

The Shelton Planning and Zoning Commission held a special meeting on April 22, 2008 in the Shelton City Hall, Rm 303, at 7:00 p.m., 54 Hill Street, Shelton, CT.

The following members were present: Chairman Anthony Pogoda
Comm. Virginia Harger
Comm. Patrick Lapera
Comm. Thomas McGorty (alternate for
Comm. Parkins/Comm. Jones)
Comm. Leon Sylvester(arrived 7:12 p.m.)
Comm. Ruth Parkins (arrived 7:54 p.m.)

Staff members present: Richard Schultz, Administrator
Anthony Panico, Consultant
Karin Tuke, Secretary

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

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

Chairman Pogoda began the meeting at 7:00 p.m. with the Pledge of Allegiance.

OLD BUSINESS

APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE

CERTIFICATE OF NON-CONFORMITY

#013 FAIRCHILD HEIGHTS, INC., 804 BRIDGEPORT AVENUE, MOBILE HOME PARK

Chairman Pogoda took items out of sequence and began with the Certificate of Non-Conformity #013 for Fairchild Heights, Inc. at 804 Bridgeport Avenue.

Mr. Schultz stated that they had an application, a Certificate of Non-Conformity request. He added that he believed that none of the Commission members had ever processed one of these requests. Staff has only processed approximately three or four of them. He explained that essentially, Staff goes out to the non-conforming land use area and documents all of the relevant information such as lot area, zoning, date of establishment, and all the other issues raised for the particular application. The information is then forwarded to Corporation Counsel insofar as it could turn into litigation. Staff routinely runs it by Corporation Counsel, and in this case, Assistant Corporation Counsel to get his approval on it because Staff makes its recommendation based on the facts in the situation.

Mr. Schultz indicated that this application was for the Fairchild Heights manufactured housing community at 804 Bridgeport Avenue. He indicated that over the past six months or so, this Commission has heard comments at the Public Portion regarding specific issues at that particular community such as issues about the number of sites that should be recognized by the City of Shelton, or the number of sites that the number of tenants believe should be recognized by the City of Shelton. Ultimately, Staff decided that it was in the best interests of the City to entertain an application for a Certificate of Non-Conformity. Mr. Schultz stated that he was prepared to read his report; he used an A2 survey which was most helpful. It was one of the first times he had an A2 survey to work with and showed the Commission everything about the subject site, all the sites shown and all the relevant information. Mr. Schultz placed the site plan of the Fairchild Heights housing community on the table for the Commissioners to review.

Mr. Schultz read the report dated April 18, 2008 for Certificate of Non-Conformity for Fairchild Heights Manufactured Housing Community, 804 Bridgeport Avenue. He read the background information of the subject property as being an area of approximately 13.7 acres that was located in the industrial IA-2 district. He noted for the Commissioners that they were aware of the location – to the south of it was the recently approved Commerce Bank, two restaurants and the hotel soon to be under construction; and to the north was the old Ramada Hotel.

He indicated that this manufactured housing community was a pre-existing non-conforming use that was currently before the Shelton P&Z Commission to officially acknowledge the non-conforming land use and to determine the total number of house sites. There was no disputing that this was a pre-existing, non-conforming use; anyone that has lived in Shelton knows that they have three – Sunnyside, Fairchild, and Woodland. The modern zoning regulations are in effect, 1952, and that is the date that this Commission uses in establishing when the modern zoning went into effect. The original trailer park was established in the late 1940's by the late Mr. Albert Fairchild, hence the name, a Bridgeport, Connecticut resident. The trailer park contained a total number of 151 sites which were served by a private community subsurface septic system. This system was abandoned in 1973 after the State constructed the Route 8 expressway and the City authorized the installation and hookup to the Bridgeport Avenue municipal sewer line. The property was subsequently sold to Ward Doolan in 1962 and continues to be owned by family members.

In regard to Inspection, Mr. Schultz indicated that Staff inspected the subject property on April 18, 2008 with the owners to document as built conditions of the community. Specifically the following site information was added.

Staff has determined the total number of sites currently existing served by both municipal sewers and electricity and maintained for occupancy is 139.

Staff has further determined that the total number of existing trailers, mobile homes and mobile manufactured homes – Mr. Schultz stopped to explain that those were the three types of homes, that's the evolution – it started with trailers, went to mobile homes and then manufactured homes, and all three were represented at this manufactured housing community. Currently existing within the community were 108 occupied and 31 vacant sites that appear as yellow highlighted areas on the site drawing. This was a combined total of 139 sites.

In regard to Findings, Staff has determined that the sites were adequately served by roads and proper street sign identification. It's important that the Commission know that these sites weren't served by dirt roads that weren't properly identified. This Commission has been especially concerned with 911 if an emergency call goes in so those issues were inspected.

Mr. Schultz indicated that there was no evidence of junkyard conditions which has been an issue by the Commission too. It is the intent of the ownership to replace the older homes with modern manufactured homes when possible.

He continued to say that there was no evidence of any erosion control problems, illegal dumping or storage related issues. These were side issues that Staff looks at because if there were an erosion problem, they need to address it and have it stabilized.

Mr. Schultz stated that the next reference was very important. The owners filed a Certification of Licenser in the Land Records on December 17, 1986 which identified a total of 151 sites. This information was reported to the Assistant

Corporation Counsel and was recognized as an important document in determining the total number of sites.

In conclusion, all the 139 sites inspected have been maintained including provisions for electrical, sewer service hookup and were capable for occupancy. Mr. Schultz stated that Staff was of the opinion, upon inspecting the site to confirm that all 139 sites have been maintained, in his opinion, and have been reported as such to the Assistant Corporation Counsel that they were prepared to make the following recommendation.

Mr. Schultz read that based upon the inspection of the community, the review of all documentation and his discussion with Assistant Corporation Counsel, it's recommended that the Commission approve the Certificate of Non-Conformity with the following conditions:

1. The total number of sites shall not exceed 139.

Mr. Schultz added that there had been a net reduction from 151 to 139.

2. All future installation of manufactured homes shall be subject to securing permits from the Wetlands, Zoning and Building Departments, WPCA and other municipal departments as deemed necessary.

Mr. Schultz added that he went over these conditions with the owners, and they have no problems with these conditions. It's important that the Commission understand that this would be enforced systematically. It would be expected every time there's a change or alteration or other issues.

3. All remodeling of homes including exterior skins, roofing, etc. shall be subject to securing a building permit in all of the municipal departments as deemed necessary.
4. All sheds and accessory structures shall be subject to securing permits from the Wetlands, Zoning and Building Departments and other municipal departments as deemed necessary.

As the Commission knows, sheds can cause havoc, the sites were very small, but they have to issue permits so that they know where they would be going and that they don't violate the wetlands and that they comply with the building code. He added that fortunately the park was not in an Aquifer Protection Area.

5. All future installation of propane tanks shall be subject to securing a building permit and other municipal departments as deemed necessary. Many homeowners throughout the community prefer to use propane; for whatever their needs were, permits were expected and could be obtained through the Building Department and the Fire Marshal's Office.

6. Compliance with all applicable State statutes.

Mr. Schultz concluded that Staff was in the position to recommend the recognition of this pre-existing non-conforming manufactured mobile home park and establishing the sites at 139. He commented that he had a very good inspection with the owners that was very informative. Fortunately, they have the A2 survey which has been stamped and sealed so they know the locations. They can use this information so there would be no more guessing or getting into emotional issues with the tenants. Mr. Schultz added that he was comfortable if the Commission wanted to act tonight. Assistant Corporation Counsel spoke to

him today. He gave the draft report to him last Friday, he reviewed it and made some slight revisions to it, and they're prepared to act on it.

Commission Sylvester arrived at 7:12 p.m.

Chairman Pogoda asked Mr. Schultz if the owner had agreed to the conditions discussed with Corporation Counsel.

Mr. Schultz responded that the owners agreed to them and when the Commission acts on it, he would be forwarding the decision letter to the property owners and cc'ing all the departments so that everyone would know what was expected.

Chairman Pogoda asked if any of the Commissioners had any questions or comments on Rick's report.

Comm. Harger asked about the vacant lots shown on the site drawing and if the owner wanted to reconfigure some of the sites, would that be permitted.

Mr. Schultz responded that it was but it's impossible because of the tightness. He commented that, if anything, they've asked them to further reduce it to improve the quality of life. The report indicates a reduction from 151 to 139 which has happened.

Comm. Harger asked if it would stay at 139.

Mr. Schultz responded that if it was to be modified, it would have to come before this Commission to make a determination or if it needs to go to the Zoning Board of Appeals or the State of Connecticut. It would be scrutinized if it comes up in the future.

Comm. Harger asked about how vacant the vacancies were – no foundation, nothing?

Mr. Schultz responded that in some instances it may have pavement or grass, but it's ready to accommodate a dwelling unit with sewer and electrical hook-ups.

Comm. Harger asked if there had been some structures on these spots at some point.

Mr. Schultz responded that he had to make a determination of how many sites were in existence out there.

Comm. Sylvester asked if they were all counted.

Mr. Schultz answered that yes, they were. Every single site was reviewed by him last Friday. The yellowed highlighted vacancies were included in the total count. There were 108 occupied and 31 vacant with a total combined of 139.

Comm. Lopera asked if the map on the table would become part of the record.

Mr. Schultz responded that it would.

