

The Shelton Planning & Zoning Commission held a special meeting on November 27, 2007 at 7 p.m. in the Shelton City Hall, Room 104, 54 Hill Street, Shelton, CT.

The following members were present:

- Acting Chairman, Anthony Pogoda
- Comm. Virginia Harger
- Comm. Patrick Lopera
- Comm. Daniel Orazietti
- Comm. Ruth Parkins
- Comm. Chris Jones
- (alternate for Comm. Sylvester)
- Comm. Thomas McGorty (alternate)

Staff members present:

- Richard Schultz, Administrator
- Anthony Panico, Consultant
- Pat Gargiulo, Court Stenographer
- Karin Tuke, Recording Secretary

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

Tapes (3) and correspondence on file in the City/Town Clerk's Office and the Planning and Zoning Office. Attachments are not available on the website.

Acting as chairman, Comm. Anthony Pogoda opened the meeting at 7 p.m. with the Pledge of Allegiance. He indicated that the first order of business would be the election of Planning & Zoning officers for this two year term.

#### **Election of Officers**

**On a motion made by Patrick Lopera seconded by Virginia Harger, it was unanimously voted to nominate Anthony Pogoda as Planning & Zoning Chairman for his two year term.**

**On a motion made by Virginia Harger seconded by Daniel Orazietti, it was unanimously voted to nominate Patrick Lopera as Planning & Zoning Vice Chairman for his two year term.**

**On a motion made by Virginia Harger seconded by Patrick Lopera, it was unanimously voted to nominate Daniel Orazietti as Planning & Zoning Secretary for his two year term.**

Chairman Pogoda announced that secretary, Karin Tuke and stenographer, Pat Gargiulo would continue to record the meetings for two more years.

Chairman Pogoda excused himself from sitting in on the first public hearing application and stated that Comm. Pat Lopera would act in his behalf and Comm. Tom McGorty would be an alternate. Additionally, Comm. Chris Jones would be acting as alternate for Comm. Leon Sylvester.

Comm. Lopera indicated that the first public hearing was a continuation of public hearing held on October 23<sup>rd</sup>.

#### **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 (CONT'D FROM 11/13/07)**

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

For the record, Atty. Thomas summarized that the reason for the continuance was based on an interpretation of the case which would permit those individuals not on the Planning & Zoning Commission at the time, due to the election, to review the extensive record of the prior hearing.

He stated that when a protest petition is filed, such as it was in this case, it requires 2/3 of all members to approve the PDD zone change. In the normal circumstance, every action by this Commission, when six members are sitting, requires 2/3 majority. Rather than repeat everything at the prior public hearing, he indicated that tonight's presentation would only address concerns brought up in the first public hearing.

Atty. Thomas summarized that this was a proposal for a seven lot cluster single family development. The property is located in between Buddington Park and Heritage Point planned development district. Buddington Park is a condominium project dating back to the 1980's and Heritage Point is a single family cluster development dating back a few years. He noted that of these three projects, their proposal has the lowest density with approximately 2.1 units per acre. The goal of this proposal is to take the Heritage Point cluster concept and slide it over to this lot for a seamless transition. Atty. Thomas recalled the aerial photographs shown at the last hearing that depict a band of higher density housing that stretches from Country Walk to Buddington Park to the proposed site to Heritage Point down to Bridgeport Avenue with Woodland Mobile Home Park, which has a very high density.

Atty. Thomas commented on an issue brought up at the last hearing about the transitional zone. There is zone line (LIP) which cuts across a small portion of their property in the rear and through a larger portion of Heritage Point.

He noted that this is a transitional zone not because of the zone line. Two dimensionally – looking at a flat map – it appears that an LIP use could go on the Heritage Point property, but that would be in theory and not in practice because the rear portion of the property, where most of the LIP is located, is mostly open space and there is a 50 ft drop-off. Also, the only way to put an LIP use on Heritage Point would be to build a road because the P&Z regulations of the City of Shelton forbid an access way or driveway to an industrial use through a residential area. Practically speaking, these areas aren't transitional zones because of the zone.

He recalled a previous discussion with the Commission about Aspen Ridge which was approved as a 12 unit condominium complex in an LIP zone. On that property, there is front access to Commerce Drive. He showed that, theoretically, a 25,000 square foot building could be put in that zone. There's no ability to really use it, but it's transitional because of where it was.

Atty. Thomas continued to state that this has Wal-Mart, Crabtree and Woodland Mobile Home Park - high density residential and commercial uses. He stated that at the end of Buddington Road where it intersects with Nells Rock Road, the single family homes that are there aren't in a residential zone. They are actually in the restricted business district behind Crabtree. Therefore, in response to whether or not the property is in a transitional zone, he indicated that it clearly is in a transitional zone. Additionally, it is in that band of higher density residential homes with Country Walk, Buddington Park, Heritage Point and Woodland Mobile Homes. In that band of higher density residential development, this property has the lowest density. He stated that he would turn the discussion over to Jim Rotondo to re-emphasize the use of Heritage Point and discuss issues pertaining to the road, drainage, and buffering that were brought up at the last public hearing.

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

Mr. Rotondo used drawings of the Heritage Point site plan on file in the P&Z Office to show the LIP zone in the lower portion of that property. He showed the zone line that established the LIP to be about 500 feet off of Buddington Road bisecting Heritage Point. The lower area would be the LIP zone.

He stated that looking at various configurations of what would be put in for an industrial use would typically be a 25,000 square foot building. Those types of smaller industrial buildings would be a flat pad rather than a residential where they could step with topography. The area within this LIP zone presents some challenges from a design standpoint such as a steep grade differential. Looking from the lower property line, there

is an elevation of approx. 280 coming up to the LIP zone line cutting through the site at an elevation of about 350. There is approximately a 70 foot grade differential in about 500 feet. Designing an industrial type development there would require larger retaining walls and a lot of fill. There is also a wetland corridor coming down through the property that would have to be dealt with in regulated areas. He stated that those are challenges that would have to be overcome in designing for that site. It is not a straightforward design.

Mr. Rotondo addressed the issue of relocating the roadway at the intersection of Buddington Road. He stated that they looked at alternatives because the traffic report conducted by the traffic engineers at Barkin & Mess indicated concerns about intersection site distance. Based on criteria in the DOT Highway Design Manual, Barkin & Mess analyzed two intersection site distances. One of those had been the 85<sup>th</sup> percentile speed – or the actual speed observed on Buddington Road. Based upon that percentile, the intersection site distance was about 55 feet short. The second criteria had been the intersection site distance based on the actual design speed of Buddington Road of 25 MPH which is 280 feet. They well exceed the intersection site distance there with approx. 330 – 350 feet.

Mr. Rotondo indicated that they did look at an alternative road way layout. He showed a drawing of that alternative which relocates the intersection of Buddington Road approx. 55 feet toward Freedom Way of the Heritage Point driveway. He stated that this configuration would close up the distance between the two driveways. In the original proposal, there is approx. 175 feet center line to center line between the two driveways. With the alternative proposal, it would be shortened up to 120 feet. Looking at these design issues, they have to balance this intersection site distance with operational deficiencies which may occur between those two driveways with the lesser distance between them. Mr. Rotondo stated that it is their opinion that with this two driveway scenario, the greater distance would be more desirable for vehicles entering or exiting the site. Therefore, from an operational standpoint at the intersection, they feel that the original plan is more advantageous.

Mr. Rotondo stated that some other issues with the alternative plan are the configuration of the interior lots. The original proposal involves two lots which front on Buddington Road providing nice yards and buffer areas between the adjacent developments. In the alternative plan the two lots are reconfigured to be on the same side of the driveway. They would encounter sloping topography with the two houses stepping. In designing retaining walls, they would encounter grading issues. He concluded that there were various challenges with this layout.

Mr. Rotondo responded to Mr. Babina's concerns about drainage. He showed the area that Mr. Babina had referred to on the site drawing. At that area by the end of Freedom Way before the terminating cul-de-sac, there is a culvert going underneath the roadway that drains down toward the Woodland Mobile Home Park. He stated that with the way the drainage patterns work in that area, the drainage area in Heritage Point drains toward the common property line between the Applicant's property and the Heritage Point property. All the roadway drainage for Heritage Point drains in two areas. There is an upper detention pump and lower wetland areas. A portion of the roadway drains to the detention basin and a portion of the roadway has a direct discharge into the wetlands. And a lower portion of the roadway has a direct discharge into the wetlands prior to going under Freedom Way.

Mr. Rotondo recalled that at the last hearing, there was some discussion about a pond located on the property. He pointed this out on the site drawing to show that as the runoff comes down from Heritage Point toward the Farrell's property, it comes through the wetlands and flows through that pond which then comes around through the property and back on to Freedom Way. Mr. Rotondo stated that this drainage area is approx. 13 acres which contributes to (inaudible).

In this application, the drainage area is about 3.3 acres. He provided a drainage report in which they have designed a detention basin located just off of John's Ridge. It has been sized to collect storm water runoff from roadways, proposed houses, and impervious

surfaces. It's been sized to provide a zero increase in runoff from the site from 2-year, 10-year, 25-year and 100-year storm events.

They looked at rainfall data from the date Mr. Babina referred to - the April 15, 2007 nor'easter. The hourly rainfall data during that day showed 2 inches of rain within 6 hours. Other times of the day, there was over an inch of rainfall in 2 hours. These were very intense, short duration storms which generated a large amount of water through that pipe. However, as part of this application, there is a storm water management system in which they are attenuating any increases in the runoff from their development.

Mr. Panico asked if Heritage Point plan had detention.

Mr. Rotondo responded that there was a detention basin at the top. He showed where there was a direct discharge into the wetlands. He added that there was a structure on the outlet; however, he was uncertain as to how much detention it provided.

Mr. Panico asked Mr. Rotondo, if in his opinion, they weren't able to attenuate the storm system.

Mr. Rotondo indicated that he was not making that assumption. He knows the engineer who designed it and he is a very good engineer. He reiterated that during that storm event in which Mr. Babina represented, there was a large amount of water going through that culvert. Given the data he obtained, he concurred with that. Those weren't normal, everyday storm events.

Atty. Thomas added that with the data from that storm event, it appears to have ranged from a 25-year event to a 50-year event based upon the rainfall within a 24 hour period, as well as the location.

Mr. Rotondo stated that at the last hearing they indicated that they would put in a 20 foot conservation easement around the perimeter of the property, mirroring what had been done at Heritage Point. The perimeter is well buffered with vegetation except for one area in the lower corner in which they would provide some additional white pine buffering. Also, any other areas that the Commission would like buffered can be provided with additional buffering.

Mr. Panico asked if they had any plan indicating the extent of existing vegetation on the site.

Mr. Rotondo responded that on the plan that they have, the upper portion of the site is clear. There is a driveway coming down with existing trees along it. The middle portion of the site, where the wetlands are located has a maintained grass lawn area.

Atty. Thomas showed two photos of the area Mr. Rotondo just described.

Mr. Rotondo continued that in the back area there are various trees located throughout, but it is not fully wooded.

Atty. Thomas showed three photos looking toward Buddington Park that showed the trees along the boundary and foliage around the pond. These photos were taken near John's Ridge where the driveway exists right now. Atty. Thomas noted there was plenty of room to put a 20 foot conservation easement as well as an additional buffer of white pines or other appropriate trees. The two closest houses include one near the rear of Heritage Point and one toward the front of Heritage Point. Using his aerial photographs from the previous hearing, he pointed out the distance between the houses and the areas to be provided with additional buffering.

Mr. Rotondo stated that the 20 foot easement they are describing piggybacks on a 20 foot conservation easement as part of the Heritage Point development. This totals up a 40 foot buffer between the two parcels.

Atty. Thomas wanted to remind the Commission that with an LIP zone line adjacent to a residential zone, there is an additional issue that exists for a 75 foot buffer requirement. Within that buffer there can't be any parking without a variance. It is their intent to create a flow from Heritage Point down through. As an exhibit, he provided an 11 x 17 sheet showing the Bulked Standards page from their Statement of Standards and Uses as compared to the approved Heritage Point standards.

