

The Shelton Planning & Zoning Commission held a special meeting on October 23, 2007 at 7 p.m. in the Shelton City Hall, Auditorium, 54 Hill Street, Shelton, CT.

The following members were present:

- Chairman Alan Cribbins
- Comm. Virginia Harger
- Comm. Patrick Lapera
- Comm. Daniel Orazietti
- Comm. Anthony Pogoda
- Comm. Leon Sylvester
- Comm. Karen Tomko-McGovern (alternate)
- Comm. Ruth Parkins (alternate)

Staff present:

- Richard Schultz, Administrator
- Anthony Panico, Consultant
- Pat Garguilo, Court Reporter
- Karin Tuke, Recording Secretary

The Chairman reserves the right to take items out of sequence.

Tapes (2) and correspondence on file in the City/Town Clerk's Office and the Planning and Zoning Office. Attachments are not available on the website.

Chairman Cribbins opened the meeting at 7:03 p.m. with the Pledge of Allegiance.

PUBLIC HEARING

APPLICATION #07-46: DOMINICK THOMAS FOR PDD ZONE CHANGE (INITIAL DEVELOPMENT PLANS: 7 UNIT CLUSTER RESIDENTIAL DEVELOPMENT), 122 BUDDINGTON ROAD (MAP, 62, LOT 31), R-1/LIP DISTRICTS

P&Z Commission Secretary Daniel Orazietti read the call of the hearing. There was no additional correspondence to be read.

Comm. Pogoda informed Chairman Cribbins that he would be excusing himself from this public hearing because he resides within 200 feet of the proposed development. Comm. Ruth Parkins would act as an alternate for this application.

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission representing the applicants, Carol and Bob Farrell.

He presented the notification letters and the photos of the sign postings. All of the notification letters containing a site plan were returned except for one notification letter. The traffic study had been submitted ahead of time; however, he distributed the traffic study and copies of an addendum letter dated 10/23/07 from Barkin & Mess and signed by Henry Ditman, Vice-President. He stated that this addendum addresses a question brought about in the traffic study.

Atty. Thomas stated that this site is located at 122 Buddington Road and is traversed by the LIP zone line and R-1. They have several maps depicting what their main presentation is with respect to this site because they believe it is clearly in a transitional zone bordered by a commercial zone, a PDD for Wal-mart. It is approximate to the restricted business district now occupied by the empty Crabtree-Haas facility. It is in an area of a band of higher density housing. To illustrate this better, Atty. Thomas presented two photographs for reference. The first photograph from Microsoft Maps provided a birds-eye view of this site showing Buddington Park, a portion of Heritage Point, the end of Country Walk, and a piece of Woodland Mobile Home Park. The other photograph depicted an aerial perspective taken from Google identifying the site and the surrounding higher density, residential developments that exist in the area. He distributed copies of both of these photographs to the Commission.

Atty. Thomas referenced the first photograph with a dotted black line depicting the site at 122 Buddington. He used both of the photographs to explain that this site was surrounded by a variety of uses – residential uses and other uses with the back of the site including Wal-Mart. He referenced the upper left of the map to show the band of multi-family, higher-density residentials that traverse from Country Walk through Buddington Park to Heritage Point to Woodland Mobile Home Park. He stated that Woodland Mobile Home Park has the highest density with 5.53 units per acre.

He continued to identify other high-density residences, approved by this Commission in the 1980's, including Buddington Park condominiums with 2.38 units per acre followed by Country Walk condominiums across the street with 2.85 units per acre. He continued to point out the recently approved cluster of single family houses of Heritage Point at 2.25 units per acre density.

Atty. Thomas indicated that this application for Meadow View proposes 2.1 units per acre – less than all the surrounding cluster developments. While there are single family homes across from Buddington Road, they feel it is most appropriate for this site and for this zone. It represents an effort to extend the idea of Huntington Point through this property. This property could be in an R-1, even though the rear of it is LIP, and accommodate two single family homes with a front lot and a rear lot. There would be no control with respect to buffering or conservation easements. These two single family homes would be bordered by a condominium and a cluster single family development at density substantially higher than what would be on this site.

Atty. Thomas stated that it is proposed to have a private road, architecture similar to Heritage Point, city water and sewers. This location as seen from an aerial perspective photo or from a map is the ultimate definition of a transitional zone moving from the commercial of Bridgeport Avenue to some higher density residential areas with more single family homes to the west. He stated that over the years, within the larger area, P&Z has seen fit to have higher density development in the northerly direction with Country Place and Sunwood condominiums.

Atty. Thomas explained that the open space will be approximately 1/3 of the site. And interestingly, it connects with the Heritage Point open space. Atty. Thomas presented photographs of the site taken from various locations. He noted that this open space is a mowed meadow. Even though it is wetlands, it would be useable to residents for picnicking and walking. There is a pond on the border with the driveway along the road that traverses Huntington Point and this property. This would be encompassed in the open space.

Atty. Thomas discussed the Heritage Point development approved by this Commission that included a 20 foot conservation easement. He added that this proposal provides for a comparable 20 foot easement on the other side also. Additionally, and as seen in some of the displayed photographs, foliage exists on the edges of the property. This foliage would remain and could be supplemented within the conservation easement. He pointed out that from the birds eye view, the current site with the existing house is very close to the first house at Heritage point and obviously there are no buffers there.

He continued to state that there would be two lots up front and five in back that would be farther away than the existing house. The existing house would be torn down. The front separation from the Heritage Point house to that house would be 65 feet. The rear separation at Heritage Point would also be 65 feet.

At Buddington Park, the front separation which presently includes a garage that would be taken down would be 200+feet and the rear separation 95+ feet. It has been designed to permit a 20 ft. conservation easement around the entire property. At that point, Atty. Thomas indicated that he would like to turn the discussion over to the engineer, Jim Rotondo.

Chairman Cribbins asked Atty. Thomas to first depict where the split was located on one of the maps.

Jim Rotondo indicated that the split was located at the rear corner of the site, the LIP district.

Chairman Cribbins noted that it was very minor.

Mr. Rotondo concurred that it was very minor.

Atty. Thomas added that it is minor but similar to Heritage Point because even though the LIP portion was slightly more, it was basically unusable for various reasons. The point wasn't the split zone, because neither property, realistically, could have been used for LIP because of the slopes and topography in the back and across Heritage Point because of the wetlands. The point was that in proximate to the LIP the commercial zone creates the transitional nature and the existing uses – higher density residential even if the mobile home park (5.53 density) was eliminated. The band surrounding it on either side is in the two ranges. They've opted for the lower two range. He concluded his comments and turned the discussion over to Jim Rotondo.

Jim Rotondo, P.E., Rotondo Engineering LLC, 25 Brook Street, Shelton, CT addressed the Commission.

Mr. Rotondo stated that the property was approximately 3.3 acres in size located along Buddington Road. The proposal consists of the construction of seven single family dwelling units and also the construction of a private roadway which is going to be named John's Ridge. The width of the roadway is proposed to be 26 feet and the length is approx. 520 linear feet terminating in a cul-de-sac. Each of the proposed dwelling units will have access from driveways off John's Ridge. Each of these dwellings will be served by public water and municipal sanitary sewer. These utilities are currently located in Buddington Road. To serve the proposed dwellings, they will extend these utilities in John's Ridge into the cul-de-sac. They are also proposing a storm water management system. This system will consist of catch basins and pipes located within the roadway. Surface water will be collected and conveyed to a proposed detention system. He referred to the right side of the map to show its location north of John's Ridge in the center adjacent to the wetland area. The detention basin will provide storage for the design storm and the flow will be allowed to outflow from that basin to an outlet control structure reducing the post development flows to the pre-developed condition.

Also, in that central area would be the open space that Atty. Thomas discussed. The proposed open space area is a little over an acre, about 46,000 square feet which is approximately 32% of the overall site area.

The architecture on the site is going to be similar to the Heritage Point architecture. They submitted a general elevation floor plan. He provided extra copies to the Commission. He referenced the drawing to explain that the home is approximately 2500 square feet in size. It will have a two-car garage, aluminum-type siding with an asphalt shingled roof. In the Statement of Uses and Standards, they are providing for a 30 foot setback along the perimeter of the parcel itself. This would be their building setback line, and within that they can provide a 20 foot conservation easement and a landscaper to provide buffering to the adjacent properties.

