutions / Research Parkway #218-09

Ms. Voss, Acting Secretary, acknowledged the correspondence received for the record from: Department of Engineering to Planning & Zoning Commission dated November 17, 2009 (Att. 9A); Kacie Costello, Assistant Town Planner to Richard Shampain dated November 19, 2009 (Att. 9B); Wallingford Department of Engineering to John Paul Garcia & Associates dated November 19, 2009 (Att. 9C); Erin O'Hare, Environmental Planner to Kacie Costello, Assistant Town Planner dated November 24, 2009 (Att. 9D); Vincent Mascia, Senior Engineer to Linda Bush, Town Planner, dated November 24, 2009 (Att. 9E)

Presenting the application was Steve Carlson, Practical Energy Solutions and Engineer Bill Walters.

Mr. Carlson gave some background on Practical Energy Solutions. Practical Energy Solutions has outgrown its current space and is looking to build a 25,000 sq.ft. building on the site. 15,000 sq.ft. would be warehouse space and 10,000 would be office space.

Mr. Walters reviewed the plan for the Commission. The proposal is for a 25,000 sq.ft. building on 3.4 acres of land. The project complies with all of the zoning regulations. Runoff from the parking area is collected by standard catch basins and pipe system and is directed to a 32,000 cubic foot detention basin that is adjacent to Carini Drive. Mr. Walters has met with Vincent Mascia and the system is designed based on that meeting and complies with the W&S Divisions model for treatment. He indicated that most of the comments received by the Engineering Department have been incorporated into the plans.

Kacie Costello, Assistant Town Planner indicated that there were no staff comments from her office.

Mr. Thompson believes that everything has been addressed except for the possible relocation of the driveway on Carini Drive just to get it a little further away from the intersection. That will not affect the site or the storm drainage.

Chairman Fitzsimmons asked for public comment. There was no public comment.

MS. BAXTER: **MOTION TO APPROVE A SITE PLAN FOR A 25,000 SQ.FT. OFFICE/WAREHOUSE BUILDING FOR PRACTICAL ENERGY SOLUTIONS AS SHOWN ON PLANS ENTITLED "SITE DEVELOPMENT PLAN, PREPARED FOR ROBERT SHAMPAIN, PRACTICAL ENERGY SOLUTIONS, 2A RESEARCH PARKWAY, DATED 10/26/09, REVISED TO 1/23/09 SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1. A \$2,000 SEDIMENTATION AND EROSION BOND**
- 2. THE CONDITIONS SET FORTH IN THE NOVEMBER 24, 2009 INTEROFFICE MEMORANDUM FROM VINCENT MASCIA, SENIOR ENGINEER TO LINDA BUSH, TOWN PLANNER REGARDING THIS APPLICATION.**
- 3. A \$10,000 PERFORMANCE AND MAINTENANCE BOND**
- 4. A \$10,000 CONSTRUCTION BOND**
- 5. THE CONDITIONS SET FORTH IN THE MEMORANDUM DATED NOVEMBER 30, 2009 FROM THE ENGINEERING DEPARTMENT TO THE PLANNING AND ZONING COMMISSION REGARDING THIS APPLICATION.**

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

10. Site Plan / Amaral Associates (Burger King)/North Colony Road #219-09

Ms. Voss, Acting Secretary, acknowledged correspondence received for the record from: Department of Engineering to Planning & Zoning Commission dated November 17, 2009 (Att. 10A); Kacie Costello, Assistant Town Planner to Amaral Associates dated November 19, 2009 (Att. 10B); Vincent Mascia, Senior Engineer to Linda Bush, Town Planner, dated November 24, 2009 (Att. 10C); Erin O'Hare, Environmental Planner to Kacie Costello, Assistant Town Planner dated November 24, 2009 (Att. 10D); Department of Engineering to Wallingford Planning & Zoning Commission dated November 23, 2009 (Att. 10E)

Presenting the application was Everett Amaral and Justin Alpurt, Amaral Associates and Kevin Jones, Burger King.

Mr. Amaral stated that the proposal is to take down the existing Burger King and construct a new one on the same site. The existing site has an inbound driveway and an outbound driveway with a Burger King in the middle, play area in front and a trash enclosure to the north. The proposed layout is very similar. The same curb cuts will be maintained. The building stays in the middle but the trash enclosure has been moved to behind the building. The rear of the parking lot stays as is. The drainage system and grading of the site would not be affected, they would stay the same. There would be additional landscape islands installed. There would be 30 feet of landscaping in the front yard of the site. A variance was obtained for 30 feet where 50 feet is required. There will be two handicap spaces in the front of the building. One additional light pole would be added to the front of the site. They are proposing to add a sidewalk along Route 5. Comments from the W&S Divisions would be incorporated in the plans. The existing building is 3,030 sq.ft. and the proposed building is 3,149 sq.ft. They expect the traffic to be very similar. Landscaping has been added along the north and south property lines.