Comm. Lopera asked if that meant that these sites couldn't be moved around.

Mr. Schultz responded that was Ginny's question as well, and they can't be modified in any way, shape or form unless it's reviewed by this Commission and/or the Zoning Board of Appeals.

Chairman Pogoda asked Rick if he had seen any conditions that weren't up to par as far as junk or anything.

Mr. Schultz responded that if he saw a site that was unoccupied or abandoned, he would have put that in his report which is why he visited every site.

Chairman Pogoda commented that he saw a lot of people from the Fairchild Heights in attendance. He asked if there was a spokesperson who wanted to address the Commission. He asked if they would like to have one person speak on behalf of the park.

Atty. Thomas G. Lonardo, 290 Pratt Street, Meriden, CT addressed the Commission representing the owners, the Doolans and their mobile home park.

Atty. Lonardo stated that they would agree wholeheartedly with Mr. Schultz's recommendations. He had only one comment on several of the last recommendations he made with respect to permits, for siding, for example and sheds. Since all these residents own their own mobile homes, the owner just owns the land and rents the land to them. If anyone wanted to put aluminum siding on their home, he thought it would be the resident's obligation to come to the Commission to apply for the permits.

Mr. Schultz responded in agreement that was the intent – the appropriate party would come.

Atty. Lonardo stated that they weren't here tonight to expand the number of units. Historically, there were 151 units at one time. Parks are licensed, as the Commission probably knows, by the Department of Consumer Protection, and if they were to check in old records of the Department they would see the number up to 151 units. In 1986, when all the parks had to register their tenants on the land records, he believed it was 141 or 142. There were 139 units or lots in the park now identifiable. They were not trying to expand it; they would be happy to live with that number.

Brian Belvin, 39 Hemlock Drive & 71 Nickledale Road, Shelton, CT addressed the Commission. He distributed copies to the Commissioners of the state and federal government zoning regulations which were just overruled. Mr. Belvin indicated that he double-checked by contacting the State of Kentucky, and a place called SIRAC Mobile Home Distributors in which the plaintiff is a dealer for. When he faxed over the status of non-conformity and the non-conformity laws to SIRAC, they indicated that they would be happy to speak to their lawyers and their salespeople.

Mr. Belvin reiterated that this was a non-conforming mobile home park. He referenced Section A – General in Non-Conformity and read “any use of land, building, structures, or any buildings or other structures existing lawfully, existing on the date of these regulations or amended hereof, and in which does not conform to one or more of these regulations may be continued in accordance with the following hereafter specify.”

He continued reading from Section B – Discontinuance “No non-conforming use of land, building or other structure which shall have been discontinued for a continuous period of one year and thereafter and may be resumed or replaced by any other non-conforming use.”

Mr. Belvin read from Section C – Repair “Nothing in this section deems to prohibit any work of non-conforming building or structure when required by law

to protect the public health and safety provided that such work does not increase the non-conformity. Nothing in this section shall be deemed to prohibit work on ordinary repair and maintenance in a non-conforming building or structure or replacement of non-materials or similar materials.”

Mr. Belvin added that he [the mobile home park owner] was building a septic and sewer system so that he could go from 108 homes to 139.

Mr. Belvin referenced Section B – Trailers and Trailer Parks. He commented that he knew a lot of people didn’t like that term – mobile homes – but they started out as trailers and went to mobile homes. They originally started in the ‘40’s when they started manufacturing mobile homes and discovered they could make parks. Pretty soon they crammed them all in and made parks as tight as they could. Then in the ‘70’s they found out it was a problem, a fire problem when units next to each other all burn down, and a wind problem when storms come in and mobile homes hit each other. Mr. Belvin indicated that was why they initiated new ordinances. He read from 41.10, “any trailer lawfully existing on this effective date of this paragraph and used and occupied as any dwelling may not be replaced by a new trailer unless located in a trailer park that complies with the provisions of this paragraph and any applicable ordinance of the City of Shelton. Any trailer parks lawfully existing on the effective date of this paragraph are deemed to be non-conforming and can be continued in the compliance with all applicable ordinances of the City of Shelton subject to the following provisions and requirements:

Within 60 days of the effective date any person operating a trailer park shall submit to Planning & Zoning a request for approval of a non-conforming status of said trailer park. Such approval shall include the following: the name and address, a plot drawn on the plan, a signed statement from the Lower Naugatuck Valley Public Health Department or its successor certifying the satisfactory provisions for water, sewage and disposal of refuse for all prepared and useable trailer sites – Mr. Belvin added which you [P&Z] do not have, proof of ownership or valid lease – you [P&Z] do not have, and a fee of \$50.00 that you [P&Z] never collected.

Mr. Belvin continued reading on the next page “upon approval the application shall submit for the Commissioner’s information related to the occupancy of each trailer by site ID number including full name of trailer owner, make, model and size and year of trailer, state in which registered, date lot number was rented if within the 12 months, and the date trailer was removed from the lot if within the last 12 months. Failure to comply with these requirements in this paragraph shall be deemed a violation of these regulations and the trailer park shall be discontinued until requirements are met.

Mr. Belvin read from 41-10-2, “any person may submit to P&Z Commission an application to rearrange or expand an existing trailer park in addition to the requirements set forth in 41-10-01 above a detailed site plan shall be submitted in accordance with the following provisions and requirements and site developments and standards and said plan shall be prepared by a registered professional engineer of a scale of not less than one inch equal to 40 feet.

Mr. Belvin indicated that the most important one of all to remember – “all proposed improvements and site requirements shall apply to the entire trailer park including all trailer sites. He continued to read from “D” – “the density of the trailer park shall be as to prevent overcrowding of the land and provide light, ventilation, open areas for each trailer. Based upon the gross area of the park, the number of individual trailer sites shall not exceed eight per gross acre. The minimum area of any trailer site shall not be less than 3500 square feet with a

dimension of no less than 40 feet. The maximum number of trailers sites in any park shall need exceed 150 sites.

Mr. Belvin continued reading "C" – "each trailer site shall be defined by a permanent corner displaying the lot number corresponding with the plot plan on file with the Town Clerk. There shall be a minimum of 20 feet clearance between each trailer. All trailer sites shall have a minimum frontage of 25 feet on a roadway of not less than 24 feet in width. At least two off street paved parking spaces shall be provided per trailer site. The park shall be graded and drained to ensure adequate removal of surface and substrate water. All roads to the park shall be paved, drained and maintained in good condition. No trailer shall be located closer than 50 feet from any street line and no closer than 100 feet from any other property line. Along the adjacent property line a strip of land not less than 50 feet in width shall be left in its natural state if already wooded or shall be landscaped with evergreen trees planted to grow into a dense evergreen buffer within five years. The individual sites of the park shall comply with all other requirements in the State Building Code on mobile homes.

Mr. Belvin stated that Mr. Doolan wants to bring 38 mobile homes into that park. He continued to say that under testimony in a newspaper while evicting a woman over one car he stated "under Doolan's own admission in open court he swore that there were at least a dozen other residents who have the same number or more cars than Dickal but isn't suing any of them. He also isn't seeking money from any of them for extra vehicles. His attorney says that this was because Doolan resolved the parking issue without having to go to court. Doolan testified at the court hearing that "basically I need to have control of the park; if I can't have control of how many motor vehicles come into the park then basically the streets would be a block. You can't get emergency vehicles down, you can't get my plow truck, and you would interfere with the comfort and safety of other residents in the park." Mr. Belvin added that this was all over a dozen vehicles. Thirty eight mobile homes, two spaces per lot equal 76 cars. He's moaning about a dozen vehicles under oath in a court would interfere with his plowing. He asked what 76 more cars would do.

Mr. Belvin stated that since Mr. Doolan wants to expand he would have to apply this to the entire trailer park. He passed around photos to the Commissioners that were taken at the mobile home park showing individual marked property lines. He indicated that one of the photos was taken of his own property and home with the line cutting the road off to his shed. Mr. Belvin stated that Mr. Doolan was taking the property from his shed over and was now taking it away from him. He indicated that his shed was built in 1997 with Beard Concrete and his signature on the concrete (inaudible). Mr. Belvin also indicated that he had a videotaped conversation of Mr. Doolan saying that it was being taken away from him for starting the Homeowner Resident's Association. Mr. Belvin added that area behind the shed was tilting because the hill behind his shed was eroding away. He was allowed to cut down 16 trees that were holding that hill up.

Mr. Belvin showed the other side of his mobile home with a paved spot and he was allowed him to park three vehicles on his lease. All of a sudden his new lease has half of the property and only two vehicles on the lease. He commented that the photograph showed that he barely had room for one vehicle. He has only one vehicle that he can park on his property now. He showed photographs of neighbor's properties that had more than one car, neighbors with children that now drive and the lack of spaces for their multiple family vehicles.

Mr. Belvin commented about the density, light and ventilation in the aforementioned federal regulations that indicated a need for adequate spacing between mobile homes in the event of high wind storm events.

He showed other photos to the Commission to demonstrate the sparsely planted bushes and the close proximity of one mobile home from another. He passed out copies of Mr. Doolan's 2008 lease for mobile home residents and made reference to the section indicating that residents would only be allowed to keep one registered motor per licensed driver residing in the mobile home not to exceed two per lot. Mr. Belvin commented that if a resident had a work truck and a nicer personal car, that resident wouldn't be allowed to have both vehicles parked in the mobile home park. He referenced the fact that the zoning regulations specified two off-street paved spots. Mr. Belvin reiterated that the federal regulations were modified in the 1970's to address mobile home park overcrowding, fire safety issues and increased storm damage to densely packed mobile homes.