Mr. Rotondo explained that a traffic study had been prepared by Barkin & Mess Associates of Branford, CT. Barkin & Mess did a traffic analysis of the property and summarized that the traffic generated by the proposed seven unit Meadow View single family residential subdivision at 122 Buddington Road would have insignificant operational effects on the area roadway network. The site is estimated to generate approximately five trips during a weekday morning peak hour and eight trips during the weekday afternoon peak hour which will follow the existing directional distribution at a nearby residential side street along Buddington Road.

He continued to state that in their report, Barkin & Mess also commented on site distances. They found that the stopping site distances at the intersection of their roadway were adequate. They commented on the intersection site distance to north of their roadway based on the 85th percentile vehicle speed. This is the actual speed of vehicles traveling on Buddington Road, not the posted speed. They found the site distance short on that. A verification was made today based on the posted 25 mph speed limit of which the intersection site distance is more than adequate. They made a recommendation to relocate or adjust the driveway to the south or southwest to provide some additional length. Mr. Rotondo stated that was doable. On the plan, one of the other criteria they wanted to keep in mind was with the separation distance between John's Ridge and Freedom Way, the driveway into Heritage Point.

Atty. Thomas added that the addendum was submitted because of this last point about the site distance. Adjusting John's Ridge by 25 feet is clearly doable by moving the two front lots to be on the same side as John's Ridge instead of bracketing John's Ridge. The site line distance is satisfactory for the posted speed. It is simply a balancing of that issue versus the issue of the separation of the private roads – Freedom's Way and John's Ridge.

Atty. Thomas indicated that completed their presentation, and he would answer any questions the Commissioners have.

Chairman Cribbins asked about the calculation of how many homes were on the property. He asked whether they did a standard configuration on it. For instance, taking out the wetlands and the pond which are included in the 3.3 acres, how many lots can they get in there?

Atty. Thomas responded that it's two lots – a free split. It wouldn't even be a subdivision; it would be a free split with a front lot and an interior lot. He stated that there was a proposal somewhat close to that with a driveway that required variances. As a result of that, there was a Wetlands approval so this case, unusually, has a Wetlands approval which is quite close to what is being done right now. There are some changes so they have to go back and get it re-approved for a few feet either way. There is a Wetlands approval for that road to traverse the way it goes. He asked Mr. Rotondo to clarify if that was correct.

Mr. Rotondo indicated that was correct.

Chairman Cribbins asked if any of the Commissioners had questions.

Comm. Oraziotti asked about the number of bedrooms in the floor plan and if it would be the same number in all of them.

Atty. Thomas stated that at this stage it is a relatively generic floor plan. At this stage in a residential development, probably the least definitive thing is what the house is going to look like. Comm. Oraziotti asked if he knew how many bedrooms there were in Heritage Point.

Atty. Thomas answered that it was 3 to 4. The floor plans are basically similar. They intended to model it after that; however, he honestly isn't sure of the size of the homes at Heritage Point. He has been told that Heritage Point has homes in the 2500 square foot range and some larger. The intent here is to stay within the 2500 square feet because it fits comfortably on these lots.

Comm. Harger asked Atty. Thomas if he had clarified the amount of wetlands on the property.

Jim Rotondo responded that there are approximately .34 acres or 14,630 square feet of wetlands on the site.

Atty. Thomas pointed out that the area of wetlands is a meadow that has been mowed for years predating wetlands statutes.

Comm. Parkins asked if there were time constraints that made the traffic study on a holiday weekend because October 8th was Columbus Day and not a typical Monday. She questioned whether monitoring the existing traffic on a holiday weekend would have an impact on the results.

Atty. Thomas stated that they can get an answer to that and report back to Staff

Chairman Cribbins asked if there was anyone in the audience who wished to speak for or against this application.

Maurice “Mo” Cayer, 8 Buddington Park, Shelton, CT addressed the Commission.

Mr. Cayer stated that he bought his property about 4-5 years ago. When he bought it he made the assumption, like a lot of other people, that the adjoining property was going to remain the same in terms of zoning. One of the characteristics of the property is its visual appeal and as a result of the zoning change, he will lose value in his property. The visual impact will be significant because he is stone's throw from the proposed developments. Additionally, there will be more noise, environmental impacts, and traffic impacts. He thinks that he will lose and other property owners at Buddington Park are going to lose also. Mr. Cayer queried “Who will gain? Will the greater community gain?” He doesn't think so. He doesn't think the change in zoning is justified, and he requested that the Board reject this request to change the zoning.

Joel Greene, Greene & Gross, Bridgeport, CT addressed the Commission on behalf of the Buddington Park Condo Association.

Mr. Greene stated that the Buddington Park Condominium Association owns the common areas just to north and abutting the property that is the subject of this application.

He stated that there was a troubling history involved, and it is a lesson in “be careful what you wish for” because a year ago he appeared in behalf of Buddington Park before the ZBA. At that time, the applicant was seeking a variance to construct three residential lots on this site. The application didn't meet the standards for the issuance of the variance. The problem of greatest significance was the wetland regulated area in the middle of the site. He stated that his clients anticipated that there would either be a new application for a variance or an application for a two lot development with two compliant homes on this site. They were quite surprised by the application for a PDD to put seven homes on this site. He stated that the seven lots have been a bit shocking to them.

Atty. Greene stated that there were three aspects of the application that he would like to discuss. The first item he'd like to discuss is Shelton's PDD regulations. Additionally, he would like to discuss certain defects, missing information in the application and, in general, the substance of the application.

In respect to the PDD regulations, Mr. Greene commented that he has looked at the Zoning regulations, the PDD regulations and the book with the variety of PDD districts that have been established. He stated that he didn't really understand why the applicant stopped at seven units, or chose five units because he found that there were a lot of standards that weren't required in

PDD's in terms of minimum standards for setbacks, side yard, etc. Mr. Greene stated that this got him thinking about the PDD districts.

He continued by commenting that this Commission was exercising in a legislative power, and sitting in a legislative capacity to decide how to create districts in the amendment of applications. It is an exercise of the police power because clearly it is exercising how owners of land can use their property. The law basically says that they will grant two commissions the power to establish these regulations, to limit the way that properties are used in the town of Shelton for the greater good. In order to be sure that the power is used fairly and uniformly, there has to be certain uniform standards that apply to all properties.

Mr. Greene indicated that he has been grappling with the problem of this instance. The applicant has asked the Commission to create a new zone, a separate PDD. After going through the book of various PDD's – Heritage Point, Wal-Mart, and a variety of others, he noticed that each one presented different standards. Certainly a lot of good has come with PDD's, and they do result in effect use of land. There have been many great projects, but at the same time, someone looking at a PDD doesn't know what is acceptable and what isn't.

There are certain standards in the regulations, and there have been some decisions that have come down. Mr. Greene referenced the case of *Mileski vs. the Planning & Zoning Commission of the City of Shelton*, in which Judge Fuller dealt with issues involving PDD's. Mr. Greene noted that since that time, he knows that the regulations were recently amended to address those issues. He commented that Judge Fuller made some interesting observations in his decision about how troubling it is evaluating properties on an application by application basis in terms of Shelton regulations and no standard regulations. Mr. Greene distributed copies of Conn. Superior Court document, *Mileski vs. Planning & Zoning Commission of the City of Shelton*.

Mr. Greene indicated that *Mileski vs. Shelton P&Z* was interesting to this discussion, and he referenced page 7 of 10 in that document and noted that Judge Fuller discusses the authority for establishing PDD applications. Judge Fuller talks about the history and basis of how they are formed and the need for regulations to be uniform for each class or kind of building, structure or use of land throughout each district.

Mr. Greene read portions of the document stating that “the regulations in one district may differ from those in another district and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit...” Mr. Greene added that there are protections that are afforded based on regulations. He asked whether those protections were afforded in these regulations which allow a tremendous amount of variety. He emphasized that there have been a lot of great decisions and great projects formed as PDD's. However, he would like to raise the issue for the record.

Additionally, Mr. Greene submitted a single copy of the case of *Campion vs. the Board of Alderman of the City of New Haven*, 85 Connecticut Appellate Decisions which was decided in 2004. In that case, Judge Lavery of the Supreme Court discussed the exercise of power in terms of PDD's.

In regard to the application itself, Mr. Greene stated that he understands it to be, under the revised regulations, an amendment to the zoning regulations which would amend the Shelton zoning map. Mr. Greene stated that under Section 34.1 under the regulations, each PDD is another independent zoning district. In Section 34.6 and 34.7, the regulation says that PDD's shall be considered in the same manner and with the same notice as required to an amendment of the regulations. Since this would result in a zone change, he wanted to share Section 8-3 of the Connecticut General Statutes with the Commission. Section 8-3 establishes the authority for planning & zoning commissions to establish and change zoning regulations and districts. He provided copies of this statute to the Commissioners.