He explained that this is a parcel of property that as of right has enough land for three lots, but because of its configuration can only get two lots. He described it as two R-1 lots between an approved condominium complex and an approved single family cluster home complex. With respect to prior actions of the Commission, Atty. Thomas indicated that they've chosen to put higher density residential on either side. If there were two R-1 lots on a free split subject to wetlands buffering requirements, the owners could cut down all the trees with no prohibition. In a PDD, the Commission has the right to establish landscaping requirements and buffering requirements which are in perpetuity. That's the difference between those two issues.

Atty. Thomas continued to say that in respect to the wetland issue, Wetlands approved the crossing that was proposed for a three lot R-1. At the second stage of this application, they will go back to Wetlands because there is a little more grading in some upland review areas with no adverse impact upon the wetlands. He asked Mr. Rotondo to point out on the drawing where the additional grading was located.

Mr. Rotondo pointed to an area and indicated that it was adjacent to the wetlands based on the detention basin, and the development and increased width in the driveway due to the PDD and (inaudible).

Atty. Thomas clarified that the basic concept was approved, and they would be going back for the grade in the upland review area.

In regard to questions about blasting, Atty. Thomas restated that the only blasting on this site would be trench blasting within the lower area for foundations. There would be no blasting for road construction.

Mr. Panico asked if there would or would not be foundation blasting.

Atty. Thomas responded that there would be some foundation blasting similar to what occurred at Heritage Point. With respect to the issues of blasting, this Commission has the opportunity to impose some restrictions, although most of the restrictions under state law are imposed by the Fire Marshal. The blasting here would be no greater than what occurred at the adjacent property over the last couple of years.

Atty. Thomas commented about the discussions that took place about the cases such as Champion and Mileski in regard to Planned Development Districts. He stated that Planned Development Districts have been approved by the Supreme Court. It is immaterial that the Champion case involved the New Haven Special Act because the language of the New Haven Special Act is identical to the language of the enabling statute which Shelton operates under. He indicated that he knows this because in a prior case someone attempted to challenge Shelton's PDD regulations and he wrote the brief before it was settled, and it is basically the same. PDD's have been approved. The concept that Shelton has for PDD's has been approved. Whatever tweaks were needed, this Commission did over a year ago in October 2006 when the new PDD concept was approved.

Atty. Thomas stated that with respect to this, some individuals raised the issue of being blind-sighted. He stated that there was a condominium - a condominium - a small piece of empty land - cluster single family housing - and cluster mobile homes. It's hard to believe that anyone living within that band would be surprised that a similar type proposal were proposed for these three acres in between condos and single family cluster houses. Especially since this development is less dense than either one of those two developments. Clearly PDD's as defined and used by the Commission over the years are

approved by the Supreme Court; they aren't anything that any court is going to knock down.

In conclusion, Atty. Thomas commented about the people who spoke for and against this project. There was a protest petition submitted which is a requirement that increased the vote to two thirds. He presented a petition of those people living in the neighborhood who are in favor of this project.

Atty. Thomas referenced a letter received by the Commission from an individual on Freedom Way concerning more lights coming into his home if the road were to be bent closer. However, they believe that their proposal for two houses with a road in the middle is safer than the alternate plan with the two houses on one side.

Atty. Thomas claimed that he feels they've answered all the concerns brought up but are prepared to answer any other questions.

Mr. Panico asked Mr. Rotondo to speak a little about the road grades because he can't recall the previous discussions about it.

Using the site drawing as a reference, Mr. Rotondo responded that coming in from Buddington Road there is approx. a 2% slope landing area. Coming back down the hill they have about 13% flattening out at the bottom and back up to about 1% grade into the cul-de-sac. He had some informal discussions in regard to the grade on this roadway with Bob Kulacz and he indicated that there were several larger developments that have been approved with road grades up to 12%-14%.

Atty. Thomas added that this is a private road similar to Freedom Way.

Mr. Panico asked if there was anything to reduce that grade to 12%.

Mr. Rotondo responded that the fill in the lower area would increase the encroachments into the wetlands or within regulated areas and potentially create some higher retaining walls.

Mr. Panico asked how significant it would be.

Mr. Rotondo answered that it would be about 3 to 4 feet higher.

Mr. Panico asked if they would just run it out further at the (inaudible...)

Mr. Rotondo responded that they are pretty locked in a safe, flatter land area on the top. He showed on the site drawing how they would take the profile and raise it up to 12% and run it down to the lower vertical curve area. He stated that looking at it coming downhill that profile would rise up and increase the lower fill area.

Mr. Panico asked if they would have to bring material in for that job.

Mr. Rotondo answered that they most likely would have to.

Atty. Thomas commented that in respect to that, addressing these matters in regulated wetlands may consider it a reasonable alternative to maintain that same grade. He pointed out that the counsel representing the neighbors commented that in the new regulations environmental issues have to be considered. Without turning the Planning & Zoning Commission into a Wetlands Commission, reasonable prudent alternatives need to be balanced against greater encroachment.

In regard to the houses proposed at the lower level, Mr. Panico asked if the closest one to the wetland was 50% into the wetland upland review area.

Mr. Rotondo responded that was correct - within the 50 foot construction area.

Atty. Thomas added that even though it's in the upland review area, there has to be adverse impact for it to be a detriment. He referenced the River Bend case that established the rule that the Wetlands Commission can't treat an upland review area stricter than wetlands.

Mr. Panico asked Atty. Thomas if he could e-mail that River Bend case over to him. Atty. Thomas indicated that he would.

Mr. Schultz told the Chairman they he wanted to acknowledge a letter received dated October 27, 2007 from Richard and Brenda Bourque, 125 Buddington Road, Shelton. He stated that they are in full support of the development with the condition that John's Ridge not be moved 25 feet to the south causing car lights to shine into their home.

Vice-Chairman Lopera asked if this was the neighbor across the street.

Mr. Schultz responded that it was the neighbor across the street.

Vice-Chairman Lopera asked that this letter be included in the record. He asked the Commissioners if they had any questions for the Applicant.

**\*See attached letter to Richard Schultz, from Richard & Brenda Bourque, dated 10/27/07.**

Comm. Parkins asked Mr. Rotondo about his opinion regarding the location of the driveway. Since the reason for looking at an alternative was to increase the 55 foot site distance, do the reconfiguration challenges outweigh the safety factor of moving the driveway - realizing that there's a resident that this would impact.

Mr. Rotondo explained that the more extreme intersection site distance is based on criteria in the State of Connecticut DOT Highway Design Manual which is geared toward highway design on state highways. That criteria is being applied at more local levels. In determining the road distances, they weigh the site distances and safety as well as other factors such as aesthetics. One of the big issues in this situation was the distance between Freedom Way and John Ridge's. In his professional opinion, shortening that distance becomes a more critical issue than intersection site distance to the right. He noted that for the posted speed limit of 25 MPH, the intersection site distance is 280 feet. They are between 330 and 350. The increased speed above the posted speed limit is what increases that intersection site distance.

Mr. Rotondo concluded that in weighing those issues, there is sufficient site distance in that direction. Therefore, in weighing the distance between the two driveways, he feels that it's important to keep as much distance as possible between those two driveways.

Comm. Parkins commented that they realize the speed limit is not typically obeyed on roads like that with drivers traveling a lot faster than someone coming out of driveway.

Mr. Rotondo added that another factor involved would be aesthetics and the issue regarding headlights from the neighbors, the Borques. These issues are also considered.

Mr. Panico asked if there was any vegetation clearing that could be done on the other side of the road that would enhance it.

Mr. Rotondo explained that the restriction in that location is a vertical curve and has nothing to do with the horizontal geometry.

Atty. Thomas added that to the left it is fine, but to the right, the traffic would be coming uphill not downhill. He showed an exhibit depicting the roadway that comes out between the existing house and garage following down to John Dominick at the curve. The curve is part of Buddington Park, past its entrance. The site distance of issue is from the driveway down to that curve. It is safe at the existing speed. Barkin & Mess compiled an addendum which is in the file stating that both factors need to be balanced.

Mr. Panico noted that it only comes into play if someone exits that road to make a left turn. The majority of the traffic is going to go to the right.

Comm. Chris Jones asked how the grade would be affected if they moved that.

Mr. Rotondo stated that with the proposed roadway, the vertical geometry would not change. The length of the road stays essentially the same.

**End of Tape 1 - 7:45 p.m.**

A discussion continued about the previous Wetlands approval for construction within their 25 foot grading setup area and 50 foot construction set back areas. With this application they would need to expand what the previous activity had been.

Mr. Panico commented that they would need to get all their encumbrances addressed before they get an approved final site plan.

Atty. Thomas stated that as he has pointed out to the Wetlands Commission, these aren't buffers; they are upland review areas. The courts and the DEP have made it very clear; it gives the ability to review the upland areas, not the wetland areas as a regulated area and to make sure that there is no adverse impact on the wetlands.

Comm. Harger asked Mr. Rotondo to reiterate the water course from where it begins and ends.

Mr. Rotondo responded by using two drawings next to each other to show the drainage area from Heritage Point that contributes to the culvert that was previously discussed. The water makes its way down in three different directions from an upper area to an existing detention basin; an area along the roadway which discharges directly into the wetlands; and an area along lower Freedom Way that discharges directly into the lower wetlands.

He continued by showing the water route from the upper portions of the site that drain toward Meadow View, the property line, entering the existing pond, working its way along an existing channel, then back onto Heritage Point where the green arrow is. At that point the water crosses Freedom Way down through the wetlands and down toward Bridgeport Avenue.

Mr. Rotondo explained that on their property with the construction of their roadway, they are intercepting all the runoff from the impervious areas, collecting it within a drainage system and discharging into a proposed detention basin just north of John's Ridge. The water would discharge back into the existing channel and go down into the channel where it flows today. The detention basin would be sized to provide for zero increase in runoff from the 2, 10, 25 and 100 year storm events.

Atty. Thomas added that there would be no further impact upon the water that runs downhill through Heritage Point.

Vice Chairman Lopera asked if there were anymore questions or comments from the Commissioners. There were none. He opened the discussion for public comments.

**Atty. Joel Greene, Greene & Gross, 1087 Broad Street, Bridgeport, CT addressed the Commission on behalf of the Buddington Park Condo Association.** Mr. Greene indicated that he would hold his remarks until members of the public spoke first.

**John Babina Jr., 9 Freedom Way, Shelton, CT addressed the Commission.** Mr. Babina stated that he found out some new information since the last public hearing when he submitted the videos of the water flow. He asked Mr. Rotondo if he could use his drawings of the property to share that information.

Mr. Rotondo indicated that he could use them.

Mr. Babina commented that as Mr. Rotondo stated, all of the drainage from Heritage Point (within the yellow line) finds its way into one area. He pointed to another property stating that its drainage comes into the Heritage Point property too. Apparently, there is a man made pond on Heritage Point property and shared on both sides of the line.

In regard to the culvert of pipe being discussed, Mr. Babina stated that it is draining everything from both properties. He stated that he doesn't know about any drainage in the back down through Buddington Park. He stated that he asked A.J. Grasso, who was the contractor for Heritage Point, if he anticipated any of the proposed developments when he sized this pipe. He stated that Mr. Grasso said the pipe was sized for "as is." Mr. Babina concluded that he thinks it was not designed for anymore, and he is concerned about it taking any additional flow.

Mr. Babina commented that for that area to take 100% from another storm like that, an enormous catch basin would be required. He indicated that they are totally opposed to this project because of concerns about the water coming under a road that supports all the utilities (sewer, phone, water, cable, gas, etc.) underneath it. He thinks that the pipe should have been made larger to handle the change in flow due to the new developments. He thinks there should have been more coordination between the two property owners. The containment would have to be enormous to hold 100% back.

Mr. Panico responded that they are allowed to discharge whatever was coming there under today's circumstances. He added that what the engineer is saying is that their design is such that the flow that would normally come off of that site under existing conditions would not be increased.