Mr. Birney stated that on the plan that was handed out there is no sidewalk indicated. Mr. Alpurt stated that the sidewalk is represented by the black area on the plans. Mr. Birney saw that but questioned the fact that it doesn't go across the driveways. Mr. Thompson had two issues with the sidewalk. He does not want it directly adjacent to the road. Route 5 is a very busy road and for the safety of pedestrians he would like it pushed back and also for the reason that the snowplows need some room to place the snow. Mr. Thompson indicated that normally the sidewalk goes straight through the driveways. He stated that the sidewalk needs to be set back because there will be sidewalks installed on the next-door property and they need to connect. The sidewalk

should be set back 5-6 feet from the road. Mr. Thompson stated that this site has historical problems with the sight line coming out of the exit driveway. The Applicant must be sure that all signs and landscaping is set back out of that sight line. Mr. Amaral indicated that he would work with the Engineering Department to work out those details.

Mr. Seichter asked about the flow of traffic on the site. Mr. Amaral indicated that the traffic pattern would remain the same as existing. Traffic enters from the southern most driveway and exits to the north. Mr. Seichter indicated that he would like to see an interconnection to the other properties. Mr. Amaral stated that the option is there if they are directed to connect. The rear of the parking allows for interconnection. There was discussion about the width of the possible interconnection. Chairman Fitzsimmons feels that according to the plan the only interconnection could be to Ives Road LLC. Mr. Amaral reviewed the plan to show the width and locations of possible interconnections. Chairman Fitzsimmons agreed that this site needs an interconnection and he would be in favor of requiring one on the Ives Road LLC side. He asked that it be depicted on the plan.

Mr. Thompson agreed that there should be an interconnection but his office didn't have the opportunity to look at it in depth. He feels that if it is made a condition of approval his office could work with the Planning Department to come up with something that would be acceptable. Mr. Amaral agreed to work with Planning and the Engineering Department on that interconnection.

Mr. Birney would like to see the sidewalk, landscaping and sight lines on the plan. He feels that the Applicant should come back with more details including the interconnection. Chairman Fitzsimmons agreed that usually the Commission gets more information and he would like that information on a plan for the Commission to review prior to approval.

Chairman Fitzsimmons was in favor of continuing this to next month to allow the Applicant time to work with Planning and Engineering to develop a plan for the interconnection. He would also like to see the sidewalks, landscaping, and truck traffic plan for the next meeting.

MS. BAXTER: MOTION TO CONTINUE THIS HEARING TO THE JANUARY 11, 2010 MEETING.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

10a. Location Survey Waiver Request / E. Henry (Blue Hills Orchard) / Blue Hills Road

Chairman Fitzsimmons noted for the record that the Commission received a letter from Mr. Henry requesting a waiver for the zoning location survey requirement needed to obtain a building permit.

Presenting the application was Eric Henry.

Mr. Henry stated that the total lot area for that one parcel is 35 acres.

Ms. Baxter stated that this seems to be the type of a situation that was thought of when the waiver of these surveys was discussed. This activity would be no where near a property line. She would support the application for the waiver.

Mr. Venoit agreed that in this case a waiver is definitely warranted. Mr. Seichter and Chairman Fitzsimmons would support this waiver.

MS. BAXTER: MOTION TO APPROVE A WAIVER OF THE ZONING LOCATION SURVEY REQUIREMENT (SECTION 8.3B), AS PERMITTED IN SECTION 8.3c, FOR BLUE HILLS ORCHARD, INC., TO ALLOW AN IN-GROUND SWIMMING POOL AT 141 BLUE HILLS ROAD BECAUSE BASED ON INFORMATION THAT HAS BEEN PROVIDED THERE IS NO INDICATION THAT THERE IS ANY IMPINGEMENT ON ANYONE ELSE'S PROPERTY.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

RECEIPT AND ACTION REQUESTED:

11. Site Plan / Haury / Pent Highway #220-09

Ms. Voss, Acting Secretary, acknowledged correspondence received for the record from: Application for Site Plan Approval (Att. 11A); Kacie Costello, Assistant Town Planner to Cheryl Haury dated November 20, 2009 (Att. 11B); Vincent Mascia, Senior Engineer to Linda Bush, Town Planner, dated November 24, 2009 (Att. 11C)

Presenting the application were George Haury representing the Applicant and contractor Tim O'Burn.