Mr. Greene continued that in paragraph B of Section 8-3, in particular, it discusses the standards under which zoning regulations can be established, changed or repealed. Significantly, it provides that 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 of the lots included in such proposed change or of the lots within 500 feet in all directions of the property included in the proposed change. Such change shall not be adopted by a vote of 2/3 of all the members of the Commission. It raises the standard for doing that.

Mr. Greene stated that he has such a petition this evening signed by the Buddington Park Condominium Association and joining it is the planned community association of Heritage Point Inc., also known as the Heritage Point Condominium Association. It states that “we the undersigned, being the owners of 20% or more of the area of lots within 500 feet in all directions

of the property included in the proposed change, hereby protest the above referenced application and request, pursuant to Section 8-3B of the Conn. General Statutes that the Shelton Planning & Zoning Commission deny the application. He submitted the petition to Chairman Cribbins.

Mr. Greene stated that the process, as he understands it, with protest petitions, would be that the zoning staff will verify that the signers of the petition are actually owners within 500 feet of the area. Consistent with the regulations, Chapter 5, Section 51, "these regulations including the building zone map which is a part hereof be amended by the Commission on its own initiative or when initiated by a petition. Any amendment may be adopted only after due notice in public hearing as prescribed by the general statutes of the State of Connecticut." Mr. Greene added that any petition for amendment shall be accompanied by the following, specifically in 51.1.2, "petitions concerning the building zone map, two copies of the map shall be submitted, drawn to scale not less than 200 feet covering the area of the proposed change and all areas in the City within 500 feet of the proposed change." Mr. Greene stated that when he reviewed the application last week, he didn't see a 500 foot map as part of the record or the application submitted. He submitted copies of the regulation to the Commissioners.

Mr. Greene asked if it could be confirmed if a 500 foot map had been submitted since the time he looked at the application last week.

Atty. Thomas stated that it was not.

Mr. Greene commented that the regulations provide that all other provisions of the regulations shall apply to PDD's. In other words, in the PDD regulations it says that these are the regulations that apply to PDD's but all other provisions of the zoning regulations apply to PDD's throughout the City. This amendment requirement is applicable to all zones.

Additionally, Mr. Greene stated that originally the PDD applications, before they were amended, involved a two or three step process. The latest revision has streamlined this process. This results in, after the public hearing tonight, a resulting zone change. It was actually language changed in the regulations that removed any ambiguity or confusion on that. He suggested that Chapter 5 does apply and on that basis, the application should have a 500 foot map to enable the Commission and Staff to conduct an analysis, and to enable the Public to determine if their property is within that 500 foot area. He concluded that it should have been included in the application.

Mr. Greene commented that he doesn't know when the traffic study was submitted by the applicant, but he had been to the Zoning Office twice last week, reviewed the file and never saw the traffic study when it was submitted. He'd like to clarify the date of the traffic study. He hasn't had an opportunity to review it so it is difficult to address it.

Chairman Cribbins stated that the traffic study was submitted on October 19th with an amendment submitted October 23rd.

Mr. Greene stated that one of the requirements of the regulations are that all applications should include the following information, and the traffic study is something that is really required to be in the application, not after the fact. The item has been scheduled for a public hearing, and he has not had a chance to see it. He wanted to know if the public hearing would remain open or if the public would have an opportunity to address it.

Mr. Greene commented that there was little offered on the issue of the wetlands and the water course. That is an essential issue of tremendous concern of the Heritage Point residents. One of their biggest concerns is that water flows off that site on to their property constantly. They are concerned about the drainage issues, the impact on the wetlands, and impact on the pond. He stated that he was not aware of anything in the record suggesting a prior approval of this plan by the Conservation Commission. He asked Chairman Cribbins whether the Conservation Commission approved this application or whether there is a notice of approval.

Chairman Cribbins answered no.

Mr. Panico responded that he believes it was alleged that the impacts on wetlands were the same impacts as a previous application to the Inland Wetland Commission that was approved and for which a permit was issued. Those Commissions do not approve a plan. They approve impacts.

Mr. Greene stated that he understands that. However, the thing that strikes him is that a seven lot cluster brings in more issues such as driveways, cul-de-sacs, impervious surfaces associated with roofs, drainage, and runoff. All of these things are of concern to the Buddington Park residents

and especially Heritage Point because they are the downhill neighbor that will receive all the storm water.

Mr. Greene continued that he has great respect for Mr. Rotondo's work; however, he doesn't profess to be a wetlands scientist. There is nothing in the application to be considered in terms of the impact of this project on the wetlands and the water course. It is no longer two houses, it is seven homes. Although it is a private road, not a highway, there will be 5 or 10 more cars passing over impervious surfaces and leaking oil. Those driveways will require salt and sand. Many of those impervious surfaces run to the catch basins and discharged adjacent to the wetland area. It is troubling to the Heritage Point residents that it is piped under the roadway and discharged from a head wall directly concentrated onto their property.

Mr. Greene asked about the PDD approval process and when the wetlands issues are addressed.

Mr. Panico stated that Wetland approval is not required as a precondition for this Commission to adopt a new zone but it is certainly a precondition necessary for final approval of a site plan.

Mr. Greene commented that in lieu of some of the finding that this Commission has to make, there are some environmental issues and wetland impacts specific to consideration of the application. It wasn't addressed this evening in terms of the water quality and the impact on wetlands and water courses. More particularly, Mr. Greene noted that the concerns of neighboring properties have not been well addressed such as storm water.

Mr. Greene stated that he is troubled by the density argument because a discussion of averages over an entire property doesn't address the concentration of these five homes on a very small piece of land and the significant impact of them on neighboring properties. The essential purpose of these PDD's and the exception created by the amendment is to create a so-called transitional area. However, the applicant does not address how seven homes better creates a transitional area than two or three homes. Mr. Greene stated that there are certain findings that this Commission must make in order to approve the initial development. He referenced 34.8a about consistency with the intent to create transitional areas. After driving through the site himself, he doesn't see how seven homes do that nor did the applicant address it.

He continued to comment that if the Commission finds that two homes are just as good as seven in creating that transition, then the PDD request isn't appropriate here, that is what the regulations state. If the purpose and intent can be achieved with the existing zone then no PDD is required. He understands that the Farrell's want to build seven units and maximize their profits, but Shelton is facing the difficult situation of saying that it can't be done at the expense of their neighbors.

He continued with a reference under 34.8f that states they need to find that this does not have a significant adverse impact on neighboring homes or property values in the area. The applicant offered nothing to address the impact on property values. It makes common sense that for Buddington Park and Heritage Point residents their views would be significantly impacted. The property can be developed, and as Atty. Thomas conceded they can put two houses there. He doesn't think that would have the impact on neighboring property values that putting five houses on a relatively small end of the site would have.

Mr. Greene referred to 34.8g which discusses impacts on wetlands and water courses. This was not addressed by the applicant. Another significant concern to the Buddington Park residents was the issue of blasting. From the application, he does not know if blasting is involved as part of the development plan or what the impact of that would be. He knows there is significant ledge in the area.

In conclusion, Mr. Greene referenced 34.9h which speaks about the potential impacts regarding ecological and environmental conditions. The potential impacts can be maintained within acceptable limits and the record doesn't justify that finding.

Mr. Greene summarized that the application is defective in that it does not have the 500 foot map required. There has been a protest petition to raise the standard of the Commission's decision. He questions the traffic study, and the environmental and wetlands impacts that haven't been adequately addressed in regard to water quality and quantity. He suggests that the applicant can't establish a PDD of seven units, as requested. It defeats the purpose of the original PDD zone and the purpose of adopting it. In this instance where the property is unique in the way it is located and on behalf of his clients, he urged the Commission to deny the application. He indicated that he would be happy to answer any questions that the Commissioners may have.

John Babina Jr., 9 Freedom Way, Shelton, CT addressed the Commission. Mr. Babina stated that he moved into that development in June 2006, and until recently he was unaware of

any activity on this other property. He inquired when he purchased his property about that parcel which he can see from the street. He was told that the owner was trying to put a house down below. When he got involved with the Association, although he's not on the Board, he became concerned with all the catch basins and water flow in the area. Although he's not a P.E., he has participated on several large construction projects that allowed him to become sensitive to these issues. He knew that in these designed development communities the City gets a benefit because more of the road and catch basin falls on the burden of the local residents. He has been raising the issue about water flow even before he knew about this application.