Mr. Babina stated that in order to do that it would take a very large retention area to hold back the flow on 4/15/07.

Mr. Panico responded that all they need to hold back or need to delay is the additional flow created by their development of the land. That is basically what a detention basin does. It cuts the peak flow down to where it was before development.

Mr. Babina continued to state that with all the developments planned in these two areas, it is focused through that one pipe. It can't hold back 100% unless.(inaudible).

Mr. Panico stated that he would like to let the engineer explain it.

Vice Chairman Lapera asked if there were any more comments from the public.

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

Mr. Greene began by indicating that he would try not to be repetitive in his remarks from the previous hearing.

In regard to the case law, Atty. Greene stated that he and Atty. Thomas disagree on the impact of the case law. His point in bringing it up at the previous hearing was not intended to have the Commission judicate the case law. He only wanted to raise an issue that he had regarding the PDD zones. He feels that it will be an area of discussion that perhaps he and Atty. Thomas could talk about another day.

Atty. Greene stated that he is struck by the fact that the applicant spends a lot of time talking about being just like Heritage Point, and it's just an extension of it, and it won't look any different. He stated that doesn't really satisfy the regulations for a PDD zone. He noted that it's not about transitional zones either because the regulations don't talk about transitional zones. He stated that the regulations talk about a PDD being this single site establishing transition between zones of different character.

He asked the Commission to decide the extent to which this development on this piece of property establishes a transition. He thought it was interesting that the wording of the regulations specifically talk about an abutting or adjacent zone of a different use. The

PDD in this case would include an industrial zone so he wasn't sure if that was compliant with the letter of the regulations.

Atty. Greene spoke about the issue of density averages not fully describing its true impact. He used the example of his clients looking out at five homes jammed into an area that had previously been an open, undeveloped area. He concluded that their sense of what the density will be in that localized area is far more than the illusion of the 2.5 number.

Atty. Greene commented about the standards that apply for adoption of the PDD zone. Atty. Thomas indicated that in October 2006 the Shelton regulations were modified in response to some of the case law. He stated that this is not designated as a Special Development Area (SDA). He understands that this is under the subparagraph B of 34.1 and the wording talks about PE districts only being established in the following locations with b) being "on property abutting and/or adjacent to an established non-residential area for the purpose of accommodating a proposed use and development that will provide an effective transition and land use and bumper to the adjacent residential neighborhood.

Atty. Greene commented that at the present time, putting five houses in the back doesn't really effect the residential neighborhood on the other side of Buddington Road. Therefore, to suggest that it creates a transition between that area really isn't genuine.

He continued reading that "such PD's must be limited to uses such as those typically authorized as special exception uses in residential districts as set forth in Schedule A." Atty. Greene stated that he couldn't find cluster homes in schedule A.

Mr. Schultz found the area in the regulations pertaining to cluster homes in a his binder.

Atty. Greene read 1B, "Conservation Residential Developments consisting of single detached dwellings for one family, not more than one such dwelling per lot, subject to added requirements." He noted that is only a special exception requirement in two of the six residential districts.

Mr. Panico added that he believes that paragraph refers to the land use - the land use being residential in nature to prevent the introduction of non-residential PDD's in a residential environment.

Atty. Greene stated that it says single detention levels for one family.

Mr. Panico stated that he wasn't speaking about that, but about the reference to Paragraph 41.1b. That language was to preclude the possibility of a non-residential use encroaching upon a residential area through the mechanism of a PDD. He continued to indicate that it was basically saying if there is a PDD next to a residential area, stay with the type of uses that would happen in residential areas, i.e. homes without distinction as to whether it's single family, detached houses on individual lots, or land owned in common or cluster or multi-family homes. It is a residential land use.

Atty. Greene commented that he hadn't studied this in detail, but he stated that there are no special permit commercial uses in residential areas.

Mr. Panico indicated that he'd like to go back to the basics by stating that a person can apply for PDD other than in those special development areas on a site in a transitional location between residential and non-residential development on the other, whether it be commercial or industrial. But what it says is that when proposing that PDD as that transitional use, that PDD shall be limited to the kinds of uses that would be expected in a residential area - predominantly residential uses, churches, schools and things of that nature. It's not an excuse to build an office building or a commercial development because all that does is move that transitional impact into a residential area.

Atty. Greene commented that it also reads that clustered homes are not typically allowed as special exceptions.

Mr. Panico restated that they weren't talking about the form of development; they are talking about the land use being residential.

Atty. Greene responded that he could only go by the wording of the regulations.

Mr. Panico stated that as one of the authors of the wording - that was the intent of the wording - to protect the residential neighborhoods from the introduction of non-residential activities.

Atty. Greene commented that all he could do is read the regulations as they are written. He stated that as it is written, by his reading, it refers to special exception uses for residential areas.

Atty. Greene commented about some other wording in the regulations as stating that it "shall not be used when an alternative conventional zoning district is available." In this case, he added that there is a residential use available that could accommodate two and arguably three lots. However, he noted that there was an application for three lots presented to the ZBA as discussed previously. He submits that there is an alternative use because even three houses on this site or two houses on this site - with one house in the front or two houses in the back or whatever that layout is - would not effect the way this transitions between the way this site lays out. It doesn't change the way the transition that these regulations contemplate is accomplished.

He continued by stating that in the standards set forth in 34.9 for the adoption of the district, Section C talks about another district not being appropriately established to accomplish such purposes as to that transition.

Atty. Greene commented about 34.9 Environmental and Ecological Impacts, Section H. He referred to the wording "any potential impacts regarding ecological and environmental conditions should be maintained within acceptable limits." He commented that to his understanding, this plan had not been approved by the Conservation Commission. He asked the Commission if it had been approved.

Atty. Thomas indicated that he would answer that by saying that the Conservation Commission in Shelton was not an approval board.

Atty. Greene asked if a permit had been issued.

Atty Thomas restated that it was not an approval board. He told Atty. Greene that it doesn't approve anything. The Conservation Commission in the City of Shelton is an advisory board that renders advisory opinions. The Wetlands Commission is separate from that.

Atty. Greene then asked if the Wetlands had rendered an approval.

Atty. Thomas responded that they have not -not at this stage.

Atty. Greene commented that Mr. Rotondo was a fine engineer but he's not an environmental scientist and not an ecologist. Therefore, a finding cannot be made as to the potential impacts regarding ecological and environmental conditions being maintained within acceptable limits. He commented that the Applicant offered nothing regarding the environmental impacts. He stated that the area is wet and the residents from Heritage Point are concerned about the drainage onto their site.

He urged the Commission that before they begin allowing this density of development, and by the way, the traffic on the site... It may be only five homes but there will be cars traversing back and forth, discharging roof drains, and a significant amount of impervious surface. Although Mr. Rotondo claims the flooding off the site will be the same or less, there hasn't been any kind of environmental or ecological study. The impacts haven't been identified. He continued to say that nothing had been addressed about water quality in regard to salted and sanded roads because this water flows into Heritage Point. Again, he stated that there was no environmental science or ecological report in the record.

He concluded by stating that he disagrees with Atty. Thomas about PDD's. He stated that clearly there is a regulation to establish them and he respects that; however, it is getting to a point where there are a lot of PDD's. He agreed with a comment made an individual at the last hearing about needing to draw the line.

He commented that he knows the Applicant is present tonight and he realizes that they have a desire to maximize their property. However, he urged the Commission to exercise its legislative power while maintaining the integrity and confidence of the public by having all requirements of the regulations for a PDD being met. On the basis of overall impact, he stated that his clients would urge the Commission to deny this PDD. As one last point, Atty. Greene added that nothing had been offered as to how this might affect property values in the neighborhood, and that was one the standards in the regulations. In 34.7f "it will not have a significant adverse effect on surrounding properties or on property values in the area." He asked the Commission to require the Applicant to meet the burden under the regulations. He indicated that he'd be happy to answer any questions.

Vice Chairman Lopera asked if the Commissioners had any questions. There were none. He asked if there were any other public comments.

**Edward Ryan, 160, 162 and 164 Buddington Road addressed the Commission.**

In response to Atty. Greene's comments, Mr. Ryan questioned what exactly his real objection was to the Farrell family's application. He commented that there are 41 houses on 17 acres and whatever Buddington Park has, and it seems as though the little guy has to struggle for a small number of homes. He feels as though this man (the applicant) has to struggle when there has been such explosive growth on Buddington Road. Mr. Ryan stated that he has been on Buddington Road for 30 years and lived in Shelton his whole life. He feels qualified to speak about what he sees happening on Buddington Road. It seems quite unfair that the little guy is really struggling to accomplish something here. He's come with his attorney and an engineer and answered all the questions about drainage, car lights, etc.

Mr. Ryan stated that he was present at the meeting in March 2003 when there was an outcry from about 55 people from Buddington Road and adjoining neighbors (Doe Place and John Dominick) against the 41 homes that are now called Heritage Point. It seems to have gotten approved with all its difficulties with wetlands. It went through and yet, here, it seems as though the Farrells have to struggle to get something very small.

Vice Chairman Lopera reminded the speaker that he has to address his comments to the Chair because there cannot be dialogue between the applicant and the attorney. The comments are fine to make and they are on the record; however, they need to be directed to the Commission. He added that he doesn't want Atty. Greene to answer them directly.

**Lynne Farrell, 25 Buddington Park, Shelton, CT addressed the Commission.** Ms.

Farrell clarified that she is no relation to the Farrells of this application; however, she is the Director and Secretary for Buddington Park. She strongly urged the Commission to deny this application based upon her comments at the last public hearing and also based upon the environmental and wetlands impacts on Buddington Park and possibly Heritage Point.

Atty. Greene responded to the comments made by Mr. Ryan, that he doesn't know Mr. Farrell and he understands the applicant's desire to maximize his property whether it be with one, two or seven houses. He commented that everyone appears before this Commission on even footing. The little guy and the big guy have to meet the standards of Shelton's regulations. It isn't about doing favors or who is liked or not liked. He doesn't feel as though this Commission issues their decisions on that basis, but on a fair agreement of the regulations based on information put before them.

Atty. Thomas provided his closing remarks by stating that this Commission had substantial discussions about the issue of wetlands when it revised the regulations. He wanted to clarify that the Wetlands Commission approves nothing. They do not approve

the number of lots, the number of units – they don't approve anything. They grant permits for regulated activities. They have no say as to the number of units or anything like that except how they impact on a regulated area.

He continued to state that is why an applicant goes before the Wetlands Commission after they have a specific final site plan. Atty. Thomas wanted to clarify that had the applicant not been before Wetlands at a prior time, then they would have gone to them for a Wetlands preliminary review. There is really nothing in the statutes that allows it, but for the last 20 or 30 years it has been done.

Secondly, Atty. Thomas noted that they have addressed environmental issues – water flow and drainage are environmental issues. He stated that one of the important things about that is that the person addressing issues has to have something after his name other than JD. There has to be P.E. or some other expertise. He indicated that while people can state their observations about the impact or the drainage, the only expert has been their expert who testified that they will, based on what they've done, capture the increased water flow and not let it go off.

Finally, in regard to property values, Atty. Thomas stated that he could have come before the Commission with a realtor, but he relayed that the Commission could use its own common sense in looking at this. There is no indication that high valued houses are going to change the area in any way, shape or form. The houses would be at a greater or equal value to Heritage Point and conceivably greater or equal value than Buddington Park.

Atty. Thomas wanted to close with a comment that Atty. Greene made. It's a comment that the Commission is often confronted with because people do have the right to use their property in accordance with the regulations. He stated that Atty. Greene said that the people in Buddington Park, who happen to be protected by existing foliage and a 20 foot easement anyway, want to look out the window and see an undeveloped piece of property. Atty. Thomas added that a lot of people do. Furthermore, the people on the undeveloped piece of property want to look out sometimes and see what reasonably, in accordance with the regulations, they could do. He concluded that they believe that's what they've propose to do.

Vice Chairman Lopera asked if there were any further comments from the Commission. There were none.