Mr. Belvin stated that 10 years ago Mr. Doolan removed mobile homes and gave him and another resident the property because he realized that units parked too close together were causing problems. However, in 2004, Mr. Doolan decided that he wanted to cram them all back in again. He feels that Mr. Doolan did not look into the applicable laws and zoning ordinances regarding mobile home parks. Even though everyone agrees that this was a non-conforming park and it comes down to the basics that any trailer lawfully existing at this time and date can't be replaced. Mr. Belvin added that if something happens to his mobile home, it can't be replaced because it's non-conforming. However, he commented that if Mr. Doolan wanted to bring his park into conformity to add more mobile homes, than he should have to go 8 by gross acre times by 13.7 to come up with about 112 homes. Unfortunately due to the hilly landscaping in Mr. Doolan's park and contrary to Mr. Schultz's comments that they all have sewers, many sewer lines were removed as well as many water lines removed 10 years ago.

Mr. Belvin summarized that if a mobile home has been out more than a year, it can't be replaced and if it's a mobile home in a non-conforming park, than it can't be replaced – this comes from state laws that were copies of federal laws. They can be strengthened but not weakened. He indicated that they weren't going to stand back on this one or lose their property, even though he already lost his shed so that Mr. Doolan can put a new mobile home on either side of him.

An audience member handed Mr. Belvin a hand-written sheet of paper to read aloud to the Commission. He read that from one section, Chapter #412 of Mobile Manufactured State Statutes Section 21-67, "license which has to be renewed by the DCP to operate a mobile home park..." He indicated that he was bringing this to the Commission's attention because – a certificate of approval by the appropriate local official or commission of compliance with the state building code or any existing municipal or ordinance planning zoning regulation shall accompany such application. He added that what that meant was every year someone from the P&Z was supposed to come out to that mobile home park and inspect it and so was the State of Connecticut.

Mr. Belvin pointed to Rick Schultz and stated that he stepped into the park for the first time in 10 years. He didn't think the State of Connecticut came in until Mr. Doolan was accused to be in violation of practices by the DCP. Mr. Belvin claimed that there was an illegal oil barrel that hasn't been removed, and a sewage leak in the park.

Mr. Belvin commented that Mr. Schultz probably hadn't seen the green abandoned mobile home at the end of the Wood Park that was half stripped with a 55 gallon drum of oil sitting in the back field with two oil filters on it. He indicated that he wanted to call the State of Connecticut Department of Environmental Protection because two different licensed people directed that the drum be removed with an accompanying report submitted.

Mr. Schultz indicated to the Chairman that Mr. Belvin was beginning to get into redundancies with his comments and he'd like to ...

Mr. Belvin interrupted to say that these laws were Shelton's ordinances and his rights to just throw a mobile home on a lot that has been pulled out was not there – flat out. It's in Shelton's ordinances and paperwork – any trailer lawfully existing may not be replaced unless it's replaced in a park that's in conformity. Mr. Belvin continued by stating that if he wants to bring the park into conformity than "God bless it...every mobile home owner here would be happy to have 3500 square feet because they have mobile homes hanging over the roadway. And now he wants to crowd more in? And people have been getting evicted over one car because his plow can't turn around, but 76 possible new ones won't cause a problem?"

Chairman Pogoda thanked Mr. Belvin for his comments.

Mr. Belvin thanked the Commission for their time and apologized for speaking so loudly due to his own hearing loss and the fact that he's very upset because five elderly women were forced out of their homes this year due to rent increases.

Mr. Schultz responded by stating that he anticipated these remarks and chose not to intervene earlier because when an individual or individuals want to speak his or her mind, Staff would not stop it.

Mr. Schultz commented that all of these issues were discussed with Assistant Corporation Counsel. As he prefaced his remarks, these non-conforming issues were very emotional, and this has been the most emotional one that he's witnessed in 25 years. He continued to say that Assistant Corporation Counsel has suggested that the regulations that Mr. Belvin referenced were probably not applicable. As the Chairman was aware, this Commission was responsible...

Mr. Belvin interrupted by asking how that could be.

Chairman Pogoda told Mr. Belvin to allow Mr. Schultz to continue speaking.

Mr. Schultz continued that this Commission was responsible in revisiting regulations that do not comply with state statutes. They have an Assistant Corporation Counsel that feels comfortable with his report and he doesn't want to subject this Commission anymore over the summer months with this issue. They have an avenue to take to the Zoning Board of Appeals if the Commission should act on this. He added that this was emotionally charged and he doesn't want this Commission to belabor the point. Corporation Counsel and Assistant Corporation Counsel feel confident that the ZBA will uphold this or else he wouldn't be recommending that the Commission act on this tonight. He sincerely asked the Chairman to act on this because it's so emotional; there were civil issues going on as they may have guessed. They've had issues such as this in the past, and the Commission tried to respond; however, some things can't be addressed especially civil matters. He asked them to act on this. They have recourse with the Zoning Board of Appeals. ZBA will have a public hearing on it and either uphold it, or reverse or modify any part of it – that's the due recourse. Mr. Schultz stated that they had one other park that has to go through this. All

of these non-conformity issues need to be addressed and unfortunately, it's just volatile at this time.

Mr. Panico responded that the other issue that the Commission should pay attention to was that there has been some misinterpretation of provisions that were cited by this gentleman over the past 15 minutes. Non-conformity, as they may know, was a very tricky situation and there were provisions in there that talk about "a trailer" meaning the isolated trailer here and there throughout town that they had way back then, and there were certain provisions that apply. However, there were additional provisions that apply if it's just a "trailer park." In this case, the non-conformity is the "trailer park." Some of the standards that were recited were standards that were applicable if a new trailer park was being created and they weren't necessarily retroactive to this particular park.

Mr. Schultz responded that was the way that Assistant Corporation Counsel reads it as well because they had a detailed discussion on it.

Mr. Panico commented that if they wanted to talk about the number of non-conforming trailers, there was an entitlement of right. If a trailer was removed and the site was blitzed and turned to grass, then he's lost that site.

Mr. Schultz added that it was called abandonment.

Mr. Belvin interjected that they're all like that...

Chairman Pogoda asked Mr. Belvin not to interrupt the speaker.

Mr. Panico continued to state that if there was no intent to abandon, then he doesn't lose the non-conforming right despite the fact that it states in there it's for a one year period. That one year period was not substantiated by state statute.

Mr. Schultz added that they have to revisit that regulation.

Mr. Belvin commented that there were dozens more blitzed into grass and parking spaces – there were tons of them.

Mr. Panico responded that in a court of law they would have to prove that the action taken was a removal with the intent to abandon. And proving intent to abandon was very, very difficult to prove. Generally, it means taking that area and devoting it to a different use.

Mr. Belvin commented that it was turned into a parking lot.

Another member of the audience commented that sites were being made into a parking lot.

Mr. Belvin interrupted to inform the Commissioners that before they vote on this he wanted them to be aware that on October 7th there was a lawsuit filed by the Homeowner's Association against Mr. Doolan. They were willing to relax, and if Mr. Doolan was willing to relax, they should wait to see what happens with the lawsuit because this was listed in that lawsuit.

Mr. Panico responded that it was not their intent to be specific about a particular site, but to refresh the Commission's memory about the need to differentiate these various items and the tricky aspects of dealing with a removal with intent to abandon.

Mr. Belvin added that they had a ton of them...

Chairman Pogoda asked Mr. Belvin not to interrupt.

Mr. Schultz responded that Staff did not want to sound insensitive; however, they've been getting weekly calls, demanding calls, he see's the writing on the wall. He's been doing Zoning for a long time. He's not saying that they were wrong and the property owners were right because it's not black and white. He's done four pre-existing non-conforming and he's had hostile neighbors showing up. He urged the Commission to use its discretion; it's not always right but there were checks and balances – it's the ZBA, through a public hearing process and then the lower courts. It's a very volatile situation right now and he doesn't want to sound insensitive but they would be doing Staff a favor by acting on it at this time instead of drawing it out over the summer because there were issues going on weekly.

Mr. Belvin shouted out that it was under Mr. Schultz's control and he could put a stop to those weekly issues....

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Atty. Lonardo requested to respond to Mr. Belvin's comments that once a mobile home was removed it could never be replaced. Atty. Lonardo indicated that there was a state statute of which he may not be aware but of which he's made Atty. Sous aware. It's Public Acts 07-43, now General Statutes 21-68. He indicated that he made copies for the Commission and the newest addition passed last May says "the replacement of a mobile manufactured home in a mobile manufactured home park with a mobile manufactured home with the same or different external dimensions that is built in compliance with federal manufactured mobile home construction and safety standards, as amended from time to time, shall not constitute an expansion of a non-conforming use."

Atty. Lonardo summarized that to buttress this gentleman's argument; it's the park that's the non-conforming use and not the individual unit. He wanted to share that statute with the Commission.