Mr. Babina stated that every time there has been a major rainstorm, he has walked the property and observed the water flow. One important point he noted was that there is a land bridge to get to the last two lots at the end of Freedom Way. He used the site drawing on the easel to indicate the lots were Lot 11 and Lot 12. There is a pipe with a trash rack to catch debris going under the road and that is where all the water funnels through.

Mr. Babina commented that on April 15, 2007, there was a heavy and sustained rainfall. He was quite taken back by the amount water flowing through that area, under the road and going down the hill. It was quite spectacular. He went back with his camera on video mode and took pictures. He brought them and would like to submit copies for the record. He has them on his laptop if the Commission would like to see them now.

Chairman Cribbins indicated that they would take the CD.

Mr. Babina said that he drove down to see where all this water went. It appeared to go around the edge of Wal-Mart, turned the corner by the mobile home park, passed right in front of their mailboxes, cut across Bridgeport Avenue and fell through a catch basin by the ill-fated Madison's Restaurant. He returned to the Board and said that based on his experience and common sense, he doesn't think that area can take any more water at all. It is about maxed out and they are going to have to be extremely attentive now in keeping the trash rack clear (natural debris or other). That particular piece of road also carries all the utilities – the electric, sewer, gas, phone, cable. He's concerned about erosion as well because they would need to maintain this on their own because it's a private road. He has made the condominium Board sensitive to this, and they have taken interest in it too. Mr. Babina agreed with Atty. Greene about the paving and increased runoff. The concept of catching water only works so well during downpours. This is shown in the videos.

Mr. Babina referenced the site map and commented that when taking the video, specifically the one marked "west," he noticed two large streams coming down from that property in two points. Therefore indicating that was already overflowing given the current status of that property. Again, that is shown in the video marked "west."

Mr. Babina continued to state that on the second video taken across the road where the catch basin goes underneath, he took a panorama shot of the water being discharged out over that area towards Wal-Mart and the trailer park. He recalled that he was stunned by the amount of water. In the video marked "east" there are two big streams coming down behind that and feeding down. He added that it also looked maxed out. Mr. Babina stated that when he drove down by the trailer park mailboxes, their channel was maxed out at that time too. He cannot see how any more water could be handled without suffering damage to the road and catch basins. They would require maintenance that would be placed upon them.

Mr. Babina concluded by stating that the system in its present design and configuration handles the max. He indicated that he had three copies of the DVD to show this.

Chairman Cribbins stated that he would take them and appreciated his comments.

Martin Nemetz, 145 Buddington Road, Shelton, CT addressed the Commission.

Mr. Nemetz stated that he has lived there for over 30 years, and he would be brief in his comments. In response to the traffic situation, he commented that it is what it is, not because of who lives on Buddington Road, but because everyone uses it as a pass through from Bridgeport Avenue to Huntington Center and back. He doesn't believe that any number of houses that would be built on that property would create any significant change in the amount of traffic. It's like a raceway. Because he has lived there for 30 years, he thinks that most of the new folks that have moved up at Buddington Park or Heritage Point have the sports car driving at 60 mph in a 25 mph zone. Five houses or seven houses probably aren't going to change the amount of traffic on that road.

Mr. Nemetz also commented about the people at Buddington Park not wanting to look out their window without being able to see grassland. He indicated that he has been there 30 years, and

he'd like to know if they think he wanted to see Buddington Park there or Heritage Point. He didn't want to. He used to walk with his children through the woods and now they can't because they are there.

Mr. Nemetz stated that he lives on a one acre zone that he has to maintain. Mr. Slosser has lived across the street from him for 30 years. He moved there because he wanted to live in the country. Now all of a sudden all these people move next door and there is no privacy because the nearest dwelling is 25 feet from his house. Mr. Nemetz made the point that a precedent has been set. There can be arguments about zoning laws and new restrictions, but a precedent has been set. He stated that those residents that have been there for 30 years never wanted anyone to come in there except for one acre zoning. When they first moved in to the area it was very quiet, and they could let their dogs roam free and keep their gates open because there wasn't any traffic on Buddington Road. But now, there are so many people in Country Walk, Buddington Park, and Heritage Point. He stated that he never wanted it to happen, but it did. And because it has happened, he commented that he doesn't think it makes any difference if there are five or seven more houses on the street. It shouldn't make any difference whatsoever.

Mr. Nemetz stated that it isn't going to change anything, like the drainage that he hears so much about. He noted that back in the 70's, he and his wife used to walk in what is now Country Walk across the street. At that time, there was no pond in the front. They made that pond to contain all the drainage and build all those condos up there. He thinks that pond crosses under the road and goes down to Bob's property. So if there is a problem with drainage or overrun, it isn't their problem, it is everyone's problem that has come in there and beat up Buddington Road to start with.

Mr. Nemetz concluded that as a long time resident, he would prefer that none of this ever happened and that no condos moved in. He comes from Fairfield and doesn't want to see cluster housing because that is what he moved away from. But because it does exist, seven more houses shouldn't make a difference. He'd like the Commission to approve this application.

Lynne Farrell, 25 Buddington Park, Shelton, CT addressed the Commission. She indicated that she is one of the original owners in Buddington Park. She has been through a lot there with the building that has gone on around it. She asked the Commission to deny this application. At the time that she moved there she didn't know what would be coming next door, nor did she ever imagine that she would have the blasting from Wal-Mart that put cracks in her walls and her floors. Since Wal-Mart came, the noise that has erupted from that location goes on all night long.

Ms. Farrell stated that she is concerned about blasting because the ledge up there is very strong. Even more important than blasting is the effect on her property. She has studied the map during the week, and it looks like one of the homes is going to be put very close to her pool. This will take away the privacy, and the blasting itself for that home will probably cause some structural damage to the pool. She indicated that the blasting that came about from English Lane really damaged her walls – that was the second time. The third time with Heritage Point, the blasting wasn't as bad. However, this time, looking at the ledge in there, the blasting will probably cause more cracks in the walls if this seven unit PDD gets approved.

Ms. Farrell has further concerns including the water situation, and she agrees with the speaker from Freedom Way. It is nice that he did such a good study of the water. The water comes across under Buddington Road and comes right in back of her place. At times in the early spring if there is a heavy rainfall, the water comes up high almost to her patio. Everyone needs to be careful of the water situation and where it goes.

She has other issues but feels as though their attorney addressed most of them so she will not continue. Ms. Farrell asked the Commission to look at all the issues that Mr. Greene addressed, especially some of the PDD cases. She recalls the *Campion vs. BOA* case which took place not long after she graduated from law school and looking at, she can see that it is applicable to whether or not this PDD is granted. She thanked the Commission and asked that they seriously consider denying this application.

Z. Wiczorkowski, 298 Buddington Road, Shelton, CT addressed the Commission. He stated that he has lived there for over 30 years. He indicated that there is Country Walk at one end, Buddington Park at one end and another big development. He stated that he used to walk on that road and there were hardly any cars on it. Now if he walks on that road, he'd get killed with everyone speeding down it. Since the developments came in, a lot of people think it is a highway. No one does 25 mph on that road. They do 40 or 45 mph on that road. He is surprised that no one has gotten killed yet. Mr. Wiczorkowski stated that Bob has owned that property for 50 years, and he sees no reason why he can't build on it. He was there before anybody. When they talk about being concerned with the wetlands, he probably had no problems with the

wetlands until they built all those houses up there. Buddington Park people are talking about their privacy – what about his privacy? Their back door is facing his front door. Mr. Wiczorkowski reiterated that he thinks the Commission should allow him to build. He's been a resident for 50 years. He's an honest guy and a hard worker that has done jobs for him. He has gotten to know him, and they are friends.

Dan Martin, Heritage Point, Shelton, CT addressed the Commission. Mr. Martin wanted to bring up one point about the woods at Heritage Point. They were originally set aside for an industrial purpose. It is a big improvement to do what they did there. He wanted Heritage Point residents to ask themselves if they would rather have industrial equipment in that land or these houses. He feels that it is an easy decision. It comes down to helping or hurting the value of the properties. It is the Board's decision, and he thinks all the points have been made.

Linda Adanti, 4 Buddington Park, Shelton, CT addressed the Commission. She stated that the attorney has made their case, but she wanted to respectfully ask the Commission to carefully contemplate what changing the zoning laws pertaining this application would mean by profiting a few to the detriment of many. Ms. Adanti has concerns about the wetlands and the blasting so close to these properties. She asked that the Commissioners to come and walk the property rather than just looking at maps and photographs. She requested that the Commission deny this application.