**On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to close the public hearing for Application #07-46.**

**APPLICATION #07-47, APPLE TREE DAYCARE AND PRESCHOOL CENTER FOR MODIFICATION OF SPECIAL EXCEPTION/SITE PLAN APPROVAL (ADDITION FOR INDOOR PLAY AREA), 117 LONG HILL CROSS ROAD (MAP 51, LOT 4), LIP DISTRICT**

Chairman Pogoda called the meeting to order for the next public hearing. Secretary Daniel Oraziotti read the call of the hearing. There was no additional correspondence.

**Neil Hayes, Mingolello & Hayes Architects, 90 Huntington Avenue, Shelton, CT addressed the Commission.**

Mr. Hayes introduced Debbie Aldrich, the owner and director of Apple Tree Daycare. He indicated that Ms. Aldrich has been in town for thirteen years with this business and in the present location since 2000. He used a site drawing to show that a few years ago an additional had been added to the original building that was approx. 2000 square feet.

Mr. Hayes stated that Ms. Aldrich proposes to add an indoor play area for toddlers and preschoolers which would be different than standard areas where there are toddlers and preschoolers because there is no sink. When toddlers and preschoolers utilize a room like this, there is a requirement of 35 square feet per child. Additionally, that determines the

number of people that are allowed inside the building. Mr. Hayes stated that presently, Ms. Aldrich has 60 clients arriving and departing at different times.

He indicated that she would like to take the children out of the existing school area there and bring them into an indoor play area. The State mandates 75 square feet per child for an outdoor play area to allow for additional movement and the space for riding toys such as Little Tike cars, etc. Therefore, to have an indoor play area she would need 75 square feet per child, not 35 square feet. Mr. Hayes stated that the basis of this request is for an open area for the purpose of taking the children out of one area into another area to play.

Mr. Hayes stated that this was an LIP zone, a permitted use with special exception from this Commission. The existing parking would remain unchanged based upon the idea that there is no increase in clientele so there will be the same number of children and employees. Therefore, they plan to leave the parking the way that it is.

Mr. Panico asked for clarification that there was no additional staff.

Mr. Hayes answered that there was no additional staff and no additional children.

**Deborah Aldrich, owner & director of Apple Tree Daycare Center, 117 Long Hill Cross Road, Shelton, CT addressed the Commission.**

Ms. Aldrich reiterated that she's been in business for 13 years. She indicated that they care for children from 6 weeks to 12 years old. The purpose of the addition is to make an indoor play area for the existing children who already come to the Center.

She added that due to New England weather, there are often not many chances to go outside. She equated the indoor play area to a McDonald's play area in that it would provide rubber padding and meet State standards. The existing children could now go into the indoor play area on a rotating basis. Presently, they have four outdoor areas. It requires 75 square feet per child outside, therefore, they are asking for an 800 square foot addition so they could get at least 10 children in there. The most they have are approx. 10 in the preschool classes.

Comm. Lopera asked the size of the existing building.

Mr. Hayes responded that it was a 2940 square foot non-conforming lot within all the zoning regulations even with the proposed addition with the exception of the parking. He stated that they were within all the setbacks, maximum square foot regulations and impervious area.

Ms. Aldrich commented that an additional classroom would generate more children and more parents; however, that isn't what she is doing. She is proposing an area for the children that are already at the daycare center.

Mr. Panico asked if it would result in any change of operations, hours or number of classes.

Ms. Aldrich responded that it would be the same operations. They are just giving the children an extra place to play.

Mr. Hayes commented that it has been working very nicely for seven years there.

Chairman Pogoda asked if there were any bathroom or other facilities in there.

Ms. Aldrich responded that there are no bathrooms in the play area. She stated that down the road, she can't convert this into class, it would be impossible because she would need another toilet and another sink.

Chairman Pogoda asked if it was State Law that determined that no more than 10 children could be in there at a time.

Ms. Aldrich responded that was correct – State Law only allows 10 children at a time.

Mr. Hayes added that even with this addition, based upon where the existing fence is located, they meet the regulation for 75 square feet per child outdoors.

Mr. Schultz added that Staff would acknowledge that there haven't been any problems at Apple Tree. They've been there for many years and Staff has been asked to monitor it. He asked Deborah to explain how the bus system works for the benefit of the new Commission members. Even though it hasn't been an issue, he asked her to explain the pick-ups from one of the elementary schools, like Long Hill.

Ms. Aldrich explained that they have children that go on the bus in the morning, a.m. and p.m. kindergarteners and afternoon drop-offs. Also, because there are many new families that have moved into the area, there are about six other stops at houses up the street before the bus even gets to the Stop sign where they are located. Her point was that the bus doesn't stop at Apple Tree just for them. It is convenient for them because eight children get on at their stop at one time rather than making eight additional stops somewhere else in the area.

Comm. Harger asked if this particular extension would be taking the place of one of their outdoor play areas.

Ms. Aldrich responded yes – and no. They have four outdoor areas. She would be taking the right hand side of the outdoor grass area. This area is only used in the summertime for the outdoor sprinklers. It is really only utilized about three months out of the year. She indicated that she thought it would be a great idea to take part of one area and combine it with another area while removing the grass area.

The indoor area would be more favorable for use during inclement weather when its too cold because it would be heated and when it is too hot outside, it would be air conditioned. The kids would still be able to expend that energy. She feels that outdoor or indoor playtime is an extension of the classroom because the children are still learning.

Comm. Harger asked if it was basically just a reconfiguration then.

Ms. Aldrich answered yes.

Comm. Parkins asked if there would still be any grass area outside.

Ms. Aldrich responded that there was no more grass area.

Comm. Parkins asked if they were eliminating all grass area.

Ms. Aldrich answered that there was only a small patch of grass area anyway, and they've added rubber mulch which is nicer for the children. It is softer and state-approved for playing.

Comm. Parkins asked about the area remaining outside and how many children would it hold at one time.

Ms. Aldrich responded that outside she still has the space of all four areas. They just took down the fence separating sections to make it all one space instead of two separate areas. She stated that now the preschool that was previously on the left, is now on the right. The area on left would now be used for toddlers, and that can hold 8 children. The other one could have 20 children at a time if it had too. However, they only put 10 children out there at a time to give them more running space. It is state-approved for 20 preschoolers at one time though.

Comm. Pogoda commented that the whole school wouldn't be outside at one time then, correct?

Ms. Aldrich responded that was correct, they wouldn't be.

Comm. Parkins asked about the structure and if there were any windows.

Ms. Aldrich answered that in the new addition she wanted there to be as many windows as possible. There would be two large windows in the back of the building, two windows on the left and one door, and another door on the right. She doesn't want it to be like a locked-in area.

Mr. Hayes showed a drawing of the proposed addition with the location of the windows and doors.

Comm. Lopera asked if it met all the fire codes.

Ms. Aldrich stated that before her previous addition she only had two means of escape; however, now she has five ways and with the proposed addition, six ways to get out of the building.

Comm. Pogoda asked if the building materials would basically match the existing structure.

Ms. Aldrich responded that she wants it to look like it has always been there and have it blend in with the existing building.

Comm. Pogoda asked if the Commissioners had any further questions. There were none. He asked if there were any comments from the public. There were none.

**On a motion made by Patrick Lopera seconded by Daniel Oraziatti, it was unanimously voted to close Application #07-47.**

**APPLICATION #07-51, DOMINICK THOMAS FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (FOOD ESTABLISHMENT WITH DRIVE THROUGH: HIGH TRAFFIC GENERATOR), 487-495 RIVER ROAD (MAP 66, LOT 1), CA-2 DISTRICT**

Secretary Daniel Oraziatti read the call of the hearing. There was no additional correspondence.

**Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission representing the Applicant.**

Atty. Thomas distributed copies of a 4-page packet including a site plan showing the proposed drive-through with two bays. He submitted notices and photos of the public hearing postings to the Commission. He indicated that he would be lawyer, engineer and architect for tonight.

Atty. Thomas stated that this proposal is for 495 River Road, at the corner of Petremont Lane and River Road. The Commission approved the site plan for retail development in accordance with the existing zone on this property. Subsequent to that time, they have obtained a variance after coming before this Commission because it was a use variance. They obtained the variance with the recommendation of this to permit a drive-through. He stated that the proposal at that point was for Dunkin Donuts.

He referred to the site plan showing the drive-through and the layout of the four bays. He indicated that on the 2<sup>nd</sup> and 3<sup>rd</sup> page, two bays have been identified for the Dunkin Donuts. The proposal at the present time is for the Dunkin Donuts to occupy both of the first two bays. The third bay has already been approved with a Certificate of Zoning Compliance for the Wine & Liquor on the River package store. In the 4<sup>th</sup> bay there have been a couple of tenants, both of which are relatively low traffic tenants – he isn't aware of any signs up at this point. He added that there are a couple of small offices above.

Atty. Thomas indicated that there had been an issue at the ZBA involving (inaudible). He stated that this would be at the end of Petremont Lane. He showed the Commission four photos showing the actual depth and width of the area. He pointed out, because it

was part of the Commission's approval, that the bottom photo showed the widening of Petremont Lane which is currently closed. It is actually being widened from their driveway to make it more appropriate to handle the traffic.

Additionally, he pointed out that there was sufficient accommodation for eight cars before it even gets out to the front. In order to address the parking up against wall in the rear, as shown on the drawing, it is highlighted "Employee Parking." Those spaces will be restricted and all tenants will be required, by lease, to have their employees park in that area. In that way, there will not be an in and out situation.

Atty. Thomas stated that he had the architect provide plans so that the Commission could visualize it. He stated that it was a nice, very well done building; it will be occupying the first two bays.

Mr. Panico asked if the drive-through would be strictly a pick-up window with no roof structure sheltering it or anything of that sort.

Atty. Thomas responded that the drive-through, at the present time, has no extension of the roof anticipated. He added that being a Dunkin Donut fan himself, he has experienced rain coming in his window occasionally when he goes to some of the Dunkin Donuts drive-throughs. Most of them don't have the roof on it.

Mr. Panico commented that his only concern is that if there is some decision down the road that this needs some sort of protection, please come in and discuss it rather than just sticking up an awning. That is the least acceptable thing.

Atty. Thomas stated that he will advise the tenant. He can't commit that he is going to do the lease because there is a commercial realtor involved, but he will certainly make that a point and make sure the approval contains that condition.

Mr. Panico stated that they have worked very successfully with the builder/owner, and he has responded to virtually all of their suggestions, requests and comments. He added that he would hate to see some afterthought of a canvas awning tacked over to shelter that window.

Atty. Thomas added that Mr. Santos wouldn't want it either – he's pretty strict about ... (inaudible).

He continued by saying that he heard a comment once about the limit of someone waiting in line at a drive-through would be six or eight cars. Once there are six or eight cars there, they would pull up to the side to walk in or go somewhere else.

Mr. Panico commented that wasn't what the State says, but that's OK.

Chairman Pogoda asked, due to the oversized nature of this Dunkin Donuts, do they intend to do anything else inside there besides the donuts. Also he wanted to know if they would be making the donuts there or will they be brought in.

Atty. Thomas stated that he has been trying over the last week and half to get information from the Dunkin Donuts people about specific issues. He indicated that he would assume, because it is a double bay, that they would have the ability to bake there. However, that is just his assumption based upon the size requested, and based on the size of other Dunkin Donuts with the facilities to bake. He relayed that he has been asking them to provide that layout.

Mr. Panico asked if the dividing partition between the two rental units would be eliminated.

Atty. Thomas answered that under the current proposal, yes. Again, he stated that he has been attempting to get a basic floor plan. He explained to the client that if the Commission was concerned about that, there would be a possibility of keeping the public hearing open until the Dunkin Donuts floor plan was presented.

Mr. Panico commented that they need to be aware that Dunkin Donuts has some pretty way out signage things that they like to do, and they've had to bang heads with them at a couple of other locations. He told Atty. Thomas that they will be very careful about what they are allowed to do on the front of that building.

