

The Shelton Planning & Zoning Commission held a Special Meeting on July 26, 2005 at 7:00 P.M. in the Shelton City Hall Auditorium, 54 Hill Street, Shelton, CT.

Members present: Chairman Alan Cribbins
Comm. Patrick Lopera (arrived late)
Comm. Jason Perillo
Comm. Anthony Pogoda
Comm. Karen Tomko-McGovern (arrived late)

Staff present: Richard Schultz, Planning Administrator
Anthony Panico, Planning Consultant
Pat Garguillo, Court Stenographer
Diana Barry, Secretary

Members absent: Comm. Daniel Oraziatti
Comm. William Papale
Comm. Leon Sylvester

Also attending was Mayor Mark Lauretti

Tapes (2) and correspondence on file in the City/Town Clerk's Office and the Planning & Zoning Office. Documents and letters presented this evening were date stamped in, received and are part of the Planning & Zoning file on these applications.

Attachments are not available on the website.

Chairman Cribbins opened the meeting with the Pledge of Allegiance and Roll Call explaining that are a couple of Commissioners with sick spouses and a Commissioner on vacation. He assured the audience though that Comm. Lopera was on his way down so that we could open the hearings.

Richard Schultz stated you all are probably wondering why the room was not air-conditioned. Obviously, there is some type of malfunction. The Maintenance Director Joseph Sewack was, I personally discussed this with him at 11:00 A.M. and he assured me that there would be no problem. Much to our dismay there is a problem. I want you all to know that I contacted him on his cell and left a message. I contacted him at home and he did not pick up the phone and he doesn't have an answering machine. I also left word with the Administrative Assistant and obviously the Mayor is aware of it because he is here. We did everything humanly possible to make sure this room functions correctly, stated Richard Schultz.

Preliminary Discussion: Mas Property

Mayor Lauretti stated that he wanted to echo the same comments made by Richard Schultz with regard to the air conditioning. I did ring Joseph Sewack, the Maintenance Director, and he didn't get back to me and I also sent the Police Department up to his house to get him. When you have someone in your office at 11 o'clock and there are 6 people standing there all saying the same thing, make sure the air condition is on. And he tells you there is no problem. Then you get here and there is a problem. Makes you wonder what some people are thinking. In any event, hopefully it will corrected in the next hour or so. We don't have a fan here and I am not sure that opening the doors will be any better, we could try it but there is a lot of humidity out there.

I asked to be put on the agenda to discuss with the Planning & Zoning Commission the Mas property, which is a 60-acre parcel that the City owns. It was purchased in 1994 from the FDIC. There was a discussion at that time of the further continuation of Constitution Boulevard North that terminates now at the intersection of Bridgeport Avenue and Route 8. Many years ago, the Planning & Zoning Commission approved the major development of the site with the continuation of Constitution Boulevard North to extend up to Route 108 in the hopes that would become a major artery. That obviously didn't come to fruition. The property came available through the FDIC and the City ceased the opportunity at that time and purchased the property. We have sat on it ever sense, stated Mayor Lauretti.

This was put on the agenda for the Board of Aldermen back in June to discuss the disposition of the property. More specific to Constitution Boulevard North and through our discussions I told the Board that over the past year and a half there have been many development proposals that have requested use of the property or interest in the City trying to purchase the property, the City selling the property. If purchased that would be done with the caveat for the road to be extended to Route 108.

It is very difficult to sell a piece of property to someone when the municipality owns it because there are many opinions. I said to the Board of Aldermen, a month and half ago, that if there is any interest on the behalf of the City to extend the road and create the major artery access that has been discussed for 25 years. This would be the opportunity, that I think you would have, to get this road built and extend at virtually no cost to the City and the taxpayers, stated Mayor Lauretti.