Richard Bourque, 125 Buddington Park, Shelton, CT addressed the Commission. He stated that he lives directly across from the proposed development. He has no concerns with it as proposed but he has heard something about the road being shifted 25 feet south which would put it directly in line with his house. He doesn't want headlights coming in his house all night. He gets that from the development put in next to this one, and he doesn't want it coming from this one too. The lights are his only concern.

Joanna Gromotskie, 30 School Street, Shelton, CT addressed the Commission. She stated that she has listened to everyone this evening and everyone seems worried about the blasting and their property. No one cared that others lost their wells and had to get public water because of the blasting for these condominiums and cluster developments. Ms. Gromotskie commented that no one should ever assume anything when moving into any area.

Chairman Cribbins asked Ms. Gromotskie to address her comments to the Commission, not the Buddington Park residents.

Ms. Gromotskie restated her comments to the Commission that no one should assume anything when purchasing a home. No one can tell you that the land will be clear forever. It is up to the individual owner to sell, like these people do, to put in homes. It is up to them. Additionally, she added that putting in these houses won't depreciate their values because \$500,000 or \$600,000 houses are going in there whereas before there was nothing. She continued to state that the drainage coming from the condos goes on to the closest property; it's not just their problem because it is coming from all over. There are a lot of diversified properties, condos, cluster homes, single family homes and a lot of land. Ms. Gromotskie stated that she uses that road as a cutoff from Huntington Street to Bridgeport Avenue. She concluded that five or seven houses are not going to make a difference for the traffic there.

Chairman Cribbins summarized to the public attendees that the Commission has heard about traffic one way or the other, drainage, blasting, and property values. He asked if there was anything else that people would like the Commission to think or hear about.

Ellen Shea, 7 Buddington Park, Shelton, CT addressed the Commission. She commented about the values of land because she is a resource economist. When speaking about the amenities and the valuations of what this land will bring with seven properties vs. two, and she would like know the percentage of land that is not ledge and not wetlands. Ms. Shea inquired what percentage of these 3.3 acres would be suitable for building that weren't wetlands or ledge that required blasting.

In regard to the zone change, Ms. Shea stated that they purchased their home under the fact, not the presumption, that the zone is what it is, and that is how they based their decision. She thinks that what needs to be addressed here was not what could be or would be, but rather what is. They have heard a lot of supplemental info or proposals about doing seven homes within a 95 foot distance. She wasn't sure if the 95 feet is measured from the property lines or not. Ms. Shea concluded that she thinks there are a lot of facts not being presented properly.

John Angles, 676 Long Hill Avenue, Shelton, CT addressed the Commission. Alderman Angles commented that he agrees with some of things pointed out – the density of blasting, the

topography, the wetlands, the water runoff, traffic, and the mixed use of the zoning. However, the thing that he's squirming about is that this is one more step in the overdevelopment of Buddington Road.

Alderman Angles stated that he wanted to take them back a little bit to each time one of these Planned Development Districts has been guided through completion by Planning & Zoning. The minute a PDD gets approval, the people on the other side of the podium are out of the picture. P&Z guides its development and its course from there, and if it comes out good, that is wonderful. Except that, the Commission is addressing the issue of what they want to develop, but not addressing the issue of Buddington Road. Mr. Angles continued to say that nothing has been done about the 90 degree turn up near the intersection of Old Kings Highway in proximity to where all these developments have been built. He commented that a developer that wanted to purchase the UI property close by there was declined. However, part of his proposal was to come in and straighten out that curve. It will not be addressed unless a conscious effort is made to do it. He indicated that he doesn't see any direction coming from P&Z so he felt he needed to ask how much more they are going to put in with the present infrastructure there.

Alderman Anglace added that there are some parts of Buddington Road that in the wintertime cause his phone to ring off the hook because of all the water, the curves and the ice. He doesn't know if they can continue to build these types of high density sites without addressing some of the infrastructure. He asked the Commission if it was their responsibility in the planning and if they were going to allow this to continue and to what extent before no one can move on Buddington Road. Alderman Anglace indicated that he wanted to share this because before the Commission approves a PDD they guide its build up but the public has no say. The public can come here and state their concerns but ultimately they are looking to this Commission or else there will be a bottleneck on Buddington Road sooner or later.

Atty. Joel Greene responded to the question that Ms. Shea posed in terms of the wetlands on the site. If that line of questioning is going to be followed, he urged the Commission to ask in terms of wetlands, of which there are two on the site including a water course represented by the pond and other regulated areas. He also thought there was a question in terms of the amount of ledge and the amount of ledge removed. If the Commission elects to pursue that questioning, he urged them to distinguish those details.

Chairman Cribbins asked if there was anyone else from the public who wished to speak for or against this application. There were none.

Atty. Thomas stated that they had no problem with the hearing being kept open for two reasons. The first reason being the 500 foot map isn't a jurisdictional thing and they can submit it. There was some confusion as to whether or not it was required in the new PDD regs. Secondly, it would give the public time to review the traffic study. After they conclude, he has extra copies of the traffic study and the addendum for Atty. Greene.

Atty. Thomas commented that the blasting is relatively minimal. The only blasting that is required would be for basements, and that's common in the area. Basement blasting is trench blasting that can be heavily controlled and done properly with line drilling. This Commission may recall how they resolved the Brennan thing which was not trench blasting. He thinks that 30% or 40% of the homes at Heritage Point had basements that were blasted out.

He stated that in zone change situations, people often point out something that he has to respond to carefully and not sound threatening. The first person brought up putting in two single family homes. Whether it's by subdivision or by right, it doesn't make any difference, they can get two single family homes. He continued to state that on each lot, subject to wetlands and even in spite of what the Wetlands Commission says, even in the wetlands upland review area it is not a buffer. That person who owns the lot in an R-1 zone can clear it from end to end.

In response to the drainage issue, on April 15th, he was standing about midcalf deep in water in his own basement. On April 15th in some areas of the state it was a 100-year storm or 50-year storm. It was an enormous event – it was great nor'easter. Pictures of that water in any area of the state would have been heavy that particular day.

Jim Rotondo stated that Atty. Thomas provided an overview of the areas where they anticipate blasting. Referring to the map, he pointed to the lower area on the east where the five units are proposed; there is noticeable ledge at the surface. They do anticipate blasting would occur within those foundation areas. The construction of the roadway is basically a fill type of construction so as far as any blasting associated with the roadway, they do not anticipate any. It would be isolated to the areas of the foundation work.

Chairman Cribbins made a recommendation that they keep the hearing open for the variety of reasons discussed. He'd like to the public to have the opportunity to review the traffic study. He'd like to see the new proposal on the road. He commented that right now the drainage system can't be addressed without seeing what proposed road system is.

Atty. Thomas asked for clarification about the proposed road system.

Chairman Cribbins commented that they stated were going to change the location of the driveway.

Atty. Thomas responded that they were necessarily going to do that without Staff suggesting it. In the addendum letter from Barkin & Mess, changing the location of the driveway was a suggestion to do it one way or the other. They do have the sight line for the posted speed so it wasn't an issue. For the next time they can present what the alternative plan is. However, they feel that this would be the better design.

Chairman Cribbins stated that if that are proposing something to change the location of the roadway, he'd like to see what the impact would be.

Atty. Thomas stated that many of the Buddington Park residents had questions about the drainage and they may not want to attend the next hearing. He requested that they'd like to quickly address some of the drainage concerns.

Chairman Cribbins agreed that he can respond about the drainage, but it looks as though this hearing will be kept open until November 13th.

Jim Rotondo stated that he would like to use the site map to provide an overview of the drainage. He stated that Buddington Road is at a higher elevation with the center of the site being lower and the rear coming back up to a slope. The Buddington Park buildings are to the right and the whole area near it is relatively flat. It is not a large drainage area which generates runoff into these wetlands. There are two existing channels that originates in a head wall which has several small pipes on it that are essentially under drains put in many years ago that do not collect surface drainage. This goes underneath an existing driveway which accesses the rear of the property into a 10-inch pipe and an existing drainage swale which enters the wetlands on the Heritage Point site.