Atty. Thomas stated that they will see the revised signs in the Certificates of Zoning Compliance as two metal posts. There is a proposal for ten, they are small, 4 ft long by 1 ft high.

Mr. Panico stated that Dunkin Donuts has a tendency to want to put their Cup of Coffee logo up and a few other things.

Atty. Thomas responded that Dunkin Donuts should realize that because they have some experience here. He informed the applicant that unless they got him a sign proposal as part of this, then it would be a separate application. This is technically just a drive-through issue.

Chairman Pogoda stated that some information has to be forthcoming in order for them to start looking at this. He thinks Mr. Panico asked some good questions that need some answers.

Atty. Thomas suggested that the two choices would be working with Staff to respond to these questions or hold the public hearing open until the 11<sup>th</sup>. Those would be the two options.

Comm. Jones indicated that he had a couple of questions. He wanted to know if the main entrance/exit was going to be on Petremont Lane.

Atty. Thomas answered that it would be the only entrance for this site, specifically off of Petremont Lane. When Precision Auto was approved, and this application was coming before the Staff and Commission, technically people could come in use that but they wanted a connection.

Comm. Parkins asked to that point, what is planned between those two buildings.

Atty. Thomas responded that he thought it was going to be landscaped.

Mr. Panico added that where there is no pavement, there would be a divider to separate the adjacent property from the other property because they need to get vehicles out from the back of their site to the front – and it would be flowing counter to the flow of the drive through window. There needs to be a raised island, and if it's wide enough, it could lend itself to landscaping. It doesn't have a lot of width but there might be some ability to do some low hedges or something. There needs to be a division of flow because cars are coming in and going out in opposite directions.

Atty. Thomas stated that was why there was no pavement there. It was either going to be landscaping or some sort of fencing.

Mr. Panico said that they met in the field with the owner before they put the last foot of pavement down. They talked about it, and he can see that it has been reflected in the final pavement.

Comm. Lopera asked if the upstairs was going to be rented.

Atty. Thomas answered that it was two small offices with a couple thousand square feet of space. That was part of the approval.

Comm. Jones asked about the widening and the grading of Petremont Lane coming from South Constitution Boulevard because that hill is quite a ride.

Atty. Thomas responded that they were required besides the widening, to cut beyond it and cut the bump. That was being done; however, it was not their requirement to widen Petremont all the way through. He wanted to take advantage of the fact that Commissioner Sylvester wasn't there, because for years proposals for this area brought out a lot of discussion about making it a one way street. However, they were advised that one of the Commission members enjoyed taking a shortcut through there in the opposite way that they intended to have the one way. So, that fell apart. He continued to say that the rest of that may have to be improved when there is another large parcel in that area subject to development.

Comm. Jones commented that the sight line was (inaudible).

He added that they were required to knock down the bump. Also the road is going to be improved. It was going to be paved because their sewer now runs up to Coram Road. They received permission to do that so now those two properties are now sewer to sewer with Coram Road.

Chairman Pogoda asked if the Commissioners had any further questions. There were none. He asked if any members from the public had any comments for or against the application.

**Pat Kullberg, 275 Coram Road addressed the Commission.** Ms. Kullberg questioned the amount of available parking and the pattern around there. She pointed to a drawing to show that the cars parked at an angle couldn't possibly go out one exit so they would have to go the other way and impact the drive-through line of cars waiting for coffee. She questioned that there were only eight employee parking spaces for three store fronts and two offices. Additionally, there didn't seem to be adequate parking for customers.

She continued to comment about the rise in road that would have vehicles come flying over that hill.

Chairman Pogoda added that Atty. Thomas has indicated that the hump has been brought down considerably; however, he hasn't been there because the road has been closed.

Ms. Kullberg stated that it was brought down somewhat, but not a whole lot.

Atty. Thomas stated that it was brought down 12 inches, an engineering requirement, to improve the line of sight.

Chairman Pogoda responded that they will be taking a look at that.

**Phyllis Walsh, 261 Coram Road, Shelton, CT addressed the Commission.** She stated that she had the same concerns as Pat Kullberg. She has had big concerns for a long time about Petremont Lane, and they didn't bring it down very much. They've widened the road and there are trees that are so close to the edge of the road that it doesn't allow drivers much room to move over for an oncoming car or truck. Anyone who uses that road has encountered buses and trucks.

She has concerns about the parking too and doesn't understand how it is going to work. If someone parks in one of the angled parking spaces in the front and backs out, they cannot swing around and go out without interfering with the cars waiting at the drive-through for donuts. She asked where the cars would pull out while they wait for the drive through vehicles. It will cause a traffic jam right in the front.

Chairman Pogoda indicated that is definitely something that they will have to look at. There were no more public comments. He asked for Atty. Thomas' response.

Atty. Thomas recognized that there was no bypass lane along the side of the building, but there is on the rear of the building. As pointed out by Staff, if that happens, that person would be able to go out through the cut-through. There would be cross easements between the two properties. He stated that there is actually a (inaudible)? that people would be able to go out of. There are no cars there. There is sufficient room for a bypass

through there. The parking requirement is not because they only anticipate eight employees, but because they want to restrict those spaces for employees so there will be less ins and outs. For the site plan approval, there are a sufficient number of spaces for the type of uses with retail on the first floor and office on the second floor; it meets the parking standards. He restated that the cut-through creates a bypass lane, and the same thing applies to Precision Auto.

Comm. Parkins asked if they were amenable to that.

Atty. Thomas answered that they are amenable to the customers. There are a lot of issues. Precision Auto is going to have a septic and they worked out between the parties to connect the sewers. There has been a substantial amount of coordination between the two property owners with site work and everything else. He noted that the main time this would occur is between 6:00 and 8:30 a.m. in the morning. The rest of the time there wouldn't be that much of a back up at the drive-through window. The parking is sufficient in accordance with Commission approvals and that is why they chose not to (inaudible).

Comm. Parkins asked what time Precision Auto opens up.

Atty. Thomas responded that he's sure it is early in the morning – probably 7 a.m. or 7:30 a.m. He commented that their site plan, which isn't reflected very well on this drawing, has sufficient parking. Most of the vehicles would be in the rear with a few customer spaces and completed cars parked in the front.

Chairman Pogoda asked if there were any more comments or questions. There were none.

**On a motion made by Daniel Orazietti seconded by Patrick Lapera, it was unanimously voted to close Application #07-51.**

**APPLICATION #07-53, HUNTINGTON WOOD, LLC FOR MODIFICATION OF BASIC DEVELOPMENT PLANS FOR THE CENTER OF SPLIT ROCK AND DETAILED DEVELOPMENT PLAN APPROVAL, PHASE II, (CHILD DAYCARE CENTER), 708 BRIDGEPORT AVENUE (MAP 29, LOT 26)**

Comm. Daniel Orazietti read the call of the hearing. There was no additional correspondence.

**Atty. Steven Bellis, 47 Perch Road, Shelton, CT addressed the Commission representing the applicant, Split Rock.**

Atty. Bellis submitted the certified mail receipts from adjacent property owners within 500 ft. He began by stating that Huntington Woods is planning to enter into a long term lease with Tutor Time. Tutor Time is a childcare center; they are part of a group called the Learning Care Group. There are approx. 1000 locations throughout the United States. They are the second largest, for profit, child care facility in North America. He stated that around Shelton, there are approx. ten franchisees that operate. They've been around and they've been around for quite some time.

Atty. Bellis stated that they filed a petition to amend the PDD to modify the Statement of Uses to allow a child daycare center. They've also submitted detailed development plans which he'll go back to after providing a brief history. He stated that prior to the PDD, there was an OPD zone that was adopted February 8, 2005. As part of that they had a Statement of Uses, and some of the approvals that could have been put into this PDD right now are a gasoline station, retail store, restaurants, banks and professional offices. They could have put in child daycare center because it was permitted in the OPD. There is nothing different with the PDD, so they could have had the child day care center.

He stated that he would go through the requirements to show that it would have met, filed under a special exception, all the criteria for a child daycare center in both the old and new district. If it were in the underlining OPD, the child daycare center would require

7500 square feet. Their building is 10,036 square feet. Under 33-16.3, they would need 2000 square feet for an outdoor play area. They have more than double that amount with about 5000 square feet.

He continued by stating that they would have to indicate how many students there would be. The maximum number of people that would be in this building would be 163, 35 of which would be full time employees. More employees are hired gradually as the center becomes more filled up. In regard to parking, the criteria would require 25 for the children/parents and 35 for the employees which would be 60 parking spaces. They have 70 spaces. The hours of operation are 6:30 a.m. to 6:30 p.m. The anticipated age breakdown would be 6 months to 12 years old.

Atty. Bellis stated that if they had no PDD and someone came before the Commission with this particular project, they would have filed a special exception and met all the requirements. He stated that he thinks the Commission would have granted approval.

Mr. Bellis commented that if there are any other questions about Tutor Time, the facility or the operations, Mr. Yasir Alcemudin from Chicago is present tonight. Mr. Alcemudin is the general counsel for the corporation that oversees Tutor Time. In regard to the layout of Tutor Time, Jim Swift is the engineer and he'll go over some things for the Commission.

**Jim Swift, Landscape Architect & P.E., 102 Village Drive, Shelton, CT addressed the Commission.** Mr. Swift showed a plan of the overall site for Split Rock showing its location on Bridgeport Avenue and Old Stratford Road. He pointed out the existing buildings including Walgreens, Outback Steakhouse, etc. He indicated that he would be referring to the two rear lots.

In regard to Tutor Time, he showed the basic development plan that was submitted in support of the application to modify the uses. Mr. Swift commented that Atty. Bellis will be mentioning two uses – one for an assisted living facility and the other for the daycare. For the Phase II construction of Tutor Time, he indicated that the Commission had before them the application and drawings giving details of Tutor Time. If the Commission is so inclined, they could approve that for actual construction.

Mr. Swift stated that the next drawing supports that with parking and (inaudible). He showed the Phase II plan and pointed out the Tutor Time building that is about 10,360 square feet. It's a single story building. They've laid it out so that it comes in off the existing driveway. There is a designated drop-off area to facilitate and keep the traffic flowing correctly for parents coming in, dropping off their children and leaving conveniently without having to drive through main parking lots with employees parking.

He continued to show that just off of the drop-off area, there is a small parking lot to support ten parking spaces with about 44 parking spaces on the other side. This is about 20 spaces more than are needed for Tutor Time. It ties into the concept of shared parking that the Commission is very familiar with and has seen in Mr. Scinto's developments and throughout town. It is very effective. That is the reason that it has been laid out in the way it is shown to support the other building which is proposed as a restaurant with parking in the front and the side. They are taking the shared parking concept and extending it out into Phase II as well. Restaurants and daycare centers have different hours, daycare centers have different hours than the uses that have been proposed for the balance of the rest of the site.

Mr. Swift showed the location of the playground at the rear of the site. It is about 5000 square feet; it is very level and works very well with the basic Tutor Time prototype building. It fits in well without having to modify for any of the prototype criteria at all to get this done. He continued to state that the utilities for Tutor Time – gas, water, sanitary sewer, electric all comes out through the existing development and services this building. It will be extended to include any other uses approved in the second part of Phase II. He stated that a small amount of drainage comes down toward the main body of the site. On the drawing he showed that the bulk of the drainage; however, has a different watershed and comes back to a detention pond in another location and drains down to a 36" pipe

underneath Stratford Road. He added that this concept is the same as it has always been throughout the basic development plan approval before this Commission. Additionally, it is the same concept as was before the State Traffic Commission which is also heavily involved in drainage facilities. There is a reduction post development run-off rate to the pre-development run-off rate. They have taken care of all that.

Mr. Bellis stated that Patrick Rose would review the details of the actual building for Tutor Time.