Secondly, Atty. Lonardo responded to Mr. Belvin's request that the Commission defer their judgment due to pending litigation by stating that pending litigation was only that – a claim by somebody that has to be proven. Atty. Lonardo commented that Mr. Belvin referred to one specific case tonight by reading from the newspaper about the Nancy Dickal lawsuit. He added that just for the record, yesterday the Housing Court Judge, Judge Ripley, ruled in their favor and against Mrs. Dickal and her family. He concluded by thanking the Commission and adding that any of the litigation so far has been denied in the courts.

Chairman Pogoda commented that as Staff has indicated this has been investigated and brought to Corporation Counsel. Corporation Counsel has agreed with Staff as to the points brought out. Chairman Pogoda stated that he thinks for due diligence and with the understanding of the volatility between the tenants and the owner of the park, this may be something for the ZBA and a public hearing just as Mr. Schultz has stated. He asked the Commissioners for their comments.

Mr. Belvin asked if he was correct that this was going to have to go to an appeal.

Mr. Schultz responded that any action of the Planning and Zoning Commission would be forwarded to the ZBA. They have to exhaust that remedy first before the lower courts.

Comm. Sylvester commented that he didn't have a comment until it was time to vote. He stated that his comment before the vote was that he commended Rick Schultz, as always for making a difficult recommendation and for remaining calm under difficult and loud conditions. He added that Rick was not ingenuine, and his vote against Rick's recommendation will have nothing to do with Rick's recommendation. Comm. Sylvester stated that his vote would be not to support the request of the park owner because he was elected to defend the rights of the people that live in the area. He suggested that they just take a ride through the park, very simply. They could listen to all this stuff, but they should just take a ride through the park and they'll find that it's very non-conformative, and it really doesn't call for the addition of any more trailers. If the law says it has to be, it has to be, but reality was through the eyes of the people living there and he understood why the people living there were here tonight.

Chairman Pogoda asked Comm. Sylvester if he wanted to make a motion then.

Comm. Sylvester stated that he did not because his motion would be to deny the recommendation, and he knew that wasn't going to fly. He expected that he wouldn't get a second so he indicated that he would wait to vote.

Chairman Pogoda asked if any other Commissioner wanted to make a motion.

Comm. Sylvester responded that OK, he would make a motion to deny Rick's recommendation, with all due respect to Rick.

Chairman Pogoda asked for a second to that motion.

Comm. Harger seconded the motion for a discussion. She asked if it was possible to ask Corporation Counsel to come to the next session and be able to hash this out with them.

Mr. Schultz interjected to remind the Commissioners that the next meeting was on May 20th with three public hearings.

Comm. Harger commented that this was such a big issue here.

Comm. Sylvester responded that he thought it was a great recommendation. He added that on something like this, someone should be here to face up to it. That's what they're there for and if they feel strongly about it, they should state it publicly in front of people. He commented that he wasn't an attorney and he had no idea what was right or wrong in regard to the law. He added again that the others should take a ride through the park.

Chairman Pogoda asked if they would like to amend the motion to ask Corporation Counsel to come to the next possible meeting to discuss this.

Comm. Sylvester responded that he wasn't going to amend his motion. His motion stands but he wanted to get it off the table one way or another. He stated that his motion was to deny it and if they wanted to come back or bring it back to the table...Could it be denied and could they reapply?

Mr. Schultz responded that they could reapply.

Comm. Sylvester commented that just because it's denied tonight doesn't mean it can't come back next week or the week after that, right?

Mr. Panico asked Rick if this was denied, would that be an action of the Commission that the Applicant would then take to the ZBA?

Mr. Schultz responded that it could be if they so choose or they could reapply with new information being presented to the Commission.

Comm. Sylvester responded that he appreciated Tony's comment because having witnessed what's there, having been through there and being familiar with it, whatever else that's said wouldn't change his mind.

Comm. Parkins arrived at 7:54 p.m.

Chairman Pogoda noted that Comm. Parkins had arrived to the meeting and Comm. McGorty would now be sitting in for Comm. Jones.

Chairman Pogoda stated that they had a motion to deny Staff's recommendation and he asked for a second.

Comm. Harger asked Tony about his comment in regard to denial and going to ZBA.

Mr. Panico explained that in denying the application, it would leave the Applicant two choices – to make a new application or appeal the decision on the original application to the ZBA.

Comm. Harger asked if the Applicant was the Park or the residents of the Park.

Mr. Schultz clarified that the Applicant was the Park Owner.

Mr. Panico added that the park owner could go to the ZBA and attempt to argue that the Commission misinterpreted its regulation, misapplied its regulations and therefore ZBA should overturn this Commission. Or he could go back and modify, adjust or whatever he needed to do and have the Commission go through the whole motion again.

Comm. Lapera commented that he understood where Comm. Sylvester was coming from; however, he had a problem with voting on a motion to decide whether or not one party or the other party should appeal it as opposed to making the decision based on the facts and based on the statutes.

Comm. Sylvester responded that his motion didn't include anything to do with an appeal – he just voted to deny it. He made a motion to deny - pure and simple.

Comm. Lapera indicated that he understood that but he thought that they should take the action based on whatever the facts show. They should give due consideration to the Staff report. If they want to have Corporation Counsel give them something in writing or come back, that's OK, he agreed with that. However, there were some things that they could consider; there were some things, as a commissioner that he would not consider. Comm. Lapera stated that he was not going to consider leases because the leases were between the applicant and the tenants, and he doesn't feel that the leases have any bearing on zoning. It's a contract between the tenant and the applicant and he doesn't want to get in the middle of that. He didn't want to get in the middle of how many cars somebody can have. He restated that he was not going to consider that. He added that Corporation Counsel's view of these regulations was that the non-conformity was the Park non-conformity. The only way to decrease the number would be to prove the intent to abandon.

Comm. Lapera added that they've had this issue before with Schuster's Garage and he thought that was a really close case on abandonment but Corporation Counsel didn't think it was a winnable case on abandonment. So, if this

applicant goes back in, and prevails and goes back to a Certificate for 151 spaces then it would be worse than it was now.

Comm. Sylvester asked why it would be worse.

Comm. Lopera responded that right now he was only looking for 139 – so if they're looking for space in the park, it's not going to be better. He would support Corporation Counsel coming back or providing something in writing to explain why these regulations do not apply. And if the regulation cited that there was no loss was correct because they'd be allowed to swap one for one, basically, then... Well, he'd like to get a little more clarification on that but he thinks they ought to make a decision based upon the facts before them.

Chairman Pogoda agreed with Leon but also thought Comm. Lopera brought out a good point that they weren't there to debate what was right or wrong because that's between the applicant and the tenants. He didn't want to get in between something like that either because it had nothing to do with the Zoning Commission. He stated that the motion – voting yes would be agreeing with what Leon stated and voting no would be against the motion made to deny.

Comm. Lopera added that if the motion to deny fails then someone would have to put another motion on the table but it's not an automatic approval.

Comm. Sylvester responded that voting yes to deny would be to vote against Rick's recommendation.

Comm. Lopera clarified that if that motion fails however, another motion can be made.

Comm. Harger asked how they would recommend that Corporation Counsel be involved.

Comm. Lopera responded that they could come back or submit a written report.

Comm. Harger commented that had nothing to do with this vote to deny though.

Comm. Sylvester clarified that his motion was to deny Staff's recommendation for approval.

Chairman Pogoda asked for all those agreeing with Comm. Sylvester to vote yes and all those disagreeing to vote no.

Comm. Lopera voted no.

Comm. McGorty voted no.

Comm. Harger indicated that she wanted to abstain until she hears more from Corporation Counsel because she doesn't feel comfortable otherwise.

Chairman Pogoda summarized that they had one Yes, two No's and one abstention – so the motion fails.

Comm. Sylvester commented that it went further than he thought it would.

Chairman Pogoda asked Staff to speak to Corporation Counsel to ask them to attend or send their comments in the form of a report – either way.

Atty. Lonardo asked if they shouldn't be voting to either approve or defer the application pending Corporation Counsel's opinion.

Comm. Lapera responded that he was just going to make that motion.

Chairman Pogoda agreed that they were going to make a motion to table this.

Comm. Lapera made a motion to table the application with the request that Rick forward the transcript to the Corporation Counsel for either an oral report or a written recommendation responding to the issues concerning the citations from the regulations.

On a motion made by Patrick Lapera seconded by Virginia Harger, it was voted (4-1) to table the Certificate of Non-Conformity #013 and consult with Corporation Counsel. Comm. Sylvester voted to deny the motion.

APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE STANDARDS

Mr. Schultz stated that all standards 1 through 16 had been reviewed by Staff and he recommended approval.

On a motion made Patrick Lapera seconded by Virginia Harger, it was unanimously voted to approve the Applications for Certificates of Zoning Compliance, Standards 1 – 16.

SEPARATES

#4615, VINCE SORRENTINO, 515 BRIDGEPORT AVENUE, BUSINESS

Mr. Schultz stated that this separate was being withdrawn; they were making an application for a special exception which was on tonight's agenda for a deli/convenience store at the old Anson Reel – replacing the Cingular Wireless store.

On a motion made by Patrick Lapera seconded by Thomas McGorty, it was unanimously voted to accept the withdrawal of Separate #4615.

#4651, CT SIGN, 811 RIVER ROAD, SIGN

Mr. Schultz stated that this was tabled at the last meeting; it was for the message center. The Commission directed Staff to sit down with the applicant to hopefully modify it. The applicant wishes to proceed. He added that it was up to the Commission, and he passed around an example of the signage to the Commissioners. He indicated that he advised the Chairman of all applicable zoning regulations that deal with these types of signs.