Mr. Rotondo explained that there is a second channel that runs parallel to the property line from a small pond that straddles the property line. He continued to point out areas on the map to explain that adjacent to Freedom Way there is a large detention basin which collects a lot of the roadway runoff that is discharged through an outlet control structure into the wetlands, into the pond area, through a channel and back onto the Heritage Point property and through the culvert under the roadway that was described. Mr. Rotondo indicated that there is a history of runoff coming down through this area during construction that he isn't totally up on. However, this area does generate a lot of runoff. In their development, they submitted a preliminary engineering report based upon their concept plan proposing a detention basin into which all of their development on the site – roadway, roof drainage, etc. - would be collected and put into that detention basin so they can control that. The other areas of the site which contribute down to that area will remain as they are today. Atty. Thomas alluded to the date that this rainfall occurred and it was an extraordinary event. The drainage area that encompasses the Farrell property and drains through their site is not a generator of that runoff. And again, they are collecting their runoff and retaining it and slowly releasing it to the pre-developed condition based on their calculations.

Atty. Thomas wanted to make a few other quick responses for the people that attended tonight. He stated that when run Westlaw(?), which they use, there is a little red flag up in the corner that you have to be careful to look for when reading a case. *Campion* was an extremely well-written and authored decision by Judge Lavery on Planning and Zoning. *Campion* went to the Supreme Court. As a result, Shelton P&Z held their breath because *Campion* would decide if PDD's were appropriate or not and legal under the statute. The Supreme Court decided that they were. There were certain comments in *Campion* that resulted in Shelton changing its zoning regulations. At the time the zoning regulations were changed, comments were made that P&Z is not the Inland Wetlands Commission. Atty. Thomas stated that even though it has been put in for consideration, this is not the Inland Wetlands Commission. Atty. Greene claimed it hasn't been addressed. It hasn't been addressed because this is not the Commission in which wetlands issues are addressed. In most cases they would be standing here before this Commission with only at best a conceptual visit to Wetlands to review with them. In this case, they do have to go back to Wetlands, but generally speaking, the issue of access to the rear or the issue of building in the rear has been done. As he has said to Wetlands, the Wetlands Commission approves nothing. They don't approve five lots, ten lots, twenty lots or one lot – they grant permits for regulated activities. He

urged the Commissioners not to read the Appellate Court decision, but to read the Supreme Court decision.

Atty. Thomas referred to the bird's eye view photograph that he presented earlier to discuss the issue of proximity. He asked what would have happened to Buddington Park or Heritage Point if the issues discussed here tonight were brought up back then. He stated that there is a home in Heritage Point that was placed much closer to his client's parent's house than they propose to put any of these homes. When this was brought to him after the ZBA, he thought that the most appropriate zoning, when looking at this aerial view, would simply be to extend Heritage Point. Heritage Point is a development that his clients weren't in favor of that impacted their property. They are surrounded by condominiums on one side and cluster development on the other side. He didn't think this Commission was prepared to extend the condo concept any farther but cluster housing isolates the open space which, in this case, happens to connect thoroughly. This is a proposal to extend the concept of Heritage Point to this property and it fits pretty easily.

Atty. Thomas stated that he isn't concerned about the 2/3 requirement because this Commission has the propensity to have the full six members voting on zone changes.

Mr. Panico indicated that they have a majority vote of the Commission which would be at least four votes. Any vote on a zoning issue by this Commission is always a 2/3 vote or more.

Atty. Thomas stated that he is aware that the continuation date for this hearing is November 13th.

Mr. Babina wanted to briefly correct the fact that the discharge point up on Freedom Way after the rainstorm and the rear discharge outlet had never been used; it was still as dry as a bone with all the water at the upper level still percolating around.

Additionally, he commented about the April 15th rainstorm being called the storm of the last hundred years. He noted that these types of weather patterns are indicative of a whole new climate change with more and more to come due global warming. There has been tons of literature to support that, and whatever happened a hundred years is no longer valid. Even on a local level, the frequency has increased dramatically for the opening of the emergency gates to the Stevenson Dam.

Chairman Cribbins thanked everyone for their comments, ended the public hearing for the evening.

On a motion made by Virginia Harger seconded by Patrick Lapera, it was unanimously voted to recess Application #07-46 until November 13, 2007.

A three minute recess was taken.

For the record, Comm. Tomko-McGovern arrived at 8:35 p.m.

OLD BUSINESS

APPLICATION #07-26, KEVIN RUSSO FOR MODIFICATION OF SPECIAL EXCEPTION APPROVAL AND RE-SUBDIVISION OF LOT 7 (2 LOTS), MEADOW WOOD ESTATES, 7 PLUM TREE LANE (MAP 145, LOT 124) R-1 DISTRICT (PUBLIC HEARING CLOSED ON 9/11/07) – DISCUSSION ONLY

Richard Schultz addressed the Commission to review the status of Application #07-26. He asked the Commissioners to look at the "X" mark on Lot #7 of the map that they were looking at. He stated that this is a technical issue that the Commission needs to come to a consensus on for the November 13th meeting.

As presented at the public hearing, the applicant indicated that the Commission may have been inconsistently enforcing the regulations, specifically 4.25, Lot Area and Shape and 24.2, Lot Area Shape and Frontage. These regulations spell out what the individual building lots look in terms of buildable area, where the square in the lot should go, etc. The applicant made the claim that no where in the wording does it claim that any portion of the square in the lot cannot go within a utility right of way. He asked the Commissioners to review the location of the "X". Furthermore, the applicant submitted exhibits showing lots previously approved by the Planning & Zoning Commission in which this requirement may not have been fulfilled. Staff has looked up those exhibits, and he will report on those first.

Mr. Schultz continued to state that clearly there is a technical issue here that the Commission has to deal with. Ideally, the regulations should be re-examined for clarity. They always have to do that, from livestock to home occupancy, they are always re-examining the regulations. Staff has examined the exhibits submitted, and he wanted to provide an explanation of what transpired on each application because it's an important component.

Mr. Schultz discussed the first item on Assessor's Map 180 that had two parcels, and Staff has determined that these lots were created by the Commission, but they were created at a time when the Commission did not have Staff. The Shelton Sub-Division Regulations went into effect May 1, 1963. The Commission did not have paid Staff (part-time or full-time) until the mid or late 70's. Mr. Panico was a paid consultant that reviewed lot layout, but he was not in the office to guide the Commission when they signed off. The Planning Chairman or the Planning Secretary could sign off on the planning record map.

Mr. Panico added that for a period of years the Commission was doing much of its own review, especially in respect to subdivisions. This is when (inaudible) Frank ?, ? Beech, Hugh? were on the Commission. Mr. Panico stated that his only role at that time was to conduct road coordination studies when the Commission had a major subdivision. He analyzed how the proposed roads in the neighborhood would hook up or be extended to hook up. He did not do any lot by lot analysis; that was done by the Commissioners themselves.

Chairman Cribbins asked why they were going back to discuss a lot from 1963.

Mr. Panico responded that it was because it was presented as an exhibit as to the rule not being applied correctly.

Chairman Cribbins asked if they had to do something because something was not applied correctly in this City back then. He asked what would be the best practice today in 2007.

Mr. Panico explained that there has been an attempt to make a case of an inconsistent application of their own regulations by virtue of certain lots being created under those same regulations.

Comm. Sylvester asked if there was anything current.

Mr. Panico stated that none of them that he's aware of.

Comm. Sylvester concurred with the Chairman. He'd like to refer this to Corporation Counsel to determine if this Commission would be obligated to change previous decisions. He wanted to know if that is what they are being asked to do.

Mr. Schultz stated that the Commission has been asked to reexamine this particular subdivision. The Commission only approved seven out of the eight lots for this subdivision. The Commission has been asked to look at the exhibits submitted, evaluate what was done in the past and how the Commission sees the regulation.

Mr. Panico stated that the intent being made was to claim an additional lot under the conventional plan which would entitle them to an additional lot under the clustered plan. That would support their petition to re-subdivide a particular lot to create two of them. That is the sequence of actions that the applicant seeks.

Comm. Sylvester asked if they have been consistent in their inconsistency.

Mr. Panico responded that he doesn't believe there has been any inconsistency. He thinks that this Staff has been consistent in the application of the regulations.

Comm. Sylvester stated that he recommends that they stay with the Staff's recommendation. Just because someone questions an inconsistency when so many

decisions are being made... They should follow the recommendation made Staff if they think it is appropriate They've not done it unfairly in the past.

Mr. Panico commented that reversing themselves would be an injustice to the original property owner denied the location.

Comm. Sylvester stated that he'll make a motion, and if there is a challenge or a question refer it to the Corporation Counsel, and have them make the decision as to whether it needs to be reconsidered.

Mr. Schultz stated that this is for discussion only on the agenda, but if there's a consensus...

Chairman Cribbins stated that there is a consensus but they want to get the right verbiage for the minutes.