**Patrick Rose, architect, Rose Tiso & Company, 418 Meadow Street, Fairfield, CT addressed the Commission.**

Mr. Rose stated that he would be speaking about Tutor Time and what has been submitted for the detailed development plans. They are prototypical plans which work with this site. He showed a drawing of building that he noted was a mirror of it with the same layout and floor plan. He showed the central entrance and drop-off location, office, and waiting area. He showed the main corridor down the building that breaks off into designated rooms for infants, toddlers, preschoolers, etc. Each room is serviced by their own toilet facilities and entries. There is an employee lounge in the center. The playground is in the rear of the building. It is 5000 square feet serviced by entrances directly off of each of the rooms. Entrances from some of the other rooms are taken out the side to the playground area. The layout is very similar to other Tutor Time facilities built in the area and other daycare facilities that are in the city of Shelton.

Mr. Rose stated that for the building elevation there is something that they submitted as a place holder, essentially, because they are trying to marry some architecture from three different buildings that are in the area. One of which is yet to be defined as an assisted living facility. He stated that they would like to be able to come to the Commission through a work session with Staff to make some modifications to this which would be more applicable to the buildings that are currently at Split Rock. This is going to influence what happens in the change of materials, roof line adjustments. The 10,360 square foot, 137 x 70 building – it won't change in size but the façade of it will be reconfigured to some degree because it needs to fit in between two other buildings.

He indicated that he foresees what is going to happen, but they didn't want to presume anything based upon what would be submitted for the assisted living facility. He explained that was the reason for these submittals, but he believes they will see some modified elevations in the near future based on their work sessions.

Mr. Bellis asked the Commission if they could come in and work with the Staff for some of the architectural details.

Mr. Panico responded that, as they know, this still has to be a two stage approval process. He knows that Jim said that he'd provide all the detailed development plans. Obviously, before they could approve detailed development plans, they would need to have the architecture nailed down. Certainly, on the basis of what they've represented as well as the verbal representation, the Commission would probably have a level of comfort to handle the zoning portion of it before moving the final detailed development plans.

Comm. Harger asked the hours of operation for Tutor Time.

Mr. Bellis stated that it would be 6:30 a.m. to 6:30 p.m. He restated the age groups as 6 months to 12 years old.

Comm. Harger asked if they expected to have some children there that would be dropped off and picked up by school buses.

Mr. Bellis stated that he didn't think so.

**Mr. Yasir Alcemudin, General Counsel, 123 Global North America Learning Care Group, addressed the Commission.** He responded to Comm. Harger's questions that most parents would be dropping off their children and picking them up. The peak hours

for drop-off are between 6:30 a.m. and 8 a.m. and pick-up peak time is between 4:30 p.m. and 6:30 p.m.

Comm. Harger asked if that would be for the younger, pre-school aged kids.

Mr. Almudin responded that Tutor Time primarily services children 6 months to 5 years old. Once the center ramped up and is operating smoothly, there is some possibility in the future that local, neighboring schools might want to send their older children there. In that case, there would accommodations such as a van or automobile that would take the children back and forth. He does not anticipate that at the moment. That would only be in the future.

**End of Tape 2, Side 1 9:15 p.m.**

Chairman Pogoda asked if anyone from the public had questions or comments about the daycare facility. There were none.

Atty. Bellis stated that he had a dual application - they have a modification of the basic development plan for the assisted living facility and he would speak about that next.

Since some of the commissioners didn't understand the dual nature of the application, Mr. Panico explained that the application to amend the Planned Development District would be to incorporate two uses that are not currently part of it - one would be the daycare facility and the other is the assisted living facility.

Atty. Bellis indicated that he wanted to break it down to do them one at a time. So now he would go on to the next one - the assisted living facility. He indicated that the Commissioners also had before them an application to modify the basic development plan to change the Statement of Uses. As stated earlier, when the PDD was approved, there were certain uses that were listed in the PDD such as the gas station, restaurant, retail, etc. It did not have the daycare center or the second proposed use called an assisted living facility.

He noted that in the regulations there are no assisted living facility P&Z regulations as of now. However, this Commission has approved a assisted living facility in Shelton under a PDD. Atty. Bellis stated that he has not given the Commission any detailed development plan - that is the difference, because they don't have any detailed development plans on this. The reason for this is because the applicant has just entered into a contract with Sunrise Development, a New York Stock Exchange (NYSE) company but they have a 90-day period in their contract to do a feasibility study and do their due diligence before submitting detailed development plans. They will be coming back to the Commission with detailed development plans. Therefore, he indicated that this evening, he is requesting the same thing he asked before, a change in the Statement of Uses to add it. He'd like to add the assisted living facility as well as the daycare center to the PDD; however, there are no detailed development plans at this time.

Atty. Bellis continued to state that he wanted to provide the Commission with a brief background about the Sunrise Development company, the work they do and what other facilities they have in the area to provide a level of comfort. He introduced Pat Mallon from Boston, MA to provide some information about Sunrise.

**Pat Mallon, Development Manager for Sunrise Senior Living for New England addressed the Commission.**

Mr. Mallon stated that in Connecticut, they have facilities in Wilton, Stamford, West Hartford, and they were recently approved for Trumbull and plan to open in March '08.

Mr. Panico asked if that included Brighton House in Woodbridge, CT.

Mr. Mallon stated that it might be run by Sunrise because in 2003, they acquired Marriot Key Living.

He showed a photograph of an L-shaped building – a two-year old Sunrise facility in Burlington, MA. He indicated that this would be the type of building proposed for Shelton also. It is an 80 unit assisted living facility. It has 32 assisted living residents and 20, what they call Terrace Club members that have a semi-Alzheimer's condition requiring some assistance and reminders. On the top floor, they have 28 Alzheimer's units which they refer to as their Reminiscence Ward which is a secured unit.

At these facilities, hardly anyone drives. Occasionally, one or two residents might bring a car in the beginning because they have difficulty giving it up. However, this facility is basically for frail, elderly people. The average entry age is 83 years. These are people that need services and cannot live on their own. They provide an apartment unit for them and dining services. He indicated that the distributed material shows the dining room facilities where they receive three meals a day. They provide clean linens, housekeeping and various activities are offered throughout the day such as exercise and a library.

Mr. Mallon added that in the building itself, there is 40% open space. They encourage residents to come out of their units, be part of things and remain active. It is their main goal to keep everyone active. There is a community van to take them to doctor's appointments, shopping, the theater, etc. – that is why they really don't need the cars to get around. The van also cuts down on the traffic in and out of the facility.

Mr. Mallon stated that what attracted him to this site was the variety of uses surrounding it – the restaurants, Walgreens – it is close to a lot of facilities, supermarkets and other shopping areas. Additionally, caregivers and children that live in area can visit their parents every day and drop in to see them in between running their own errands. If the facility is off the beaten path somewhere, residents don't seem to get as many visitors. Mr. Mallon added that historically they try to put the facilities on a main drag where there is a lot of retail, and they seem to do very well. Also, family can take them out to the area restaurants and stores.

Mr. Mallon explained some of the photos in the brochure including its architecture and room layouts. He explained that Sunrise tries to provide a residential feel inside with a lot of wood, wooden staircases and wooden doors, trim moldings, etc. It doesn't have a commercial or institutional look. There is an outside porch with a four season porch (heating, a/c) behind it for the residents to sit on. There are designated drop-off areas so that the residents don't have to walk from the parking area. He reiterated that they really aim to create a residential feeling. There are no institutional, fluorescent lights or suspended ceilings – it is all drywall and residential lighting inside. It really has a home feeling.

Mr. Mallon pointed out the photos of the dining facilities. The residents are given three meals a day, served with linens by a waiter/waitress. It is not cafeteria style dining. It is very nice – a nice way for the residents to spend their remaining years.

Mr. Mallon stated that he thinks it is a good use for the town. It helps the elderly and creates some jobs. There is really no impact on services and it provides some high tax revenue. The demographic studies show a need for this type of facility in the area.

Mr. Mallon concluded that Sunrise runs 450 communities nationwide. They are also in the UK, Germany and Canada. They are located in 26 states in the United States, and they care for 50,000 seniors. They are a publicly traded company on the NYSE.

Mr. Bellis asked Mr. Mallon how much it would cost to build a building similar to the one in the photograph.

Mr. Mallon responded that it would probably be about 12 million dollars. It is a steel and concrete building, not a wood frame. It is built very well and is extremely fire safe with automatic doors that will block off sections of the area in the event of a fire or emergency. There really is no need to evacuate the building which is good for safety. It is very difficult to evacuate frail elderly.

Mr. Mallon restated that the average entry age is 83. They provide a variety of services including bathing, dressing, reminders, etc. He described it as a gap before a nursing home. They try to provide enough services so that people might never even have to go to a nursing home by making them comfortable enough to spend their remaining years.

Atty. Bellis asked how it would be having this type of facility next to a child daycare facility.

Mr. Mallon indicated that would be an asset for them because they like to have residents near children so they hear them playing and laughing outside. It brings back a lot of good memories for them. Another important asset is the landscaping because in addition to traditional landscaping, they try to include a lot of residential type flower beds. They require more maintenance and care but it allows the residents to go outside to walk around the grounds. He stated that although this plan does not show it, the final plan would include a walkway that goes around the entire building, outside gardens and terrace spaces. The Alzheimers ward would also have an outdoor space on the third floor with a balcony so they could be outside without the danger of walking off.

Chairman Pogoda asked about the Alzheimers patients and how well they would be supervised.

Mr. Mallon stated that they receive more supervision in the Alzheimer's ward upstairs. They have their own kitchen facility and outdoor space up there. If they are accompanied by a caretaker, they could come down to partake in some other services.

Chairman Pogoda asked if it would be a one-on-one if they came downstairs.

Mr. Mallon responded that yes it would be. They would never let an Alzheimer's patient just wander down alone. It is a completely locked unit and they couldn't leave without supervision.

Chairman Pogoda indicated that he was asking because he reads so much about elderly persons straying off and getting lost. They considered something like this many years ago in the city and security was one of the concerns at that time too.

Comm. Parkins asked if any of the units would be outfitted as efficiencies.

Mr. Mallon responded that there were no cooking facilities except for a small kitchenette area with a small college-size refrigerator, sink and perhaps a microwave, if they want it. They provide three meals a day, and they really don't want the residents to stay in the rooms to eat. They would like them to come out to the dining room.

Mr. Mallon pointed out that in some of the photos, the hallways show windows that open out into the hallways so that residents can see and talk to others that come by. They encourage residents to come out and be a part of the community. There are chairs, small couches, or lounges every few feet in the hallways so that can stop, sit and chat with friends. It isn't like long institutional corridors.

Comm. McGorty asked how many employees were required to run the facility.

Mr. Mallon stated that on the maximum, day shift there would be 28 employees. At night, after 8 p.m. there would be less like 4 or 5 employees but more on the third floor than the other floors. The good thing is that they don't generate a lot of traffic because they all don't leave in the same shift. Dietary aides, activity coordinators, cooks come and go at different times.

Chairman Pogoda asked if there would be any on site medical staff.

Mr. Mallon stated that there was a wellness nurse on the staff.

Chairman Pogoda asked if there was 24 hour nurse coverage.

Mr. Mallon responded that he believed there was 24 hours nursing coverage, but he would need to make sure of that though.

Chairman Pogoda asked if there were any doctors.

Mr. Mallon responded that there were no doctors there but they encourage local hospitals to do doctor visits. They have local dentists visit for the residents about once a month. There is also a small salon in the facility so that hairdressers can come in and do the resident's hair on the premises.

Mr. Panico asked how they handle some of the basic services for the building like rubbish removal, delivery of food products, etc.

Mr. Mallon replied that this wasn't the final plan but there is usually a kitchen entrance closest to the parking area for deliveries. Although it isn't shown on this plan, there would be a dumpster somewhere in the back of the building where the garbage truck would have enough room to come in. It would be an enclosed area with a trellis or fence.

Comm. Harger asked about the medical services or if there was a clinic that the nurse would operate out of.

Mr. Mallon responded that there was not; it was just a wellness nurse. They aren't licensed as a nursing home. If someone needed some other type of nursing services such as regular injections, a home health nurse could come in to visit the resident. Also, rehabilitation or physical therapists can come in.