Neil Purchuk, Car Wash owner, 811 River Road, Shelton addressed the Commission.

Mr. Purchuk indicated that he wanted to provide some additional photographs for the Commission to review. He showed a photo from their location showing the Sports Center and their message center sign down the road. He commented that it was a similar design to what he would be doing. He showed the LED signage on River Road at the SUNOCO station. He had another picture of their road and commented that there were no driveways on the other side of the road for several thousand feet until the methane gas storage place. He added that there would be no fear as far as the message center being a distraction. Mr. Purchuk stated that he would be able to go out and do special pricing for oil changes and car washes on certain days and times of the week.

Chairman Pogoda indicated that as he had mentioned at the last meeting, he feels very strongly about these types of signs due to safety concerns on a busy road such as River Road. Also, as the applicant stated, there was a sign across the street that was placed there on a PDD. It was a special, one time deal. There was nowhere else in the City of Shelton that a sign like that exists.

Chairman Pogoda stated that under their sign regs, 44.3.5 Light and Motion, no flashing, revolving or moving signs or continuous stop lighting will be permitted. All lighting of signs in residential districts shall be indirect with the source of illumination not visible from any street or any lot other than the lot in which the sign is located.

Chairman Pogoda added that the Zoning Subcommittee was also in the process, working with Staff, to strengthen their sign regulations and pinpoint definitive areas. Signs have been bantered around this table so often and it has taken up so much more time and discussion than he'd like. They will continue to work on these signs. As he stated at the last meeting, he thinks this type of sign was a hazard. Chairman Pogoda added that it was bad enough that drivers try to find an address, much less look at a moving sign stating different prices on it on a busy road going at about 50 mph.

Mr. Purchuk responded that it was a 40 zone road.

Chairman Pogoda commented that just because the sign says 40, he's driven on that road and knows how fast the cars go and whether it's 30 or 50, he still thought it was dangerous.

Comm. Harger agreed with Chairman Pogoda and stated that she wasn't too thrilled about this from the previous meeting and she still agrees with Tony that it's hazardous for motorists.

Comm. Parkins asked if this sign was proposed to be flashing.

Mr. Purchuk responded that it would be flashing. He added that he would be willing to put certain restrictions on it and offer the town to use it to make announcements several times a month as well as utilizing the sign for Amber Alerts. He didn't want to force this on the town; he's been advised that the PDD has nothing to do with sign regulations but from a legal standpoint a precedent has been set by allowing some of these signs in town. He indicated that they have a very strong case and he certainly doesn't want to have to bring this court. He'd rather negotiate something here for the town and for himself. Mr. Purchuk indicated that he would be willing to hold the sign, without flashing, and hold the message for 20 seconds. Also, he'd be willing to have Amber Alerts on the sign or town announcements, so he thinks it could be a win-win.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to deny Separate #4651.

#4688, DENISE DUBE, 522 HOWE AVENUE, BUSINESS

Mr. Schultz stated that this was next to Valley Printing, across from Shelton Pizza; this space was occupied by Reliable Real Estate. It's 400 square feet; type of business was hairdressing/barber with one employee, hours Thursday 10 a.m. – 8 p.m. Friday 10 a.m. – 8 p.m. and Saturdays 8 a.m. – 2 p.m. This was a permitted use as of right and Staff recommends approval.

Ms. Dube, the owner, stated that the hours were tentative right now. She showed a draft of her sign without color.

Mr. Schultz indicated that this application would be for occupancy only and the sign could be put on the next agenda. He asked the applicant to provide a colorized depiction of the signage with dimensions for the next meeting.

Ms. Dube added that the sign would not be any bigger than the existing sign that was already there – 3 ft by 4 ft – for Reliable Realtors.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve Separate #4688.

SEPARATE #4659, MINUTE MEN CLEANERS OF TRUMBULL, 90 HUNT STREET, BUSINESS/SIGN

Mr. Schultz stated that this was for the second Zoots in Huntington Center. The sign is consistent, black and white. Staff recommends approval.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve Separate #4659.

SEPARATE # 4670, VALERIE WEED-PURCELL, 165 CENTER STREET, BUSINESS/SIGN

Mr. Schultz stated that this was Brian Lizotte's Magic Store that went out of business on Oak Avenue and Center Street. This would be a 650 square feet retail establishment for children's stuffed animals, one part time employee, 10-5 or 10-6 Monday through Saturday. Staff recommends approval.

On a motion made by Patrick Lopera seconded by Virginia Harger, it was unanimously voted to approve Separate #4670 for the business only.

SEPARATE #4663, PAUL SURMAY, AVALON DRIVE, RECYCLE CENTER

Mr. Schultz indicated that besides the apartments and the pool house for Avalon, they have the free standing recycling center. They took out a separate permit and it's consistent with the approved site plan. It's a covered structured for recycled goods that animals can't get into.

On a motion made by Thomas McGorty seconded by Patrick Lopera, it was unanimously voted to approve Separate #4663.

SEPARATE #4614, AMANDA ORAM, 18 FOREST AVENUE, HOME OFFICE

Mr. Schultz stated that this was for pet sitting and the conditions for pet sitting were for off site services rendered. The office area for one person would be 30 square feet and Staff recommends approval.

On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to approve Separate #4614.

SEPARATE #4682, HARRISON TONNE, 140 YUTAKA TRAIL, HOME OFFICE

Mr. Schultz indicated that this was for a web design business with one employee, 75 square feet, hours of operation M-F, 9-5. Staff recommends approval.

Comm. Harger asked if there would be any customers going in and out of there.

Mr. Schultz answered there would not be any customers; it was all on the Internet.

On a motion made by Patrick Lopera seconded by Thomas McGorty, it was unanimously voted to approve Separate #4682.

APPLICATION #08-06, MARIA WILHELM FOR CAM SITE PLAN APPROVAL (GRAVEL BOAT RAMP), 590 RIVER ROAD (MAP 53, LOT 56), R-1 DISTRICT – REQUEST TO WITHDRAW (APPLICANT INITIATED)

On a motion made by Patrick Lopera seconded by Thomas McGorty, it was unanimously voted to accept the request for withdrawal for Application #08-06.

Comm. Sylvester asked Rick Schultz what the story was with that.

Mr. Schultz responded that the DEP was requiring them to do a flora and fauna, plant and wildlife biological evaluation because their map says that there was the potential to have significant plant life there. It was quite excessive but the State was insistent. The Applicant realizes this and they were going to try to work with the State.

Mr. Schultz commented that this was one of the few times after he made the referral on behalf of the Commission, that the State wrote a two-page letter stating there may be unique flora and fauna there, so the Applicant was withdrawing without prejudice.

Chairman Pogoda commented that the State was looking very diligently at that right now.

Mr. Schultz added it was plant life and wildlife – the box turtle, red-tail hawk, certain species of plant life, eagles and salamanders. Remember the box turtle on Armstrong Road because of the bog...

NEW BUSINESS

APPLICATION #08-08, ST REALTY FOR SPECIAL EXCEPTION APPROVAL (HIGH TRAFFIC GENERATOR: ICE CREAM SHOP/DELI), 515 BRIDGEPORT AVENUE (MAP 62, LOT 44), CA-2 DISTRICT – ACCEPT AND SCHEDULE PUBLIC HEARING

Mr. Schultz recommended May 20th for the meeting; they'll be having two other public hearings on that date. One would be for the modification of the initial development plans for the marina and this would be the second for a special exception.

On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to accept Application #08-08 and schedule a public hearing for May 20, 2008.

APPLICATION #08-09, BARRY KNOTT ON BEHALF OF RICAR, LLC AND MIANUS HOLDINGS, LLC FOR MODIFICATION OF INITIAL DEVELOPMENT PLANS: (MARINA, MULTI-FAMILY, RESTAURANT/CLUB HOUSE), 704-712 AND 722 RIVER ROAD (MAPS 32, LOTS 16 AND 17), AND CAM SITE PLAN IA-2 AND IA-3 DISTRICTS – ACCEPT AND SCHEDULE PUBLIC HEARING

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept Application #08-09 and schedule a public hearing for May 20, 2008.

PROPOSAL OF THE SHELTON PLANNING AND ZONING COMMISSION TO AMEND THE BUILDING ZONE MAP BY CHANGING FROM RESIDENCE R-4 TO RESIDENCE R-1 FOR PROPERTIES NORTH OF UPPER CANAL STREET INCLUDING MCCALLUM ENTERPRISES, RIVERVIEW PARK AND PORTIONS OF THE HOUSATONIC RAILROAD COMPANY PROPERTIES (MAP 139, LOTS 1 AND 2) – SCHEDULE PUBLIC HEARING (PREVIOUS ADOPTION WAS DECLARED NULL AND VOID)

Chairman Pogoda indicated that they needed to schedule a public hearing because the previous adoption was considered null and void.

Mr. Schultz stated that as reported at the last meeting, Staff was anticipating a lawsuit and they did receive it. One of the findings was an invalid notification in the Connecticut Post. The Connecticut Post was scheduled to put the first legal in when the Commission adopted it. It never went in so it came back to the Commission to amend the effective date. Unfortunately, there was case law and it went all the way to the Connecticut State Supreme Court that says once the Commission adopts a zone change, the effective date has to be honored. Mr. Schultz indicated that Staff has been putting the notice in on Thursday and the effective date was on that Friday, so there was no room to correct it if it should happen. He indicated that he hadn't checked with Corporation Counsel, but he did an extensive review and everything was fine because there was case law in the appellate court that upheld changes of effective dates. But there was a case law that went to the State Supreme so he has determined that the Commission's actions were invalid and because of that they need to reopen the public hearing.