Mr. Panico stated that he feels that Comm. Sylvester has stated that they've been consistent in the interpretation of the regulations, having worked with them for years and he supports that interpretation. Furthermore, that is the interpretation that's been applied to this particular application, so they should stay with it.

Chairman Cribbins polled the Commissioners to confirm there was a consensus and there was.

Mr. Panico added that if that's the consensus, they will draft something for the record.

APPLICATION #07-38, EVR JOINT VENTURE FOR SUBDIVISION APPROVAL (26 LOTS: TWISTED VINES ESTATES), FOX HUNT ROAD, OKENUK WAY, POE PLACE AND DICKINSON DRIVE (MAP 174, LOT 11), R-1 DISTRICT – DISCUSSION AND ACTION

Mr. Schultz stated that the Commission was awaiting action from Wetlands which has been received. Wetlands acted on their October 11th meeting. He read the City Engineer's report dated October 19th and the Staff Report dated 10/23/07.

***See attached letter from Robert Kulacz dated 10/19/07.**

***See attached Staff Report dated 10/23/07.**

Mr. Schultz concluded by stating that this application required a lot of attention. There were many comments from neighborhood because many residents did not want any roads extended. However, at least two of the roads have to be extended. They will be implementing the pre-blasting and notification policy recently instituted by the City of Shelton. He read the draft motion.

Chairman Cribbins indicated that Comm. Ruth Parkins will act as his alternate because he was on business travel and not present for the initial public hearing.

On a motion made by Leon Sylvester seconded by Anthony Pogoda, it was unanimously roll call voted (6-0) to approve Application #07-38. Chairman Cribbins abstained from voting with Comm. Parkins acting as alternate.

APPLICATION #07-45, LABORATORY CORPORATION OF AMERICA/DIANON SYSTEMS FOR MODIFICATION OF SITE PLAN APPROVAL (GENERATOR/EXTERIOR BUILDING ALTERATIONS), 1 FOREST PARKWAY (MAP 15, LOT 19), LIP DISTRICT – DISCUSSION AND POSSIBLE ACTION.

Mr. Schultz stated that at the request of the Commission, Staff met with the applicant. The applicant's architect is present tonight to show the proposed treatments to satisfy the Commission's concerns.

Chairman Cribbins commented that the only comment they had was, now that Staff has worked with the applicant, would there be impartial screening of that roof equipment.

Mike Fortuna, architect, T Lb. Architecture, 92 W. Main Street, Chester, CT addressed the Commission.

Mr. Fortuna stated that he is a principal with the T Lb Architecture who did the design of this building. He showed the original drawings with the roof equipment presented to the Commission two weeks ago and a drawing of the same views with five feet of screening set one foot back from the edge of the building.

He stated that all of the heavy equipment would be shielded behind the screening. The only thing seen above the screening would be some of the exhaust stacks that are 12 feet high and too difficult to screen.

Comm. Parkins asked what it was being screened with.

Mr. Fortuna responded that it would probably be a matte finish aluminum louver-type screen that will match the grayish concrete building color.

Mr. Panico noted that they wouldn't want to introduce a contrasting color because it looks like a big band on the roof.

Mr. Schultz asked Mr. Fortuna to submit a sample to Staff so they can show the Commission. He read a draft motion for the Modification of Site Plan Approval for Application #07-45 including a back-up generator on pad, two hazmat structures, parking adjustment and roof-mounted equipment. He indicated that this will be bonded and subject to Commission's final review to ensure they are satisfied with the screening. He stated that favorable reports had been received from the City Engineer and Fire Marshal as well.

On a motion made by Leon Sylvester seconded by Patrick Lapera, it was unanimously voted to approve Application #07-45.

APPLICATION #07-48, UNITED RECYLCING AND ENERGY FOR MODIFICATION OF SITE PLAN (BLDG EXPANSION), 90 OLIVER TERRACE (MAP 63, LOT 13), 1A-2 DISTRICT – DISCUSSION AND POSSIBLE ACTION.

Chairman Cribbins stated that Comm. Sylvester will excuse himself from this application and Comm. Tomko-McGovern will act in his behalf.

Mr. Schultz stated that the Commission recently approved the larger addition for United Recycling & Energy, and they are here tonight for a 5,625 addition for a tip floor and an 5,200 square foot renewable energy plant addition. Mr. Salemm will review some new technology and he submitted some information to the Commission. This is an existing steel and masonry building, and the applicant has indicated that it will be consistent with the existing architecture. The property is not in a water shed or flood hazard area. An erosion control plan is not required for the project. Inland Wetlands has determined there are no regulated activities. They've received a favorable City Engineer report with several conditions that the applicant will address.

Joe Salemm, United Recycling & Energy, Shelton, CT addressed the Commission.

He stated that this is a continuation of the recycling facilities expansion. They've been preparing the property for an additional 1500 square feet of recycling processing area. The tip floor should have been submitted in the previous application.

He indicated that the energy plant is a simple boiler room that will be an extension of the building similar to the building described in the information provided to the Commissioners tonight. Clean, renewable energy will be produced on the property from clean wood chips processed through their facility. They have an abundance of pallet and land clearing debris existing there that they currently truck off of the property. Through the Connecticut Clean Energy Fund promotion to put in regional, small power plants, he and his partner have been looking at some very impressive energy systems working in Vermont and New Hampshire area schools.

Mr. Salemme stated that it is an ideal situation for them because they will get low cost electricity/heat and a savings in not transporting 5 – 6 trailer loads of wood a day off of their property. It is a win-win situation for them. This has been promoted in different areas throughout the state. A lot of the reason that it hasn't been more successful is because other locations would have to transport this wood material in. In their case, the wood is already there.

He indicated that he has come to the Commission with limited technical information because this is simply the first step in a long process that would go through the DPUC, DEP, and Air Control. They have to obtain all these other permits before they can do anything. They have to decide if they are going to be connected to the grid, use this power within their industrial complex, or supply to their neighbors. The neighbors have expressed interest in purchasing this green energy. This is clean, renewable green energy. They are trying to finance this properly through the Connecticut Clean Energy Fund; however, they need to meet with certain commissions. This Commission is the first step before the Connecticut Siting Council, the DEP and the DPUC for other approvals.

Chairman Cribbins asked how large the addition that they are looking for.

Mr. Salemme stated that it would be less than 5000 square feet. The Fairfield University system highlighted in the newspaper today is a 4.2 megawatt system which is about 3000 square feet. This will be on the back of a 75,000 to 85,000 square foot building. It will be an additional 5000 square foot footprint with a concrete base with a ceiling.

Mr. Panico asked if this was something that was going to potentially expand in the future to consume more of their product.

Mr. Salemme stated that if it did, it would have to go through a whole other building. They need to do a feasibility study following this for grants that they are applying for. Expanding this is possible but probably not likely. The cost of a 5 megawatt plant or an 11 megawatt plant is about the same at approx. \$8M - \$10M investment. It has more to do with the type of dry wood or wet wood than with the amount of wood. It doesn't really effect the size of the footprint. The efficiency of the unit, the turbines they plan to purchase measure the moisture content of the wood. The only thing they might change would be the drying system to take the moisture content out of the wood. Mr. Salemme answered that they would not go much bigger because then they would have to transport wood in which defeats the purpose in their location.

Mr. Panico asked if this pretty much consumes their supply of wood chips.

Mr. Salemme stated that it consumes a major portion that they currently transport off the property. He has spoken to the Mayor about this for the renovation of the old school. It is being done in Vermont.

Mr. Schultz read the draft resolution.

On a motion made by Anthony Pogoda seconded by Patrick Lapera, it was unanimously voted to approve Application #07-48. Comm. Sylvester abstained from voting with Comm. Tomko-McGovern as the alternate.

APPLICATION #07-50, DOMINICK THOMAS FOR FINAL SITE DEVELOPMENT PLAN APPROVAL (PDD #64), (MIX USE DEVELOPMENT) 820-838 BRIDGEPORT AVENUE (MAP 18, LOT 19) – DISCUSSION ONLY

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission for the applicant.

Mr. Thomas stated that this was the final site development plan for the hotel. He understands that the Longhorn Restaurant opened, but he didn't get an invite even though everyone else in the world did.

Comm. Parkins added that it was excellent.