Years ago we, maybe 7 years ago, we did some engineering and preliminary pricing of the road. It was unfeasible at that time. Sense that time there have been changes in the City and as many of you are aware the City has become a major employer for many large and small size businesses. Recently there have been a couple of requests from major corporations. Corporations that I think the City of Shelton could be very proud of. Pretty much in the category of a Swiss Army that intends to move their World Headquarters. Even more dynamic then that is that some of these companies are not large generators of employees but are large tax generators because of the personal property.

Without getting into all the details and specifics of that, I thought, it was important that both the Board of Aldermen and the Planning & Zoning Commission have the opportunity to discuss the future of that road, the extension of road and the zoning that would exist in and around that road. If it is the boards consensus that we request the Planning & Zoning board to take a look at the area and see if there is a desire to solidify the zoning that took place for (inaudible) or some other type of zoning that would be desirable for this (inaudible) and the extension of Constitution Boulevard North stated Mayor Lauretti.

I welcome any comments from the members of the Commission and the Planning Consultant, as to how we proceed forward. One of my thoughts was probably to establish a subcommittee to look at the zoning, and the layout of the road. It might not be bad idea to incorporate some members of the Plan Update Committee.

I know that 15 years ago there was some zoning approved for City Trust that was pretty intense. I will let the Planning Consultant speak to that. You are right Mr. Mayor there's some zoning put in to place for the City Trust proposal and it had some geometry layouts for the road. There was some acquisitions that the City acquired at the time we acquired the Mas property. Since that time Planning & Zoning has done some scratching around in the area and have put some base maps together. We did some tentative layouts to explore some of the pros and cons of the road layouts that were suggested then. We looked at some other configurations that might better serve the area and better deal with the traffic demands on Bridgeport Avenue, stated Anthony Panico.

What we need to do is go resurrect that back work that we have done in the form of rough work, which is a good point of departure. Then proceed from there and get the Commission up to speed. Whatever additional membership you need to supplement for the study Committee then we go from there. We are not starting from zero, we do have some materials and we can move forward from that point, stated Anthony Panico.

I know that the Plan Update Committee has put this particular piece of property within their discussions, stated Chairman Cribbins. So I know that it will be incorporated into the plan that we get. I am looking for a different type of frame, a timeframe with regard to the initial portion of the property, questioned Chairman Cribbins? I couldn't give you a specific reference to the timeframe, answered Mayor Lauretti. I can tell you that a lot of these Corporations when they are in the market place looking they look very aggressively and make decisions because their planning for their future needs is usually immediate. They move expeditiously and unfortunately I know that the wheels of city government don't turn that fast and sometimes they shouldn't turn that fast. Sometimes we should take our time and be very careful in the deliberations about the things that we do that will have a long-term impact on the City, he added.

As you know, last year there was a proposal before the Boards and Commissions within the City that was pretty intense and I think it kind of threw people off balance. I can tell you though that is the type of interest that is out there especially from a corporate standpoint, stated Mayor Lauretti. This particular proposal a year and half ago was designed more for the residential component and some Corporate. It is my thought that most of the property would serve the City well with the road extended at the expense of someone else and also knowing what future use, corporate use that could occur on the site so that it is feasible for all parties concerned.

It also has the potential opportunity to solve some of the City's facility needs up in that area, stated Anthony Panico. When you are dealing with Citywide concerns with expansion and location. That is an area where you should think about fire department needs and public works needs.

5-6 years ago the Board of Aldermen decided to carve out a 5 acre piece for possible relocation of the Fire House out of the downtown area up to the centrally located part of the City enabling a quicker response then from the downtown area, stated Mayor Lauretti. Here again we don't want to reference specific timeframes. The point I want to make is the time is now and the opportunity is now for the City to get this road put in, if you feel it is important. If you don't think it will serve a purpose by way of creating itself as a major artery and relieving some of the traffic from upper White Hills into Huntington Center down to Bridgeport Avenue and Route 8 there. I want people to understand that these things are on the table and we should be discussing them openly. I think it is important and I think the time is now for that discussion.