Comm. Harger asked if any of the residents would have an aide living or staying with them all day. She asked how self-sufficient the residents were.

Mr. Mallon responded that there are full-time caregivers available if anyone needs help getting dressed, bathed, fed, etc. They are full time employees available to provide those types of services.

Atty. Bellis indicated that he wanted to address why he thought they should amend the Statement of Uses for the assisted living facility. He indicated that he looked at the 2008 Plan of Conservation and Development. He was aware that many of the Commissioners worked on it. It states that one of the city's goals was to maximize future revenue potential while minimizing negative impacts on the city. He stated that he thinks the assisted living facility could meet that goal.

Atty. Bellis stated that he spoke the Tax Assessor, Gloria Kovacs, to obtain a rough estimate of the tax revenue that a facility such as this might generate. She used the comparison of the Crosby Common Units, the 68 unit assisted living facility on Long Hill Road. Without seeing the architecture of this proposed building or knowing its costs or its possible assessments, she estimated that it would be higher than the Long Hill facility at around \$200K-\$250K tax revenue annually.

He continued that in regard to the POCD goal to maximize negative impacts on the city. The assisted living facility wouldn't impact schools and would minimally impact the traffic situation. Most of the residents do not drive. Traffic would be limited to employees and visitors. He indicated that the Shelton Plan of Conservation and Development states that currently Shelton has 25% of its residents in the 55 and older category. Therefore, by 2020, it could be 35%. This town as well as many other towns is getting older with more and more elderly people.

Atty. Bellis provided a quote from the POCD that states "as demand for assisted living increases, new facilities should be encouraged." Presently, Shelton has one assisted living facility. He continued "despite the revenue positive nature these types of alternative housing should be in a mixed use environment where residents can be within walking distance of many daily needs." Atty. Bellis pointed to the fact that this was a mixed use area with banks, restaurants, shopping, groceries, etc. According the POCD, they don't want these assisted living facilities set off in R-1 neighborhoods.

As Pat Mallon mentioned, they want elderly residents to have some interaction with the economic development in town. They want the convenience for access to services and visitors. Furthermore, he commented that he doesn't think residential developments would want this type of 80 unit facility in their R-1 zones. He concluded that it makes a lot of sense. He thinks it is a winning combination for the city with increased tax revenue, no impact on town services; it provides a benefit for the elderly community, and it coincides with Shelton's long range plan to encourage these type of facilities in mixed used locations.

Atty. Bellis concluded that there was a 90 day due diligence period with their contract so he did not submit any detailed development plans. These people will come back before the Commission to answer any questions and show specific details about the facility and operations.

Mr. Panico inquired about extending some of the architectural motif into this so that its part of the complex. He asked Mr. Mallon if they was some flexibility with respect to that elevation.

Mr. Mallon responded that materials and colors can be adjusted, but the basic building should remain as it is. He mentioned that for the facility in the photograph they added the green metal roofs to match existing buildings to blend in. He stated that they would come in for design review and provide samples.

Atty. Bellis indicated that the idea would be to have these three buildings architecturally similar so that they go together.

Comm. Laperera asked about how many square feet of office were in the original proposal.

Atty. Bellis commented that he was not certain if that was how it was set up. There are professional offices in the Statement of Uses. He wasn't sure which building, but there was an entire 3<sup>rd</sup> floor that was for professional offices.

Mr. Panico added that he thinks Comm. Laperera is referring the original basic development plans for the entire complex which had earmarked that site at that time with a projected use as an office condominium.

Atty. Bellis responded that he didn't represent them then but he did some research on that. He indicated that he went to Jim Ryan's office and asked what the vacant office space was in Shelton. Mr. Ryan stated that Wakefield & Cushman did an independent study for the area. Presently, it is at 12.8% for direct vacancies; there is actually a higher rate of vacant offices because many tenants have left but continue to pay the rent.

He commented that looking at the POCD, he didn't think offices would offer as much on the revenue side. Furthermore, it would impact the town more with increased traffic and people in and out. The daycare facility and the assisted living facility provide more revenue with less impact. Additionally, these would be long term leases that are possibly 30 years.

Comm. Laperera commented that at the original hearings he recalled that it was to be 60% office condos and 40% retail. That is a significant amount of office space that would have generated a fair amount of tax revenue.

Chairman Pogoda asked if there were any other comments from the Commission. There were none. He asked if there was anyone from the public for or against this application. There were no public comments.

**On a motion made by Virginia Harger seconded by Patrick Laperera, it was unanimously voted to close Application #07-53.**

The Commission concluded the public hearings and took a 3 minute recess at 9:10 p.m.

Chairman Pogoda reconvened the meeting with Old Business, Application #07-49.

**APPLICATION #07-49, DOMINICK THOMAS FOR SITE PLAN APPROVAL (AUTOMOTIVE REPAIR FACILITY), 61 CENTER STREET (MAP 129D, LOT 53), CA-3 DISTRICT – DISCUSSION AND POSSIBLE ACTION**

Mr. Schultz indicated that Staff has provided a 7-page overview to all the Commissioners. He wanted to address the information in it before Atty. Thomas follows with further clarification. Staff has provided some observations that need to be discussed and considered by the Commission.

Mr. Schultz began by stating that the subject property is 61 Center Street, known locally as the Schuster's Garage. As stated on the agenda this is a site plan approval for a change of location for the certificate from the Department of Motor Vehicles for a dealer's license. This is for someone that has a license that would like to relocate to this location. More recently, the Zoning Board of Appeals used to handle that; however, the state statutes have changed, and it now rests on Planning & Zoning.

Mr. Schultz continued that the second part was for the occupancy of the site. The Commission goes to great lengths when there is a new occupancy for an older building. A variety of things are considered such as landscaping, and façade improvements. A good example would be the gas station on Howe Avenue by the Commodore Hull Bridge.

He stated that the new applicant's name was Performance Auto Works. The current property owners are Edward and Patricia Schuster. The property is in the Commercial CA-3, also within the Central Business District Overlay with a .15 acres. It is an automotive repair including auto body work, display/sale of used cars. This is as presented by the Applicant, pre-existing non-conforming use under Permitted Use Line #36 and Section 41.1.

The building is 2,357 square feet with overhead utilities, sanitary sewer and public water. There are 7 onsite customer parking spaces with another area for used vehicle display.

Mr. Schultz specified that the following six comments were very important for the Commission to consider.

- The 2006 POCD recognizes the area on the Future Land Use Plan as not supporting auto related uses.
- The Draft Downtown Plan shows this area within the "downtown business" land use category that doesn't support auto related uses.
- The property is located is within a CBD overlay zone that prohibits auto sales and service.

The property owner's previous applications for Certificates for Zoning Compliance for a laundromat were denied in 2006.

- The applicant requests a waiver for submission of architectural drawings and did not provide a detailed site plan with landscaping, driveway location, parking or info on its inside spray booth.
- 

Mr. Schultz added that the applicant's attorney will address those issues. The Commission has the ability to waive certain site plans for an existing facility.

- The Commission must determine if the non-conforming use has been abandoned under Section 41.5 Discontinuance of the Zoning Regs.

Mr. Schultz indicated that the Commission would hear from the Applicant tonight that in his opinion, it has not. He noted that making this determination will be a very difficult one that this Commission is not faced with on a regular basis. Additionally, the City Engineer has submitted a report with no comments and the Fire Marshal report recommends approval with standard conditions.

He summarized that this is a request to re-occupy this former automotive repair facility. The previous application for a Laundromat was denied. Making this determination will be very difficult. Additionally, a copy of the site plan location has been included with a copy of the certificate for a Laundromat that was denied.

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

Atty. Thomas provided an aerial Google photo of the site. He stated that up until 2007, the property was under a lease for Northstar that was approved for auto detailing and dealer licensed until 9/07. Although there were some issues with that tenant, they were approved by this Commission two years ago.

He showed some photos from Vincent Tabacc who is Performance Auto Works. He is present tonight. Atty. Thomas indicated that he just obtained his proposal for his intended parking. He plans on displaying no more than eight cars in between the two driveways. He has no plan of changing the existing entrances which are driveways. He plans to put customer cars along the south boundary – the boundary with Shelton Alarm. There would be 2 -3 employees that would park offsite.

Atty. Thomas pointed out in the photo that the area outside of this property borders the public parking adjacent to the old Post Office. He believes that the issue of the non-conforming use and its abandonment is not really an issue because there was an approval and a lease for its use by Northstar. They were in and out because of tenant issues with their lease and use just expiring in Sept. 2007. They performed auto detailing and were approved for a dealer's license at that location.

Atty. Thomas stated that Mr. Tabacc has operated for last four years in Norwalk with Performance Auto. He is moving up here because he lost his lease and would like to be closer to his residence in Trumbull.

He stated that when dealing with a pre-existing non-conforming use, a lot of the points brought up by Rick Schultz about the POCD aren't really applicable because it is a pre-existing non-conforming use. This is someone that will not be changing the building and continuing the use held by Schuster's Garage for years. The building is in relatively good shape; it is not in disrepair. They can respond to any of Rick's questions about the inside spray booth. It's their estimation that 7 -10 customer spaces are more than sufficient based upon Mr. Tabacc's experience. He intends on displaying no more than 8 vehicles at a maximum under his dealer's license, and he would accept that as a pre-condition.

Atty. Thomas noted that when looking at the site in the photo it is .15 acres as Rick Schultz stated. There really is not much area for any landscaping except possibly some pre-potted planters. He commented that this is something that is very common in downtown areas. This is a very small site with a pre-existing use. They want to continue that use under a new owner at this time.

Atty. Thomas stated that Mr. Tabacc and Mr. Schuster were available to answer any questions.

Mr. Panico clarified that they were not really proposing to continue the use because the use was an auto detailing shop.

Atty. Thomas responded that it would still be a dealers shop.

Mr. Panico commented that it would be a dealers shop but now it would go back to full automotive repair and used car sales. It was only an accommodation required in order to do the detailing work. There was no zoning authorization to do auto repairs. The State of Connecticut authorized that in order to perform detailing, a license has to be obtained from P&Z.

Atty. Thomas noted that he was not representing them at the time or when they came in for the Laundromat which was technically a permitted use under the zone, but they chose not to go forward with it.

Chairman Pogoda asked if any of the Commissioners had any questions or comments.

Comm. Jones stated that he's aware that he is the new guy on the block, but he wanted to make one comment as a downtown business owner himself. From the Central Business Area and the Draft Downtown Plan, how did they play into (inaudible)...

Mr. Schultz clarified that this is an application where the Applicant is simply stating that this is pre-existing non-conforming, and he has every right to continue that use. There are no ifs, ands, or buts.

Atty. Thomas stated that it is a pre-existing non-conforming use and nothing that Zoning has passed would have any impact upon it.

Mr. Schultz added that all of the Planning documents are consistently stating to stop this or discontinue it. It is difficult for the Commission to take it to that level when there is a legitimate application. The Commission has to make a determination that this is a pre-existing non-conforming use that has not been abandoned, or conversely has been abandoned, and act on it accordingly.

Comm. Jones asked if there had been any discussion of the City purchasing this property at all.

Chairman Pogoda stated that there was nothing he was aware of. Personally, he does not (inaudible)...

Mr. Schultz stated that in the past, the Commission has directed him to advise the Mayor's Office of its position. This is a valued piece of real estate on Center Street.

Comm. Jones asked the other Commissioners if they could make a recommendation to Rick Schultz to advise the Mayor's Office to revisit this. He commented that he is on 91 Center Street and everyone knows the problems downtown with lack of parking.

End of Tape 2 Side 2

Chairman Pogoda agreed that the parking was difficult there. As Tony Panico mentioned, it was not an automotive repair, it was a detailing shop given a certificate from the State. Repair and spray painting booth – none of that is able to go down there now. This is not an easy decision to make here. He stated that he'd like to direct Rick Schultz to talk to the Mayor's Office about this and let him know where the Commission is coming from. He commented that everyone is aware that parking is needed downtown.