Atty Thomas stated that they have the sign that will be located in the middle of the island where the temporary sign is right now. He showed an example of the sign that would be put in first, provided that Commerce Bank wasn't purchased by Citibank North anytime soon. He showed another example of what would be put in secondly once the Hotel Sierra comes in. There is room to add the restaurants on the sign if they want to be placed on the sign. They only anticipate that Longhorn would, however, they are so close to the front that they probably won't. They wanted to show that there is room for the restaurants, but right now it looks like just Commerce Bank will go in. The brick will match and there be some stucco.

Phil Tiso, Rose, Tiso & Company, 418 Meadow Street, Fairfield, CT addressed the Commission.

Mr. Tiso discussed the layout and some site amenities. They have added a row of (inaudible) along this property line which is the mobile home community property line. They have reconfigured some of the surface parking. Additionally, there had been some questions and concerns about the parking deck below. There is a ramp to the underground parking, and per Staff recommendations, they have revised the parking layout to make the circulation of cars flow a little bit better. They addressed the issues about the doors and staircases. He asked if he should walk through the entire layout.

Chairman Cribbins responded that the only question would be if the Staff was satisfied now.

Mr. Panico stated that they were finishing their review now. They wanted to update the Commission.

Chairman Cribbins stated that they would provide consensus so that Staff could provide a favorable resolution.

Mr. Panico stated they would prepare a report for final action.

Mr. Cribbins stated that because the Public Hearing ran so long they will table the Applications for Certificates of Zoning Compliance and everything under Other Business. They will finish this evening with Application #07-52.

NEW BUSINESS

APPLICATION #07-52, PRIMROSE COMPANIES, INC. FOR MINOR MODIFICATION OF INITIAL DEVELOPMENT PLANS (SHELTON RIVER FRONT DEVELOPMENT) CANAL STREET, PDD #60 – ACCEPT, DISCUSSION, AND POSSIBLE ACTION.

On a motion made by Patrick Lapera seconded by Virginia Harger, it was unanimously voted to accept Application #07-52.

John Geddes addressed the Commission. He stated that he brought some revised plans that he made today to clarify the letter he sent. He provided a site plan for the Commission to review. Mr. Geddes continued to say that basically he has requested two major items from the Commission. As they get closer to the final design on the rest of the sites, he has determined a number of issues that he thinks are achieving the same overall intent but changing the way to get there.

Mr. Geddes stated that when this Commission voted on the PDD, they made a couple of requirements that he would like to revisit. One of the requirements was the 2:1 ratio on the development for parking. They are still meeting that intent on the overall plan; however, as each one of the sites meets its final stages they are over the ratio on some sites and under the ratio on others. Ultimately in going through the final stages, they have had one major redesign of the areas labeled as sites C&D because of the parking issues.

He elaborated that on Site C he had to pose an addition to the back of the building so that the commercial building also had a residential component to it. He has since redesigned and eliminated that residential portion giving up 16 units to provide parking for the employees of that building. He redesigned the residential portion of it so that it would become part of the Site D development and gave up some units so now they have a driveway entrance and parking that strictly meets the requirements for the existing

commercial building that will remain. The driveway and entrance goes to the residential portion where the townhouses were located.

Mr. Geddes stated that in this case, when he looks at his parking ratios, if he isn't allowed to have credit for any of the parking areas in front of the garage then he would only be able to provide a 1:6 ratio. However, it should be made up under the shared parking because of the fact that they are providing 36 parking spaces for the commercial portion of it that provides additional parking during the night hours.

Mr. Geddes stated that the main thing was that he gave up 19 residential units which brought it down to 490 units in addition to the Birmingham units. The initial approved plan called for 613 units which was 510 in addition to the Birmingham. They are still providing 1140 parking spaces (more to a 2:1 ratio) for the 490 units. They will have more parking on some parcels than they will on others.

He stated that each one of these developments becomes finalized and brought back to this Commission for approval, it will obviously be looked at on an individual basis. The Birmingham was already done and occupied, but in accordance with his original commitments and what has been done to accommodate parking without thought to municipal spaces that were initially thought to be used, they have proceeded to purchase the property and extended the parking. Even though this Commission provided in their approval that they have 1.5:1 ratio on the parking. Not counting any municipal spaces they have been able to achieve 164 spaces which are at a ratio of 1.6:1 which exceeded what the Commission required.

As they go on they will have the ability to be more creative. On Site G they proposed 2800 square feet commercial and 64 residential units with 290 parking spaces. The rest of Mr. Geddes comments about parking ratios were inaudible.

He stated that he was not sure how to get this Commission to provide a modification on this other than the clear understanding that a commitment would be provided for a 2:1 ratio on the overall development; however, certain individual sites will have a different ratio. The intent is that the overall development will have the 2:1 ratio.

Chairman Cribbins stated that what they should do is accept the latest plan as a minor modification of the initial plan which would include the reduction of 19 residential units and the overall count of parking spaces.

Comm. Oraziatti asked where the units were coming out of.

Mr. Geddes used a drawing to show the general area that 4 units would be coming out of ? (inaudible), with some units coming out of ? (inaudible) and he claimed it's the way that they averaged out. They took out the next few units elsewhere as the site is being developed. He indicated that on these they are actually getting ready to submit the final plans for this Commission to review on each one of these sites.

Chairman Cribbins stated that he thinks the next step would be for this to go to the Downtown Subcommittee and when they say OK, it could come to this Commission for a resolution. He asked the other commissioners if they had any questions or comments.

Comm. Lapera stated that he would like to think about this parking a little bit because he is concerned. He wanted to make sure that the buildings don't go up and the last place for the parking has no parking. He'd like to think about the sequencing and the number of spaces building by building. Comm. Lapera said there has to be enough parking for these buildings. He'd like to think about the implications of the changes Mr. Geddes would like to make, and he'd like the Downtown Commission to take a look at it.

Mr. Geddes responded to Comm. Lapera to keep in mind that the issues will come in as far as the ratios toward the end. Speaking about Sites C and D, this Commission did allow for the joint parking. He stated that even though they have a 1.6:1 ratio on Site C&D they have two items as a plus. They have the ability to ?(inaudible) the regulations

to allow for it and to park in front of the garages. The commercial parking allows for the overflow joint parking.

Mr. Panico stated that he doesn't have an issue until you get to those next two parcels.

Mr. Geddes comments were inaudible.

Mr. Panico stated that at the Birmingham they had one building that there wasn't anything they could do about. However, here they are dealing with a cluster of buildings and he wasn't sure they would be able to do what they said they could do.

Chairman Cribbins stated that this will be going to the Downtown Subcommittee next.

Mr. Panico told Mr. Geddes that they will keep him informed.

Comm. Sylvester commented that he does not understand what they are being requested to do. He thought Comm. Oraziotti asked a clear question about where the units were coming from and there really wasn't any answer.

Mr. Panico stated that there is a reduction in the number of units.

Comm. Sylvester asked from where. The answer wasn't very clear nor what the expectations are. As the Commission continues here, they need clear...

Mr. Panico stated that he agrees and that is why a parking ratio was put in when this was adopted as a zoning document. Mr. Geddes was asking that the Commission re-examine that parking ratio, because he's concerned that a strict application of that parking ratio would create problems.

Comm. Sylvester agreed with Comm. Lopera's comments. What happens at the end if something happens and there's no parking.

Mr. Panico stated that before final approval is given on any of these phases, they have to be satisfied that what is proposed in that final stage will work.

Comm. Lopera commented that C&D isn't a big parcel; it is only 30 units.

Comm. Sylvester stated that he would like to know as they move forward what the standard is at the Birmingham. He wanted to know how much of it is rented or sold.

Mr. Panico stated that as of today it is 70% sold.

Comm. Sylvester stated that he has heard that it is more rented than sold. It is very interesting information that has to go into the mix of what they are doing as they move down – as to what kind of response they are getting and what they are creating for downtown. He questioned if they were creating ownership, condominium ownership, or a rental environment.

Mr. Panico commented that he thinks it is going to be a mixture.

Comm. Sylvester stated that he wasn't for or against anything but he thinks they should know as they move forward as to how many units, and how is the parking be used. He'd like to go and observe. It is so conceptual.

Mr. Panico stated that the next step is adequate parking. There are no ifs, ands or buts - they are going to get their two spaces on site not off site. If the 1 ½ works, he doesn't know if it will...

Comm. Sylvester commented about Alderman Anglace's comments regarding the traffic and parking issues because P&Z hasn't exacted the proper investments from the developer. This is why he would like to know what is happening, such as what type of ownership or other information, before more decisions are made.

On a motion made by Anthony Pogoda seconded by Patrick Lapera, it was unanimously voted to adjourn at 9:55 p.m.

Respectfully submitted by,

Karin Tuke
Clerk