Mr. Haury is proposing a 50-foot by 60-foot building addition. Mr. Haury indicated that he received the correspondence entered into the record. Mr. Haury stated that he does not have city sewers. Mr. O'Burn indicated that he has been in contact with the W&S Divisions. There is no water going into this building. It is strictly enclosed space for the storage of cars. There are no sewer lines or water lines to the building.

Kacie Costello, Assistant Town Planner stated that the Location of Use permit was approved for the entire property and that is why this is being treated as a site plan addition. It is a revision to the site plan but it is for a Special Permit use. An addition off of the back to the south of the proposed addition was approved administratively for personal storage only. As she understands it at this point they would like to make the entire addition available to be used as part of the business.

MS. BAXTER: MOTION TO APPROVE A SITE PLAN FOR A 3,038 SQ.FT. WAREHOUSE ADDITION FOR HAURY AS SHOWN ON PLANS ENTITLED "ZONING LOCATION SURVEY PREPARED FOR PENT HIGHWAY HOLDING COMPANY, PENT HIGHWAY, WALLINGFORD", DATED 11/9/09 SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. THE CONDITIONS SET FORTH IN THE NOVEMBER 24, 2009 INTEROFFICE MEMORANDUM FROM VINCENT MASCIA, SENIOR ENGINEER TO LINDA BUSH, TOWN PLANNER REGARDING THIS APPLICATION.**
- 2. THE ADDITION OF PARKING AS PER THE REQUIREMENTS OF THE ASSISTANT TOWN PLANNER.**

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE.

12. Site Plan (Accessory Apartment) / Azzolina / North Branford Road #221-09

Ms. Voss, Acting Secretary, acknowledged correspondence received for the record from: Application for Site Plan – Accessory Apartment (Att. 12A); Map (Att. 12B); Ground Floor Plan w/In-Law (Att. 12C); Affidavit (Att. 12D)

Presenting the application was Kristen Johnson and Martin Azzolina.

Ms. Johnson stated that approximately one year ago she and Mr. Azzolina purchased the land and contracted with a builder to build their home. The plans that were submitted to the Building Department did include an in-law apartment. The contractor was supposed to obtain all of the proper permits. He did obtain the building permit but never got the proper approvals from Zoning. They received a Certificate of Occupancy in June 2009 along with a conditional zoning certificate. They had no idea that there was a problem until they received a letter from Kacie Costello, Assistant Town Planner at the end of October. They have since filed an application and that is why they are in front of the Commission now.

Ms. Baxter questioned the fact that the Building Department granted a building permit in this situation. Kacie Costello, Assistant Town Planner stated that the apartment was shown on the floor plans for the original

construction of the house. She stated that this apartment complies with all of the regulations regarding accessory apartments.

MS. BAXTER: MOTION TO APPROVE A 700 SQ.FT. ACCESSORY APARTMENT FOR AZZOLINA AT 132 NORTH BRANFORD ROAD SUBJECT TO INSPECTION BY THE ZONING ENFORCEMENT OFFICER.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

13. Site Plan (Accessory Apartment) / Mezzie / Schoolhouse Road #222-09

Ms. Voss, Acting Secretary, acknowledged correspondence received for the record from: Application for Site Plan – Accessory Apartment (Revision) (Att. 13A); Letter from Alex R. Mezzie dated November 17, 2009 (Att. 13B); Affidavit (Att. 13C); Variance #09-050 granted October 19, 2009 (Att. 13D), Linda Bush, Town Planner, to Alex Mezzie dated July 15, 2009 (Att. 13F); Assessor's Card (Att. 13G); Assessor's Card (Att. 13H); Survey Map 68 Schoolhouse Road (Att. 13I)

No one was present for this application.

Kacie Costello, Assistant Town Planner indicated that the Applicant did end up having to get a variance for the square footage. He originally appeared in front of the P&Z and then went to the ZBA and now he is coming before the P&Z again to modify his original approval. She stated that the Applicant did request a fee waiver for this second application. The Commission recalled that the applicant bought the house after the accessory apartment had been constructed, unaware that building permits had been granted, and the apartment constructed, without approval from the Planning and Zoning Commission.

MS. VOSS: MOTION TO APPROVE A 914.38 SQ.FT. ACCESSORY APARTMENT FOR MEZZIE AT 68 SCHOOLHOUSE ROAD, AND WAIVE THE FILING FEE.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED WITH A VOTE OF 4-1. MS. BAXTER VOTED NO.