Chairman Cribbins stated I think it is important to and we should incorporate this into the Plan Update that we are going to get. We will be having more meetings with that committee probably starting in late September and then over that timeframe we will prepare and get that ready for Public Hearings. It is almost ready and it is coming together nicely.

Comm. Karen Tomko-McGovern arrived at 7:25 P.M. and Comm. Lopera arrived at 7:30 P.M.

Thank you very much Mayor Lauretti for your comments. We now have a quorum stated Chairman Cribbins so on to our Public Hearings.

PUBLIC HEARINGS:

A. AVALON BAY COMMUNITIES, INC. (SHELTON II)

Application # 05-17, Joseph Williams on behalf of Avalon Bay Communities, Inc. to amend the Zoning Regulations by establishing a new district entitled MFHD(Multi-family housing district) and related standards –(continued from 6/14/05) and
Application # 05-18, Joseph Williams on behalf of Avalon Bay Communities, Inc. to amend the Building Zone Map by changing from R-1/OPD to MFHD, Bridgeport Avenue/Huntington Street (Map 8, Lot 8) – (continued from 6/14/05)

Chairman Cribbins stated where we are in the process. Avalon Bay Communities submitted an application to the Planning & Zoning Board. We have had over 5 hours of testimony from the applicant and from the Public over the course of 3 meetings. We are now here today and the process we set up the last time, we had completed the Public portion. We will allow Attorney Kelly and a few other people to present some technical data for input. The way the process works then is the applicant will get an opportunity to come in and close their portion, summarize their portion of it in the form of a rebuttal. Then we close the Public Hearing. After we close the Public Hearing then the Commission will have 65 days by Statues to make a ruling on the project but typically we like to get ours done before that. So that is the time line and that is what has brought us up to tonight.

Comm. Pogoda read three additional pieces of correspondence one from Homestead Suites dated July 1st, 2005 under the name of Jean Barrett, a letter from the Conservation Commission dated June 6th, 2005 and a letter from John Anglace, Chairman of the Board of Aldermen dated July 26th, 2005. The first two letters were read before but John Anglace's letter was not. His letter asked that his comments be read into the minutes of the meeting because he was not able to attend this evening's meeting.

John Anglace's letter states, "This project is wrong for the Huntington Street area and for the City of Shelton. I would urge you both as an individual resident and as the President of the Board of Aldermen that the Planning & Zoning Commission rejects it. I have spoken with a number of the Aldermen and assure you that there is a consensus to support such a P & Z decision. Thank you. John F. Anglace, Jr. "

Attorney Kevin Kelly, Bishop, Jackson & Kelly, Stratford, CT. representing The Voices of Shelton, addressed the Commission. At the last hearing when it was continued, we did attempt to discuss issues with Avalon Bay and the parties were unable to agree on no development other than residential property in the R1 zone. That is why we are proceeding with the Public Hearings this evening.

The first issue to address this evening is the standard of review that this Commission has to amend the Zoning Regulations and change the Zoning Map. When a zoning Commission enacts a change with regulations for zone classification it acts in its legislative capacity. Your actions are subject to (inaudible)

In your legislative capacity you act as a formulator of public policy and possess much broader discretion than that of an administrative board. You have wide and liberal legislative discretions which Courts will not disturb unless you act arbitrarily or illegally, stated Attorney Kelly.

Secondly, Connecticut General Statues Section 8-3B states in pertinent part, "if a protest against a proposed change is filed at or before a hearing with the Zoning Commission signed by the owners of 20% or more of the area in the lots included in such proposed change or the lots within 500 feet in all directions of the property included in the proposed change such change should not be adopted unless by a vote of 2/3 (two-thirds) of all members of the Commission. I would like to present the Commission with such a protest petition with in access of 20%.