Comm. Jones commented about the photographs provided and the location of the abutting parking lot and adjacent buildings as being the hub of downtown.

Mr. Schultz informed the Commission that the 65-day review period expires on December 13<sup>th</sup>, 2007. The last P&Z of the year will be December 11<sup>th</sup>.

**Edward Schuster, owner of 61 Center Street, Shelton, CT addressed the Commission.** Mr. Schuster stated that he was born in Shelton. He ran that facility for 40 years, and it has been a dealer repair. The previous occupant, Northstar, had a dealer license. He sold cars; it wasn't just details. He wanted a dealer's license, he had one and it was in effect until September '07, which just passed. He left because he had some other problems. He wanted to state that it was a dealer and repairs since 1965. Actually, beyond that it was a repair facility for 105 years. He has plans that date back to 1902. Walt Schiegel's(?) ran it, the Delos(?) brothers ran it, he ran it, Ricky Schuster ran it, etc. He wants to continue that use. It would be an undue hardship for him to convert it to a Talbot's or some other haberdashery.

Mr. Schuster asked Comm. Jones about his business on 91 Center Street.

Comm. Jones stated that he had hardwood floor business right next door to Joe's Garage.

Mr. Schuster asked Comm. Jones if he had parking.

Comm. Jones responded that he had no parking.

Mr. Schuster commented that he had plenty of parking and could fit 30 cars on the lot if he had to. He indicated that he could be the chauffer and park his car for the day and let his customers park there. He asked to continue a dealer repair facility which Vincent Tabacc promises that he will do. He doesn't want anything to do with body work, paint work or spray booths. He wants to repair cars. He has three children that he wants to support. He is a good family man with 18 years in the business and 4 years as a business owner. He wants to transfer his business from Norwalk to Shelton. Mr. Schuster indicated that he only wants the best for Shelton, but it's an unneeded hardship for him to convert this to a Talbot's.

Mr. Schuster continued that the City promised him some new doors and new windows and they never came through. There are other buildings in town that got these windows on grants. He stated that he was born here, and he is here now, and he wants the best for Shelton. He indicated that the Mayor has approached him a couple of times. He said he had to go to the Board of Aldermen. Time has gone by, and his bills are coming in. He had to pay taxes and insurance. He stated that he does not want to work at 72 years old physically anymore, he's done it all. He'd like to buy one of those assisted living units, if he can afford it. The undercurrent of negativity that he has received is too much to bear.

Mr. Schuster added that people have told him that the Zoning board doesn't understand why he wants a garage there or a laundromat – the City wants it for a parking lot. The Laundromat would have been a slam dunk installation as far as he had been told, but the Zoning board said no because there was already one up the street. He indicated that these are the type of comments he has received. Mr. Schuster stated that he doesn't think it is fair to a Shelton resident and tax payer. He added that his father worked for the City of Shelton for many years. He cut grass for the City of Shelton when he was a 12 year-old. He urged the Commission to look at his side of the story.

Mr. Schuster stated that he would be willing to converse with the Mayor – if he were reasonable. He doesn't want to hear him suggest that he should donate his property to the City in the name of his father. He knows the woman with the empty lot who was asked to donate it to Shelton in memory of. Mr. Schuster concluded that he'd like to go on working his property the best way he knows how. He would be bringing in a young man with a family and young children, just as he was. He brought up four children by working in that garage. He concluded by stating that he'd be happy to answer any questions.

Mr. Schultz asked Mr. Schuster if he could clarify that there would be three lifts and if there would be a small spray booth or a wrecker.

Mr. Tabacc responded that he wouldn't have the wrecker or spray booth.

Mr. Schultz stated that the wrecker and spray booth would come out. Staff will work with the Applicant to modify the Statement of Use.

Atty. Thomas wanted to clarify that in the use line items, detailing is really not separated from automotive repair work. Their position is a continuation of the use for automotive work which is clearly a non-conforming use that has continued on for 105 years.

Mr. Panico stated that they represented that the employees would be parking in the city lot. He wanted to know if that would be necessary after listening to Mr. Schuster because that City lot is taxed as it is.

Atty. Thomas asked Mr. Tabacc to respond as to the number of employees he would have.

**Vincent Tabacc, 845 Daniels Farm Road, Trumbull, CT addressed the Commission.**

Mr. Tabacc indicated that the maximum would be 3 – 4 employees. It would be himself, his father and two mechanics. The most would be 2 or 3 employee cars.

Atty. Thomas stated that they only suggested that because there was public parking available. He understands that the City lots are taxed; they would park on site if the Commission requested it. He added that there is a parking lot next to Cleto's Package Store too.

Mr. Panico stated that the most parking spaces are on Howe Avenue, on the lot where the old gas company was.

Mr. Schuster commented that he thought the Post Office employees were going to get a bus and park offsite so that there would be more parking downtown. He added that he knows it is tough decision but Vincent said he'll park offsite and he will.

Mr. Schultz stated that he wanted to publicly tell Mr. Schuster that there was never any intent to insult him. There have been many planning documents to support the elimination of this use. This Commission has tried for many years to no avail. There is a lot of frustration here. He realizes that he needs to get that building occupied.

Mr. Schuster stated that he's heard of (inaudible?) rights to block him off and eminent domain two months ago. It is more than just insults.

Mr. Schultz commented that he didn't deserve to be insulted.

Comm. Laperera asked about the sale of cars, and if that property had always been used for the sale of cars.

Atty. Thomas stated that was part of the dealers license. They no longer have a repair license; it is either a new car dealers license or a used car dealers license.

Mr. Panico stated that there are a lot of things that are allowed under that go beyond what the Zoning Commission may or may not have authorized.

Comm. Laperera asked about the previous tenant – had his lease expired. He wanted to know if that vacated the property prior to September 2007.

Atty. Thomas indicated that they left sometime prior to that, but he wasn't sure how much prior.

Mr. Panico asked if there were any lifts on the premises now.

Mr. Schuster responded that there was not. There would be above ground lifts that are environmentally safe.

Mr. Panico asked how they previously did the auto servicing before.

Mr. Schuster responded that he did have lifts originally and Jack Perkins from Northstar had a lift in there but he took them out and (inaudible).

Chairman Pogoda ended the discussions and moved on to other business. He indicated that everyone had a copy of the 2008 meeting schedule.

Mr. Schultz stated that the meetings would be planned for the second Tuesday of each month at 7 p.m. either in Room 104 or the Auditorium.

**On a motion made by Patrick Laperera seconded by Daniel Oraziotti, it was unanimously voted to approve the 2008 Planning & Zoning Meeting Schedule.**

## **APPLICATIONS FOR CERTIFICATES OF ZONING COMPLIANCE**

### **SEPARATE #4894, SB CUSTOM BUILDERS, LLC, 495 RIVER ROAD, SIGN**

Mr. Schultz stated that this would be for the Santos Plaza sign.

Atty. Thomas stated that the proposed sign drawing should have the measurements on it. The individual tenant signs are relatively small, 16" x 48"

Comm. Lapera asked if the picture of the little guy would be included on the sign.

Atty. Thomas stated that there wouldn't be any little guy on the sign. The brick on the sign would match the brick on the building.

Chairman Pogoda emphasized that before tenants draft a sign to include there, they should meet with Staff so there are no surprises.

Atty. Thomas stated that has been in contact with two of the tenants. He instructed them that even though this isn't a PDD, they would be expecting a small, simple identification sign without phone numbers. A name sign is part of the front. It wouldn't be big, only 16" x 4 ft. across. They were also told there would be a sign over their business that would need to be an internally illuminated channel letter sign. Also, they were informed that all signs have to come back before this Commission.

Chairman Pogoda stated that he doesn't want any surprises such as "the signs have already been made up." As everyone knows, they don't want donuts, donut holes, or anything else on the signage.

Atty. Thomas indicated that the tenants realize that have to come before the Commission with their own signs. He stated that the only reason the draft sign includes "tenant" signs on it was because he didn't want to give the impression that this would just be a large monument sign that a large hole under it that someone could walk underneath. He noted that the Applicant has been cooperative with Staff in making changes, such as with the brick. It looks like the 3<sup>rd</sup> tenant downstairs might be an insurance agency or a Portuguese bakery. The problem with the Portuguese bakery is that they are running into a problem being with Dunkin Donuts.

Atty. Thomas stated that he would notify the land owner, but he didn't know if he'd be doing all these leases. He's notified the two tenants that he has had contact with that there is a further application necessary for signs.

**On a motion made by Patrick Lapera seconded by Virginia Harger, it was unanimously voted to approve Application for Certificate of Zoning Compliance, Separate #4894 for the monument sign only.**

### **APPLICATION #4946, ORAZIETTI BROS., LLC, 441-445 HOWE AVENUE, COMMERCIAL CONSTRUCTION**

Comm. Orazietti announced that he would abstain from this application.

Mr. Schultz stated that they had a minor modification of the improvements including the upper patio area, expansion of the kitchen area and the stairwell. The most significant change would be the retractable atrium that would enable them to have the roof cover during the winter months. Mr. Schultz passed around the proposed plan.

Chairman Pogoda asked if the outside patio would be heated in the winter time.

Comm. Orazietti stated that it would be heated.

Mr. Schultz stated that they would also be adding two bathrooms upstairs for the patrons. There is a small office/storage next to the bathrooms. The other significant change would

be the rebuilding of the stairwell in the back. There is a 12 foot setback, and they'd like to use the variance they received three years ago for a zero foot setback. However, they don't need to go to zero feet; they need to go six feet instead of the 12 feet because the stairwell is about 6 feet.

The abutting property owner is aware of it. As a matter of fact, they were going to give them a zero foot setback under the zoning requirement – it is probably in the land records. They gave a variance to the ZBA for a zero foot setback on 12/17/02.

Mr. Schultz concluded that the modifications included the retractable atrium roof, the upper patio area, 2 bathrooms, office/storage area and rear stairwell reconstruction. Staff recommends approval.

**On a motion made by Virginia Harger seconded by Patrick Lapera, it was unanimously voted to approve Application for Certificate of Zoning Compliance, Separate #4946. Comm. Oraziatti abstained from voting with Comm. Chris Jones acting as alternate.**

**APPLICATION #4947, STEPHANIE KINIK, 702 BRIDGEPORT AVENUE, STE. 305, BUSINESS**

Mr. Schultz indicated that this was the first professional office for Split Rock – a chiropractor in the upper floor area. She doesn't need a sign. The office is 1100 square feet with one employee, hours of operation Mon. 8 -2, Tue. 8-6, Thu. 8-6, Fri. 8-2, closed on Wednesday, Saturday and Sunday. They are required to have five parking spaces.

Comm. Parkins asked how anyone would know where she is if she doesn't have a sign. She expressed concern that there would be another sandwich board stuck up there with all the others because it looks terrible down there.

Mr. Schultz responded that they have Staff members dealing with that issue. The community allows the temporary banners but they do keep them up too long.

Comm. Lapera commented that they should be down in thirty days.

Mr. Schultz indicated that they've allowed them to stay up for 6 weeks.

Chairman Pogoda stated that this was something they will be working on in the coming years.

Comm. Harger wanted to know if the chiropractor really didn't want a sign.

Mr. Shultz responded that she said she doesn't need one. At best, they'll have a small directory sign on the wall of the building.

Comm. Parkins asked if she had a window facing Bridgeport Avenue.

Mr. Schultz indicated that he wasn't sure and would double-check on it.

**On a motion made by Patrick Lapera seconded by Daniel Oraziatti, it was unanimously voted to approve Separate #4947.**

**CHINATOWN SHELTON, 194 LEAVENWORTH ROAD, SIGN**

Mr. Schultz showed the Commission the proposed blue and white solid lettered sign for White Hills Shopping Center.

**On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to approve signage for Chinatown Shelton on 194 Leavenworth Road.**

**On a motion made by Virginia Harger seconded by Patrick Lapera, it was unanimously voted to adjourn at 10:43 p.m.**

Respectfully Submitted,

Karin Tuke