Mr. Schultz stated that he would be sending out the notices to the Council of Government and what the Commission can do would be to open the hearing, close it and act on. Also, there were boilerplate issues that were in the lawsuit, one of which was failing to notify the property owners. Mr. Schultz told the Commission that they weren't obligated to notify the property owner, only when a petitioner does it, but he would be voluntarily notifying the property owners this time around.

He added that the other boilerplate issue was that it was spot zoning, which it is not because it's over 30 acres worth of land area and the Commission based it upon planning recommendations – their plan of development, the regional plan and the state plan which was to preserve that entire Riverview Park, McCallum hydroelectric facility and the Housatonic Railroad right of way property.

Comm. Lapera asked if that had been sent in and the paper just didn't publish it.

Mr. Schultz responded that was correct.

Comm. Lapera commented that it wasn't their fault; it's the paper's fault. It's not that the application was invalid; it's just that it didn't get published.

Mr. Schultz added that it was his job to put it in correctly and he won't be putting it in on a Thursday anymore, he'd be doing it on a Wednesday so that if he finds an error he can recover it on Thursday. It doesn't usually happen but it happened. Additionally, he would voluntarily be notifying all the property owners.

Mr. Schultz indicated that they would need to bump this to June because he knows that they want to get into one meeting a month for June-July-August. So they have June 10th, June 17th and June 24th.

Chairman Pogoda stated that they would shoot for one meeting in June.

Comm. Parkins suggested doing it on June 10th in case they get backed up, there would still be time left in the month.

On a motion made by Patrick Lapera seconded by Virginia Harger, it was unanimously voted to accept the Planning and Zoning Commission Proposal for the amendment to the Building Zone Map (R4 to R1) for properties north of upper Canal Street including McCallum Enterprises, Riverview Park and portions of the Housatonic Railroad Company properties. (Map 139, Lots 1 and 2). A public hearing was scheduled for June 10, 2008.

OTHER BUSINESS

PHASE III CANAL STREET, SHELTON RIVERFRONT DEVELOPMENT

Mr. Schultz asked the Commissioners to refer to the Draft Report dated 4/22/08.
***See attached Shelton Riverfront Development and Phase III, Canal/Wooster Streets Reconstruction Plans dated April 22, 2008.**

He stated that it was a thick document because they have the adopted resolution for the whole reconstruction of the Canal Street residential/commercial development. Also, it includes reports from the Downtown Subcommittee regarding Phase III, the City Engineer's Report and the Staff Report.

Mr. Schultz indicated that there were three components in this document. Staff wants to start with Phase III. Phase I started way down by the slab area. Phase II takes it up to the Derby-Shelton Bridge and Bridge Street. Phase III will take it to the cul-de-sac and up Wooster Street. He referenced a graphic against the window and pointed out the locations of Bridge Street, the walkway going to the Kyle's Corner project, the Wooster Street intersection, the railroad crossing, the cul-de-sac and the access way to the McCallum property and the Howe Avenue intersection.

Mr. Schultz read from the draft report regarding Phase III, Canal Street/Wooster Street North. He commented that the bulk of Canal Street and Wooster Street would be the uniform 30 ft width, it does drop down to 26 ft to the cul-de-sac. The cul-de-sac would be built to subdivision requirements. The City Engineer was requesting that as well as the Fire Marshal for the obvious reasons. It should be noted that some of the advisory groups have suggested a lesser width amount, but as indicated in the City Engineer's report, he wants the roads labeled correctly. They will over time with the Traffic Authority provide traffic counting devices, walkway striping, and those upright signs that say Slow Down. It physically has to be done because this would be parallel to Howe Avenue and obviously, right now cars come down there quickly. He wanted to share that with the Commission because some groups have said they think it should be a lesser width to force the reduction of speed; he doesn't see that happening, but that would be the Commission's call.

Mr. Panico commented that the difficulty was that road was apt to continue to carry truck traffic. And if a truck breaks down in a 26 foot road, they may have difficulty maintaining two-way traffic that bypasses that vehicle.

Mr. Schultz responded that they were also saying that so they'd find another location and everyone knows that the trucks will use that route. It's just not going to happen; it's just wishful thinking but they still bring it to Staff's attention. He added that the sidewalk width was 10 feet on the river side to accommodate the 603 dwelling units. The other side would be approximately 8

or 9 feet and it's all within the 50 foot right of way that they will be achieving. He continued reading from the draft report.

He used a profile drawing of the Canal Park to show the location of the retaining wall which would be the limit of the right of way. He stated that the developer would be doing this through an easement; he's not going to deed it and fee to the City. Corporation Counsel finds that way of doing it to be acceptable.

He indicated that with Wooster Street, Staff many years ago thought about a different geometry there, but it's the opinion of DeCarlo and Doll and SEDC that this type of traditional intersection be provided. Staff thought the traffic would want to go down and turn left, but the State has reviewed this and the State's in agreement. And the State will have the final say on this matter. Sidewalks would still continue up to Wooster Street to get to the central business district on Howe Avenue. There's a significant improvement at the Wooster/Howe Avenue that may require the taking of land. They're still looking at that. There's a traffic light scheduled to go there and the State has asked for this type of geometry. It hasn't been finalized but it was still an important part of the overall plans.

Chairman Pogoda asked what the sidewalk width would be on Wooster.

Mr. Schultz responded that it was his understanding that it would continue with that 8 or 9 on both sides. He wanted to make sure the Commission was comfortable with that. Suburban sidewalks would be 4 feet but this was urban area and they try to achieve the optimum 10 feet, but 8 feet could do it.

Mr. Panico agreed that they should strive for the 10 foot walkways.

Mr. Schultz indicated that hopefully they'll be putting their recommendation in tonight so he's spelled some things out that they can add to or modify.

Mr. Panico asked if there was a right of way width restriction on Wooster Street – does it have the 50 feet.

Mr. Schultz responded that his understanding was that it was 50 feet because that was built to other standards. Canal Street goes back over 100 years. He asked the Commissioners to keep the sidewalk widths in mind. He added that they should discuss the design of the sidewalks.

He referenced the green streetscape displayed at the front of the table that depicted a brick treatment. Staff was of the opinion that they should try to achieve that and there was different ways to do that. He mentioned that if real brick was to be used it should be put in concrete pavement as opposed to stones that move. They could also use the stamp; he indicated that has come along way. They actually do concrete, stain it and stamp it, and it's held up pretty well. They'll need a consensus on that.

Mr. Schultz commented about the guardrails; Staff was of the recommendation to do decorative wooden.

Mr. Panico asked if it was granite curbing on the rest of Canal Street and down through the park.

Mr. Schultz responded that yes, Staff was going to recommend granite curbing too. The guardrails should be of wood; it should be timber on timber whenever possible. He's heard from the Commission that they don't like the metal that oxidizes.

Comm. Parkins agreed that the metal that rusts looks terrible.

Mr. Panico commented that typically guardrails were a foot and a half or two feet off the travel lane, but in this case the guardrail was shown, at least graphically, as the back of the walk. And the back of the walk was also the location of the retaining wall that creates these water features, so somehow or another that guardrail would have to be penetrated at various situations with this sidewalk treatment, this aesthetic enhancement.

Mr. Schultz commented that he hoped the consensus be wood timber because it's more attractive and it compliments the older buildings that have wood timber in its beams. The City Engineer normally doesn't like to go with that but he's hoping that the Commission feels very strongly and puts timber on timber, vertical and horizontal in their recommendation.

Chairman Pogoda asked Rick if there was any discussion at the DSC on some of these points that were being brought out.

Mr. Schultz responded that some of them were, but not on the guardrails. He noted that he included a report from the Subcommittee. There were a lot of small issues that collectively add up to a satisfying street statement such as uniform caliber trees – 2 ½ inch that's consistent with the sub-regulations. He knows that the Commission prefers to see some kind of shade tree because this was an urban area. They've tried ornamental trees downtown but they just weren't holding up. He added that some of the better urban trees were red oak and they really need to go with the appropriate species. The Tree Warden does have the final say just like in the subdivisions but definitely a shade tree, something hardy in an urban environment. Additionally, it has to be big, at least 2 ½" because if a car hits it, a little tree would just snap.

Mr. Schultz brought up the subject of the street lighting. He commented that the lighting in front of the Pierpont was very attractive. He hopes the City would compliment the Birmingham with some nice light fixtures.

Comm. Sylvester asked if they extended up to Wooster Street.

Mr. Schultz responded that they were recommending that it could be continued up to Wooster Street.

Comm. Sylvester added that the street lights were important if they want people to walk up and down there.

Mr. Schultz responded that it would be brought up again in the Subcommittee. Staff has another map showing future connections. They just have the road connections right now – Wooster Street, the roads south of the bridge, Cornell...and they all have to be properly lit. People walking up to the central business district will need a wide enough sidewalk, proper grades and well lit and the granite curbing. The State put in bluestone and replaced it with granite because it's more durable.