Avalon Bay Communities has petitioned this Commission seeking both a Zone Change and amendment to the Zoning Regulations. The Commission is presented with a protest petition, which I have just presented to the Commission, in accordance with the Ct. General Statues 8-3B and signed by at least 20% of the property owners within 500 feet of the proposed zone change. There fore Avalon Bay's proposed changes can't be adopted except by a 2/3 (two-thirds) vote of all of the Commission members. That means 5 of 7 Commission members have to vote in favor of this petition for it to become effective.

Third Avalon Bay's attempt to justify the project by placing significant reliance upon the PDD and Special Development areas which are in close proximity to the proposed development site. With regards to the PDD the Connecticut Appellate Court has recently stated that PDD's are a creature not normally spotted in the Connecticut Juries Prudence Courts, stated Attorney Kelly. The Courts struck down municipalities attempt to use PDD's because the use of them is not authorized through a special act or the broad language detailed in Ct. General Statues 8-2. In so far as PPD's are created without proper legislative authority there relative location to the proposed development can't be used as an example of the City's comprehensive plan of development or as a justification for the approval of Avalon Bay's applications. We concur with Avalon Bay that recent Court cases call in to question the legality of the PDD approach to zoning.

Fourth, the proposals are not consistent with the natural resources and open space requirement of the comprehensive plan of development.

Attorney Kelly calls John Trautman to the podium. John Trautman asked for additional time to get himself ready and Attorney Kelly continued with Richard Jager.

Richard Jager, 2 Copel Lane, addressed the Commission. He read a letter, which was received, date stamped in and made part of the Planning & Zoning file.

Stephanie Rias on behalf of Randy York, 29 Courtland Drive, addressed the Commission. She read from a prepared statement that was received, date stamped in and made part of the Planning & Zoning file. She is concerned with health and safety impacts, traffic studies, construction activities, air quality, light pollution, mitigation measures, sewer issues, vibration noise and pollution, negative impact, energy issues, canopy protection, diesel exhaust issues with regard to a daycare center's children playing outside and green space protection. She also read an updated version of what she called a Quality of Life Card 2005, which addresses concerns for land use and public health issues.

End of Side 1A of 2A, Tape 1 of 2 at 8:00 P.M.

Stephanie Rias, continued reading from Randy York's prepared letter. The letter was received, date stamped in and made part of the Planning & Zoning file. The letter states concerns for an intelligent land use plan, a supportive community spirit, concerns with biodiversity, traffic congestion, undeveloped woodland, fast track plan, negative consequences, ecosystems, and concerns with promoting the tax base.

Chairman Cribbins questions if this will go on much longer? No, she answers. This is not relevant to the Avalon Bay applications, stated Chairman Cribbins. It's good stuff, though, states a man from the audience. Oh it is and we can hear it, stated Chairman Cribbins. Several people in the audience state we want to hear it. Several comments all at once from people in the audience and Stephanie Rias continues. Attorney Williams stated that the site plan is not before you this evening.

John Trautman, Ecological Consultant, addressed the Commission. He presented the Commission with one copy of his qualifications, which he summarizes. The qualification letter was received, dated stamped in and is part of the Planning & Zoning file for these applications.

This evening the applications before you concerning a new zoning designation and the amendments I will use as an outline the Route 8 Corridor Plan Update prepared by the City of Shelton, July 1, 1999 and revised May 1, 2000. In the executive summary I will quote to the Commission for the record "The Route 8 Corridor Plan Update report is the conclusion of the work effort and it focuses on that portion of the Route 8 Corridor area along both sides of Bridgeport Avenue between Exit 11 and 13 of the Route 8 Expressway."

As part of this update study there were 4 goals and objective:

Goal # 1 maintain the current pattern of diversified high quality economical development including offices, industry, and the latest support services and provide opportunities for its continued intergrowth. Protecting these growth areas from the intrusion of development forms inconsistent with its goals.

Under Goal # 1 objective letter B to encourage development, which maintains and enhances the corridor while protecting the surrounding residential areas, stated John Trautman.

Goal # 2 provide for the efficient and orderly movement of people and goods into, out of and within the area. Provide safe functional access to individual sites of such economical activity.