EXTENSIONS:

14. Subdivision / Maplewood Const. / Grove Street #104-07

Ms. Voss, Acting Secretary, acknowledged correspondence received for the record from: Vincenzo Perretta, Maplewood Construction to Linda Bush, Town Planner, dated November 6, 2009 (Att. 14A)

MS. BAXTER: MOTION TO GRANT AN EXTENSION FOR FILING OF THE MYLAR AT 47 GROVE STREET FOR AN ADDITIONAL 90 DAYS TO EXPIRE FROM THE DATE OF THE EXPIRATION OF THE LAST EXTENSION.

THE MOTION WAS SECONDED BY MR. SEICHTER AND PASSED UNANIMOUSLY BY A VOICE VOTE.

CORRESPONDENCE:

15. Lee / Chieppo Farm Zoning - Discussed earlier.

16. Anonymous / 1135 Durham Road (Att.16)

Kacie Costello, Assistant Town Planner stated this is not a zoning violation. Her office keeps receiving anonymous letters regarding this property but is unable to respond because the letters are anonymous. She stated that in a residential zone a person is permitted to have one commercial vehicle with a capacity of up to one ton and this complies.

17. Molloy / I-5 Zone

Chairman Fitzsimmons acknowledged correspondence received for the record from: Joan Molloy to James C. Fitzsimmons dated November 13, 2009 (Att. 17A); Joan Molloy to James C. Fitzsimmons dated September 4, 2009 (Att. 17B); I-5 Gateway Development Zone (I-5GD) date stamped September 8, 2009 (Att. 17C); Richard Nunn to Wallingford Planning & Zoning Commission dated July 6, 2009 (Att. 17D)

Kacie Costello, Assistant Town Planner stated that she believes that Attorney Molloy is looking for a time to discuss this issue in further detail.

The Commission decided to schedule a workshop for January 25, 2010 at 7:00 p.m to discuss this issue.

Kacie Costello, Assistant Town Planner would notify Attorney Molloy and the EDC.

BOND RELEASES AND REDUCTIONS:

Kacie Costello, Assistant Town Planner stated that her office is not ready to recommend the release of any of the bonds at this time.

18. Special Permit / C&W Builders / Main Street, Yalesville #415-05

19. Site Plan / Orsini / 2 Northrop Industrial Park Road West #241-06 (Att. 19A)

20. Special Permit / Greene-Woronick / Quinpiac Street & Fern Avenue #403-09 (Att. 20A, 20B, 20C)

REPORTS OF OFFICERS AND STAFF:

21. ZBA Decisions – November 16, 2009 (Att. 21)

The Commission received and noted the decisions of the Zoning Board of Appeals made at the November 16, 2009 meeting.

22. ZBA Agenda – December 21, 2009 (Att. 22)

The Commission received and noted the agenda for the Zoning Board of Appeals meeting scheduled for December 21, 2009.

23. Incentive Housing Zone Update (Att. 23)

Chairman Fitzsimmons stated that he had a meeting with Linda Bush, Town Planner, and John Gervasio regarding the incentive housing zone. He reported that there was little consensus and stated that Mr. Gervasio is taking exception with the application in general. Chairman Fitzsimmons stated that Linda Bush, Town Planner, has told him that they are working on resubmitting the application to get back into the State. The people from the State have visited and the application has been reviewed and resubmitted.

24. Administrative Approvals

a. Site Plan / Gavin / Main Street, Yalesville #217-09

b. Change of Use / Praxis Church / South Broad Street #318-09

c. Change of Use / Bianco / Capital Drive #319-09

The Commissioners had no comments.

25. Notes

26. Zoning Enforcement Log

Kacie Costello, Assistant Town Planner commented on the log.

27. Citation Ordinance

Kacie Costello, Assistant Town Planner reported that she, Chairman Fitzsimmons and Linda Bush, Town Planner, attended a meeting of the Town Council and brought the concept before them and they have agreed to discuss it further. Chairman Fitzsimmons feels that this Commission has made significant progress in zoning enforcement but the issue of a fine is a big stretch for some people on the Council.

Mr. Birney asked if the decision from the Superior Court Judge had been sent to the Commissioners prior to them receiving it in their normal packets. Kacie Costello, Assistant Town Planner stated that last month it was noted for the record. Mr. Birney does not recall seeing it and stated that he believes that if there is a court decision issued the Commission should be given the notice immediately. Chairman Fitzsimmons stated that point has been raised before with Linda Bush, Town Planner, Janis Small, Town Attorney and Adam Mantzaris. He asked that Ms. Costello remind Ms. Bush of the request of the Commissioners.

Ms. Baxter made a motion to adjourn. The motion was seconded by Mr. Seichter and passed unanimously by a voice vote. The meeting adjourned at approximately. 12:01 a.m.

Respectfully submitted,

Sonja Vining,
Recording Secretary
Atts. 1 - 23