Mr. Schultz stated that he knows the DSC needed to discuss these issues. Staff recommends that they report favorably on the proposed plan of Phase III which was the Canal/Wooster Street North Reconstruction as recommended by the City Engineer and the Downtown Subcommittee with the following recommendations. He read the recommendations from the draft report and turned the discussion over to the DSC.

Comm. Harger stated that the DSC hasn't had a chance to discuss the sidewalk area yet.

Chairman Pogoda asked if there was going to be another DSC meeting to discuss some of these issues.

Comm. Harger responded that they hadn't discussed Canal Park and everything; it was really just really focused on the building and on the River side of the street.

Mr. Schultz commented that he would be adding a note that the street trees should be of a 2 ½" caliber.

Chairman Pogoda asked about the walkways, would they be making the determination of whether they would be brick or...

Mr. Schultz responded that he put that they would be of decorative brick or pavers.

Comm. Sylvester reiterated that they should include that good lighting be provided up through Wooster Street.

Comm. Harger commented that for the Canal Park section they would need to have discussions at the DSC level.

Mr. Schultz commented that he would be adding that the sidewalk widths should be a minimum of 8 ft for the west side of Canal and 10 ft for Wooster Street because that's the central business district.

Mr. Panico added that Wooster should be at least 10 feet even if it means that they have to shift the pavement over to get a wider sidewalk on one side as compared to the other.

Comm. Parkins asked how wide the road - Wooster Street was.

Mr. Schultz responded that it was 30 feet – that's uniform. He asked the Commissioners if they were all in support of the traffic light, at least at this time.

All were in support of the traffic light.

Comm. Parkins commented that not many people would be trying to get out of there, even though, unfortunately, the next block up there's another light. For one thing, it would slow people down coming into Downtown.

Mr. Schultz stated that he would modify these recommendations and take it to the DSC. SEDC doesn't need this today but they would like a recommendation, obviously.

ON A MOTION MADE BY PATRICK LAPERA SECONDED BY VIRGINIA HARGER, IT WAS UNANIMOUSLY VOTED TO REPORT FAVORABLY ON PHASE III, CANAL STREET AND WOOSTER STREET NORTH RECONSTRUCTION PLANS.

Comm. Sylvester asked if by recommending the width of the road, would that include the filling of the canal too?

Comm. Harger responded that was the next section.

Comm. Parkins asked Rick Schultz if #D - use of decorative pole lighting - included the decorative gates around the light poles.

Mr. Schultz responded that he would be adding "including decorative gates."

Mr. Panico responded to Comm. Sylvester that the filling of the canal was inherent in the effort to build the road. They have to fill the edge of the canal in order to be able to build the road.

Comm. Sylvester commented that he knew that and that was an issue in the public view that they needed to make clear. They were making the recommendation, in which he concurs, that because of the road way that the road would be constructed...

Mr. Panico responded that it would necessitate filling along the edge of the waterways.

Comm. Sylvester responded that the developer described that pretty clearly.

Mr. Panico noted that it was being minimized by creating a retaining wall so that they don't slope that fill out into the water unnecessarily.

Comm. Sylvester agreed that the developer did a nice job presenting and explaining that. That's why he thinks they should note or make clear that they were saying there would be some filling of the canal in order to accommodate the road.

Mr. Panico added that it was the minimum amount that could be done to accommodate the road and the sidewalk.

Comm. Parkins added that it would also reduce the depth of the water there.

Mr. Panico agreed and indicated that was secondary; the encroachment was necessary to accommodate the road improvement.

Comm. Sylvester stated that he wanted to make sure that was included so that people would be clear that was what was going to happen.

Chairman Pogoda agreed and commented that through this discussion it would be put on the record.

Comm. Sylvester commented that they also discussed the educational issues and the possibility of, at the park, or along the Riverwalk, somehow the history of Canal Street and the individual sites be memorialized someplace either at this area or at the river site. He wasn't sure how it would look from the riverfront. He knew that from the Canal Street side, they could picture what had been there.

Mr. Panico added that there were all sorts of pictorial evidence of some of the developments that were at that site.

Comm. Sylvester commented that they had talked about it and he didn't want it to get lost in everything.

Mr. Schultz responded that he was making note of it and adding a provision about identifying historical markers.

Mr. Panico commented that it was a matter of encouraging the City to do it because basically the City was going to be ... (inaudible) the walkway.

Comm. Sylvester added that he thought it would just be really great to have.

Mr. Schultz indicated that the City actually had a program on the older homes; they could do the same plaques on the face of the building and some vertical ones in appropriate locations.

Comm. Sylvester stated that they had that intention with the McCallum piece – if they walk through on Saturday, they'll see it. It was intended to be more than what was there. He's just got a billboard there but it was supposed to be more. Comm. Sylvester indicated that it was interesting in the discussion, John Guedes pointed out that there were buildings beneath the existing buildings already there. He had no idea that there were businesses existing before those buildings...

Mr. Panico added that something had settled adjacent to the River before it became... (inaudible).

Mr. Schultz stated that there were fires and explosions...

Comm. Sylvester added that there were buildings under the buildings that were presently going to be taken down or redone. At least if they could take it from where they know it and pass it on.

Mr. Schultz stated that with the Birmingham there were two separate buildings and they were joined in the middle; that's why it has that glass atrium.

Comm. Harger commented that in their recommendations that wouldn't be something for the developer to do. The historical markers would be something for the City.

Mr. Schultz responded that some of it would be in conjunction with the developer such as with the right of way; the developer was going to do that retaining wall and the guardrail. There were so many small issues on this.

Chairman Pogoda added that the small issues were important and that was why he wanted the DSC to bring their comments to this table because if the DSC deems it important, they should be made aware of it.

Comm. Harger indicated that this was good so that the developer could make accommodations for it now rather than later on.

Comm. Parkins mentioned that up on Route 7 there was Lover's Leap State Park in New Milford that has a whole pictorial display in the park of all the buildings that used to be there. It was done very nicely and it's very educational.

Comm. Sylvester commented that he had never seen that but that he'd like to see something like that up there.

Mr. Schultz stated that the next provision was the Shelton Canal Park and that was the actual enhancement of that canal area across from sites B & C. He referenced that map to show what they would like to do. He read from the draft report section entitled Shelton Canal Park.

He added that the consensus from the beginning was to preserve the canals to the extent possible. The developer who owns title to this property says that they need to enhance it; the best solution was what was shown. He pointed to the drawing that depicted two separate pools with fountains – it needs to be aerated so that it wasn't stagnating. It makes sense to put walking paths and pocket parks in it as well. Mr. Schultz continued to state that it was a critical design solution insofar as they need more green areas, they want to preserve a

historical canal and they want additional walking space. He thinks this achieves that.

Mr. Panico commented that they need to understand that right now there was water where the proposed parking lot was shown. He asked if they were proposing that it be eliminated in favor of the other two pools.

Mr. Schultz responded that was what the proposal was for – this was not the detailed plans. They would be getting detailed plans.

Mr. Panico indicated that he was mentioning it because in the report leading up to the first action that was taken; they had made a statement about no further encroachment into the canal areas. They have to rationalize that; they have to deal with it and they can't just let it happen. They have to do it knowingly.

Comm. Sylvester commented that he didn't realize that because they didn't discuss it Friday morning.

Mr. Panico pointed out where at the end of the parking lot, it slopes down and the water starts.

Mr. Schultz asked Mr. Panico to show everyone the limits from the south to the north – it's just one big water body.

Mr. Panico showed where they would have to consciously decide...

Comm. Parkins asked if that was parking there.

Mr. Panico indicated that was what the plan shows and it's further reflected in the blowup of that other picture. The developer would like to create these two bodies of water. In looking at that sketch, the eight car parking lot in the right hand corner, today – it's water.

Comm. Parkins asked if it was that approximate size.

Mr. Panico responded that yes it was.

Comm. Parkins asked if the other two pools were approximate size as well.

Mr. Panico responded that the left hand water body was probably 30 to 40 feet into the water to make some land area as park land around it, but the more serious one was at the other end.

Mr. Schultz stated that they revised and improved the widths. With the improvements, the width would be shrunk to an average of 22 feet. They can't touch the track park because of the encroachment, it would spill over...there was a retaining wall along the train track that's been covered over, over the years, a stone wall.

Chairman Pogoda asked if the new width was going to be approximately 22 feet – and what was it now?

Mr. Panico responded that it was roughly 35 feet, maybe more.

Mr. Schultz added that there had to be filling into there to get that retaining wall and get the right of way made.

Mr. Panico commented that although this was an architectural sketch, it showed more or less the edge of the existing Canal Street. Beyond the existing Canal

Street it just goes right down into the water in order to create an adequate right of way. He pointed to the part of the Canal that needed to be filled in to the retaining wall along that edge. He added that was dictated by the need to have the road improvement – if that's not done, they can't create a road improvement.

Mr. Schultz added that they were salvaging the canal and they need to determine if they were going to be satisfied with it.

Comm. Parkins asked if it was the developer's intention to fill that in to create additional parking – do they need parking or was it just for aesthetics?

Mr. Panico responded that he thought he wanted to take that expanse of water, create those two water features and build everything else around it – park land, supporting area, and a small parking lot.

Mr. Schultz indicated that there were comments early on – Historical, Conservation Commission, Citizen's Group – to please preserve, to the extent possible, the remaining canals.