Goals # 3 continue to upgrade and expand public utilities and other infrastructure facilities to service existing and anticipated development needs including traffic.

Goal # 4 coordinate development activities in a manner that enhances and protects the environmental qualities of the area. Comprehensively improved the overall visual appearance of the area (inaudible) in concert with site development and building design materials.

So using this as a pathway before this Commission, I have prepared a letter addressing my concerns with these two applications before you. He then read from his letter, which was received, date stamped in, and is part of the Planning & Zoning file on these application. I would like to indulge the Commission to keep this hearing open solely for the receipt of a clean copy. I had a clerical dilemma this afternoon. My clean copy would be the exact replica of this, stated John Trautman. That is fine you can submit a copy stated Chairman Cribbins. I am sure we will get this word for word because we are taking the transcript here, he added.

Attorney Kevin Kelly addressed the Commission. With regard to traffic, the Valley Regional Planning Agency compiled a regional transportation plan in 1994 and subsequently in concert with the Greater Bridgeport Regional Planning Agency a consolidated regional transportation plan was compiled in December, 1997. All the reports address the future concerns that impact the Route 8 Corridor area over a 20-year period, which would currently end (inaudible). They confirm the need for safety while providing economic development, stated Attorney Kelly.

Both the VRPA and the GBRPA reports, and this Commission, in that update recommended several improvements to what they call Study Area A. Which is basically the Bridgeport Avenue, Huntington Street area and that is the site of this proposed development.

They asked for, called for, a new southbound entrance ramp at the interchange for Exit 11 and Bridgeport Avenue to improve access, relieve congestion and dangerous maneuvers that occur daily at the Huntington Street southbound ramp. They called for the widening of Bridgeport Avenue. They called for the Trap Falls Rd., Armstrong Lane intersection with Bridgeport Avenue, which is somewhat, impacted by this alignment and other factors.

These deficiencies are summarized in the 1998 Barkan and Mess Traffic Report, which is also what the experts from Avalon used, that was commissioned by the Shelton Planning & Zoning Commission to analyze the proposed Reservoir Corporate Center project and the Shelton Research Park, stated Attorney Kelly.

What I would like to present to the Commission are two (2) documents, one of which is traffic statistics from the City of Shelton. They document over 100 accidents in the 2001-2005 period in Study Area A. Together with a petition that is signed by more than 1000-1500 of your neighbors in opposition of this proposal.

Avalon Bay Communities proposed application for text amendments and rezoning of 7.08 on Bridgeport Avenue is nothing less than spot zoning. Connecticut Courts have consistently invalidated zoning decisions that have constituted spot zoning. Action by the zoning authority that gives a single lot the small area privileges that are not extended to other land in the vicinity in general (inaudible) sound public policy which frankly (inaudible).

Two elements must be satisfied before a spot zone can be (inaudible). First the zone change must concern a small area of land. This is small enough to be considered spot zoning and second the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole, stated Attorney Kelly.

Avalon Shelton 2 doesn't advance the City's plan of development to encourage the provision of multi-family housing and transitional uses in the Shelton downtown area and River Road corridor area. Avalon Bay's proposed text change and corresponding zone change will not benefit the Shelton Community and is in (inaudible) of the comprehensive plan of development dated October 13, 1992 as supplemented by the Route 8 Corridor Update dated July 1, 1999 and revised May 1, 2000 for the following reasons:

1. It fails to protect residential neighbors from commercial encroachment and allows mix uses in established residential areas.
2. It fails to preserve the integrity of residential neighborhoods.
3. It fails to provide the efficient working movement of people and goods into, out of and within Shelton and to provide adequate access to places of employment, residential, recreational and commercial activities.
4. It fails to protect the City's historic and architecturally significant structures and sites, it's unique geological and (inaudible) sites and its areas of unique natural beauty.
5. It fails to provide gateway entrances into the City.
6. It fails to carefully control development. Especially in sensitive environmental areas which could result in damage to the land and the environment.
7. It fails to take into consideration the increased traffic congestion and the need to preserve Open Space in the face of economic pressure.
8. It fails to confine multi-family development to downtown Shelton and the River Road Corridor.
9. It fails to discourage the granting of use variance including density increases.
10. It fails to investigate the benefits of the Scenic Road Ordinance, which focuses public attention on uniquely scenic roads including portions of Huntington Street.
11. As John Trautman has already indicated, it fails to maintain the current pattern of diversified high quality economic development which includes offices, industry and related support services and provide opportunities for its continued future growth and fails to protect these growth areas from the intrusion of development forms inconsistent with this goals.
12. It fails to encourage development, which maintains and enhances the corridor character while protecting the surrounding residential neighborhoods.
13. It fails to provide the efficient and orderly movement of people and goods into and out of the area.
14. It fails to coordinate development activities in a manner that enhances and protects the environmental qualities of the area. It fails to comprehensively improve the overall visual area to attract the streetscape design in concert with site development and building design in this area.

15. It fails to improve the overall appearance and safety of the corridor area through the use of graphic symbols, planting of trees, improvement of personal safety and the provisions of other functional and (inaudible) improvements that will make the corridor more desirable.
16. It fails to preserve and protect the natural resources, open space and (inaudible) component of the plan. The Valley Council of Governments itself has recommended against this proposal. The executive summary of Route 8 Corridor plan states that planning needs to balance the needs for development and continued growth while protecting the environment and natural resources in the area. Available open land resources must not be consumed with new development which is inconsistent with the established high quality image of the area (inaudible) this areas infrastructure and support services and would not generate the most grand list growth.

Even Avalon Bay's consultant concedes that at a 73000 square foot office with 4 single-family homes would impact the City's grand list (inaudible) then a 171 rental unit development.

Existing land use pattern within Study Area A is committed to light manufacturing, businesses and corporate offices in combination with relatively new major single tenant retail establishments, shopping center, and new dining and transient lodging accommodations supporting the office and corporate developments.

Appropriate zoning of the OPD will promote compatibility with the established land uses, in this case residential stated Attorney Kelly, and the environment. To place minimum burden on the infrastructure and generate maximum benefits to the City.

Tonight Voices of Shelton asks this Commission a very simple question, are you going to stand with Avalon Bay Communities or are you going to stand with the people of Shelton who opposed Avalon's proposal and who elect you to this position of trust because they believe that you have the courage to exercise the discretion to protect what Shelton has always been. A great place to live, work and raise a family. I ask you stand with the Voices of Shelton and reject Avalon's proposal. I thank you for the opportunity to address this Commission with the trust and confidence that the people have placed in you, stated Attorney Kelly.

Attorney Williams, representing Avalon Bay, addressed the Commission. I would like to address those legal arguments made by Attorney Kelly later but what I will do know is turn this over to members of our team that have some responsive questions from the last meeting along with a brief written submission.

David Schiff, Planning Consultant, addressed the Commission. I would like to respond to a couple of issues that were raised at the last meeting and provide you with additional research that we have done. One concern was the number of multi-family units in the City in recent years. We did obtain that information from the City Planner's office since the effective date of the plan of development in 1993 through June of this year there are 532 multi-family housing units approved in the City of Shelton of which 79 were occupied. This compares to the plan of development goal of 1800 additional multi-family units. The goal provides the City with about 30% of what has been there.

The other issue was the impact to the schools at the time information was submitted that shows one or two bedroom units would produce little school age children. In 2004 condos have few school age children and that is the same for rental apartments. I have an article that details some information that was done in New Hampshire that shows very little school age children and the smaller units directly relate back to school children with very little numbers.

Attorney Kelly addressed the Commission. Mr. Chairman he is giving you additional research that was not placed in public record at the last meeting. This, as I understand it, is rebuttal to what has already been proposed not new additional information and I would ask that the new research not be included in the record.

It is rebuttal Mr. Chairman and he doesn't have a right to ask that, stated Attorney Williams. There is a lot of information being given to you tonight and we are being asked to rebut on the spot. We have prepared some responsive documents all of which is in response to comments made the last time, stated Attorney Williams.

We will take these documents and we will ask our Corporation Counsel before we put these in. I will give these to Rick and have him date stamp them. We will get with our Corporation Counsel and ask his opinion. I am not an Attorney so I will get my outside Counsel to tell me if they can be put in, stated Chairman Cribbins. Either way you both have had your arguments. For the record there is no restrictions when the applicant might submit (inaudible) and I will say that anything we submit should be accepted for the record, stated Attorney Williams.

Attorney Williams stated he will submit some information that is Avalon Bay's and its company's profile. I also submit a letter from Mr. Estrada responsive to questions concerning property values. I also will submit another copy of the traffic study that Barkan & Mess did.

David Sullivan, Barkan & Mess Associates, addressed the Commission. I will talk briefly to a hand full of points that have come about at the previous hearings. The first one was, and I think this is a very important point, the traffic report has been submitted for the record and my main charge here is the impact to the area with the zone change. We gave you a letter early on indicating that this proposal has less traffic than what would be (inaudible).

The traffic study itself, on the table that shows our findings, the impact at the intersection of Bridgeport Avenue is at a level of service B and C now at peak hours (inaudible). That will remain a level service of B.

The 100 accidents in 4 years indicate that was a mile from the site. 25 accidents in that large an area including Route 8 and surrounding areas including the shopping centers, (inaudible). That needs to be put into perspective.

We know there have been discussions with regard to an additional ramp that might be coming on line. We talked with CT DOT and there have been discussions but it is years away. It is still being planned, there is no project for it and there is no funding for it.

The last two points and I heard a number of people talking about the accidents on Huntington Street. Our access is from Bridgeport Avenue.

I kept hearing that we have a 21% growth in 2001 as opposed to the 2005, our manual counts are DOT in the morning were 1140-1240 at the south and north of the intersection. 1169 and 1317. 1318 and 1575 were the DOT counts. Little or no growth has occurred in this area, stated David Sullivan.

Andy Greene, a Licensed Professional Engineer, with Millon & McBroom, addressed the Commission. I have a couple of letters to submit. One was from Ted Hart, from my office. The letter answers questions about the garages and layout of the conservation easement. There are 166 parking garages and those are first come basis. The storm water management plan incorporates water quantity and water quality.

Donald Klepper-Smith, Economist, addressed the Commission. He presented a slide show of his professional qualifications.

End of Side 1B of 2A, Tape 1 of 2 at 8:45 P.M.

Donald Klepper-Smith continued with his slide show.

The point I want to make here is that the multi-family units are fiscally stabled. I want to leave that message with you. The commercial residential development provides \$8500 more. Highest and best use for the property is not solely determined by net fiscal impact.

Attorney Williams, addressed the Commission. I have submitted several packets of Mr. Klepper-Smith's slides which can be used as backups.

I believe and I respectively submit that the expert information that has just been submitted to you has addressed the concerns. The applications before you are to create a multi-family housing district and rezone the Bridgeport Avenue property to that zone. The site plan special exception is not before this Commission and any site plan comments or criticism we are not responding to this evening because they are not before you. I assure you though that if you approve the zone we will be coming before you with a site plan and all those issues will be aired and we will address them at that time.

As to Attorney Kelly's arguments, first as to the PDD's he argues that because of an appellate Court's decision in (inaudible) that the existence of the PDD or SDA overlay as a cursor can't be sited as an example of prior actions of the Commission and examples of this (inaudible) your plan of development and that is just wrong, stated Attorney Williams.

The Case has elevated one section of the New Haven Zoning Regulations and as I submitted to your earlier, it referred to a case that references Shelton's regulations and that is why (inaudible) the ability to have future PDD's is in jeopardy. I did question that ability and that is why we didn't (inaudible). That is a very different thing than what Attorney Kelly is arguing. To accept what he is arguing you are accepting the proposition that all PDD's have (inaudible). That is a monumental proposition that can reek havoc on someone in Shelton and he has no authority (inaudible).

As to the argue that this is spot zoning he is wrong on that as well, stated Attorney Williams. This is not a small area for purposes of case law. There have been a couple of these sites that have held that as to similar size area. It is unusual for case law for a Court to find that a property of this size qualifies for spot zoning. More importantly the key question is rather the proposed zone change is out of character with the comprehensive plan of zoning for the town. We have submitted to you in our argument is that the proposal is consistent with the mix use in the area, it is consistent with the zoning regulations and it is consistent with the goals of your comprehensive plan of development and the Route 8 Corridor update which set as a goal additional multi-family housing units and which the town is still trying to achieve. It has meet about 30%, he added.

The proposal is consistent with the plan and certainly not out of harmony and further more advances the public interest of having the high quality housing opportunity options. Mr. Klepper-Smith showed you the business environment that you created. It certainly (inaudible) doesn't constitute spot zoning.

As to the petition that was submitted this evening under Section 8-3B, obviously this was just presented to us. We would like to have an opportunity, to address further and to evaluate further the validity of the petition. Even having reviewed it in the past few minutes, there are several flaws evident and I would question its validity and rather it qualifies. If it does by Statue the Commission can only approve the zone change by a 2/3 (two-thirds) vote. I would note to begin with that it is, stated Attorney Williams.

That is a mute point because it requires 4 out of 6, stated Anthony Panico. What requires 4 out of 6, questioned Attorney Williams? Any zoning decision made by this Commission requires 4 affirmative votes, answered Anthony Panico. As determined by the nature of the Commission as 6 members, he added.

Well I won't spend a lot of time on the petition but I would like to note that on 2 of the properties 496 and 500 Huntington, the petition is only signed by one of the owners and the list of owners, they were good enough to attach that to the petition, each of those properties has two owners, stated Attorney Williams. I can submit the Case Law later if necessary and I can discuss it with Corporation Counsel but Case Law is clear that proving the validity of the petition is the burden of the petitioner and they have the signatures of 20% of the owners within 500 feet and that the Case Law is consistent that all owners have to sign so subtract those two properties and look at the location map. If you look at the map with the ring 20% of the property owners are not represented and that petition most fail, stated Attorney Williams.

In closing there is a need for the housing that would be developed under the zoning regulation and there is a need to advance this type of housing in Shelton. It is consistent with the plan of development and the mix use nature of the area. There will be no adverse traffic impact to the site on Bridgeport Avenue and Route 8. It would only generate 2/3 as much traffic or put it another way that it reduces the traffic by 1/3. This proposal would be an asset to the town as a whole particularly the business community. This has WPCA and Wetlands permits. All Engineering and other site related aspects would be addressed at a later date. For all of these reasons we respectfully request your approval.

I think that concludes the hearings and I would ask for a motion to close the Public Hearings, stated Chairman Cribbins.

On a motion made by Anthony Pogoda seconded by Patrick Lopera it was unanimously voted to close the Public Hearing on Applications # 05-17 and 05-18.

Chairman Cribbins stated thank you very much to the Public for your input. Thank you very much to the applicant for that detailed report. Also thank you very much to my fellow Commissioners here.

One thing you need to understand even though it is a hot night they hung in there with us as we do all the time, they do their research, they do their homework, and when we come to a decision, and we do, all this information and when we create our resolution for the last 14 years, we have not lost a decision in Court, stated Chairman Cribbins. So thank you very much.

On a motion made by Anthony Pogoda seconded by Jason Perillo it was unanimously voted to adjourn at 9:05 P.M.

Respectfully submitted by,

Diana Barry
Clerk