Mr. Panico commented that he was raising the issue because they just put a finding in their report that provided the basis of their first action that basically stated no further encroachment into the water area.

Comm. Sylvester responded that he meant no further than for the expansion of the road.

Comm. Parkins added that the other issue he was going to have was that people were going to want to park in there, but that's going to be his problem, not the City's problem.

Mr. Panico mentioned that on Page A under the Canal and River Lock discussion, "the canal is a significant historic element in Downtown and it is important that no further encroachment be permitted other than what is necessary to accommodate the proposed reconstruction of Canal Street by the City." Mr. Panico indicated that from that he thought the additional parking proposed for the area should be eliminated. He asked if they were dealing with that.

Mr. Schultz responded that he was putting that wording in about the 8 car parking lot.

Comm. Parkins asked if he was eliminating it or putting it in.

Mr. Schultz responded that he was putting it in the narrative because that was part of his request. The Commission now has to decide if they like the two ponds as approved and if they want to keep the eight car parking lot.

Chairman Pogoda commented that if this was going to be a park setting he didn't know how much could be salvaged. He doesn't remember three of them. He remembered the two of them and he didn't remember the small one. If it was that small and...

Mr. Panico responded that today it wasn't three separate ones – it's all one continuous canal.

Mr. Schultz pointed to the revised drawing and added that it runs continuously from there to there, and the developer wants to use it – he wants to make it a destination so that people can walk around it. Right now it's stagnated and that's why he wants to aerate it.

Comm. Lopera commented that if they're looking for green space, they should take the lot out, move the park down and let him put in more green.

Mr. Schultz indicated that it was a little pocket park but if they wanted those eight parking spaces...

Mr. Panico commented that in that same vein, he was also losing parking because of the way that the State wants the geometry of that turn, it pushes back some of the parking and it doesn't work anymore.

Comm. Sylvester asked who the parking was going to belong to.

Mr. Panico responded that right now it was owned by the various properties across the way...

Comm. Sylvester commented that was a big discussion they had. They didn't decide but they certainly had a healthy discussion about it.

Mr. Panico responded that he thought that particular parking lot, he believed, was owned by the big building.

Comm. Sylvester indicated that to him, he doesn't need parking for the big building. If they were going to give up green space to give parking...and if owned by someone else, such as a condo association and there's a problem, they were going to have a contest between the City and the condo association and that was why he brought up about the graffiti on the wall already.

Comm. Sylvester indicated that he thought it should be a City-owned park, not because he wanted to assume ownership and responsibility for it, but because as years go on it would be better as defined as part of the public rather than part of the ownership of the condo association. That was just his opinion. If that were followed through and if it were City-owned, then he thought if they did give up green space for parking than the parking should be reserved for people visiting that particular park.

Mr. Panico questioned if the City actually wants to or should own the real estate.

Comm. Sylvester responded that his best bet would be that the City would not be.

Mr. Panico added that they had always talked about having some spaces in there available for the general public.

Comm. Sylvester indicated that if it were to be owned by the condo association, and if everyone agreed, it should be open to the public.

Mr. Panico added that the needs were different – the condos need it at night but the public needs it during the day.

Comm. Parkins commented that the parking would be a different situation. If those parking spaces belonged to the condo association than they have the right to park there.

Comm. Sylvester added that he did not want the parking owned by the condo association.

Comm. Parkins stated that even if it was owned by the City, there would be no way to police that lot.

Mr. Panico commented that in terms of utilization, those spaces were remote from users, so the only time they would be used would be during the peak parking demand times for the condominiums and that's the evenings.

Comm. Lopera indicated that it was only eight spaces and two bodies of water in a large area. If they don't need the eight spaces, he thought they should move the little green space back and let the water bodies be a little bit bigger to give some scale to that area.

Mr. Panico agreed that was the alternative but if they were going to go along with it, put the caveat on it that those eight spaces need to be open to the public.

Comm. Sylvester added that there wasn't a whole lot of parking down there for the public.

Chairman Pogoda agreed there was none.

Comm. Parkins noted that it really wasn't the developer's responsibility. It's the City's responsibility to provide public parking. A developer building a condominium complex next to a park wouldn't provide parking for the public to come in and use it.

Mr. Panico responded that there were situations where there was an amenity feature attractive to the public; the provision of parking was a reasonable requirement to place on the developer. In this particular case, if they were going to give that up as public space, than asking for it to be retained for public use as a trade-off is...

Comm. Parkins commented that for that particular situation, she agreed with that.

Mr. Panico continued to say that it would still be available for peak demand of the future residents of the area.

Comm. Parkins added that then the City would have to take ownership of it and she didn't know if the City wanted to do that.

Mr. Panico indicated that the other side of the coin was to tell the developer that he needs to convey it to the City and their going to put parking there. He would rather have the parking be provided by the developer and have him retain the responsibility for the overall maintenance to the area because the City probably wouldn't do it – or not do it to the level it needs to be done, whereas the future owners have a vested interest in keeping it looking nice because it's their front yard.

Comm. Parkins commented that it would just be a matter of the developer agreeing to it being public or to just not designate it as private.

Mr. Panico stated that he didn't think it was going to be an issue. It would be available to whoever needs it, but they want to be sure that the public was not prevented from using it.

Chairman Pogoda agreed that it not be marked and anyone parking there from the public wouldn't be towed out of there.

Mr. Schultz stated that he provided two options and he read them from the draft report under Shelton Canal Park. They would need to consider tonight if it was

their preference to keep this privately owned and maintained with the provision for pedestrian easement. Additionally, the adjacent 8-car parking lot, if they want to eliminate that or modify it or keep it in place.

Chairman Pogoda stated that the plan was to keep it and let the developer use it for the condo people but if the public uses it...

Mr. Schultz interjected that they would have another crack at this because the DSC was going to look at the final plan.

Comm. Parkins agreed that they should let them keep the parking but not designate it.

Comm. Sylvester added that it would probably only be used at night.

Comm. Harger indicated that they shouldn't mark it Private Parking, Visitor Parking – just no marking at all, nothing.

Comm. McGorty asked if the condo association would keep and maintain it though.

Mr. Panico stated that the developer has to decide where it was going.

Comm. Sylvester responded that the condo association would maintain it.

Mr. Panico commented that the developer has to determine the ownership of that real estate. He has to determine whose going to end up owning it - would it be cut up and owned by the different people as it was today or was he going to reallocate it – he didn't know the answer to that.

Comm. Parkins added that the City has to be willing to accept it to – the BOA, if he doesn't want to keep ownership of it and he wants the City to take ownership of it.

Mr. Panico responded that he didn't want the City to take ownership of it.

Comm. Harger indicated that he's always talked about the condo association but he's never designated it to the Radcliffe or the Birmingham.

Mr. Schultz commented that the consensus seems to be to keep it in privately held ownership.

Mr. Panico wanted to get back to the original question that they need to specifically address that so that it doesn't appear to have happened inadvertently.

Comm. Sylvester asked what they were specifically addressing.

Mr. Panico responded that they were consciously approving this deviation from the original discussion about encroachment. He thought this plan was a good solution but they need to rationalize that it was a deviation from the conceptual plan. It's a good solution to have parking in that location available to the public.

Comm. Sylvester commented that it was a good solution to have parking in that location available to the public - and to have ownership by the condo association.

Mr. Panico responded that ownership should be by some other entity that would be willing to take on the responsibility for maintaining it.

Comm. Sylvester asked what other entity?

Mr. Panico responded that it be an entity other than the City. If the City wanted to take it, he hopes they'll maintain it. He has no problem with the City owning it, providing the City maintains it and keeps it up.

Comm. Sylvester commented that he thought parks were City responsibilities, municipal things that they take pride in and keep up. He indicated that he would prefer to have the City in control of the parks and the parking. If it doesn't happen, it doesn't happen, but that would be his vision of what a park down there should be like.

Comm. Sylvester added that he doesn't care. It's going someplace, either to the condo association or to the City.

Mr. Panico indicated that he's got an expense to build it but where it goes after he builds it, he really doesn't care.

Comm. Parkins commented that maybe it would go to the Radcliffe; it doesn't have to go to the condo association.

Comm. Sylvester said the debate was whether or not the City would be willing to assume the responsibility.

Mr. Schultz indicated that he would be incorporating these notes into this document and be reviewing it with Mr. Panico. This was an important document and all these components overlapped because they were interrelated. The last one would be Site E.

Mr. Panico commented that before they move to that section, would this recommendation be written up in such a fashion that says "recommended to the City ...and if the City fails to accept it ...then go to Plan B..." What would be the preference from the Commission?

Comm. Sylvester responded that he knew his preference.

Chairman Pogoda would like to let the City have it, but knowing the way the City was on maintaining some of this stuff, he'd rather see it go to the Radcliffe or the association across the street because they have a vested interest in upkeep. It would be done best by a private concern.

Mr. Panico responded that if that referral were made tomorrow he thinks the recommendation that what come out of the City Engineer's Office would be in view of the undeterminable potential liabilities associated with these properties in the future that the City ought not to be involved.

Mr. Schultz indicated that he would do a referral to the BOA so that they know these issues.

Mr. Panico commented that they didn't want the unseen liabilities on the Riverwalk and based on the history and the fact (inaudible, tape flips...)

Mr. Schultz read from the draft report, in the section entitled Modification of Adopted Resolution Pertaining to Site E for the Shelton Riverfront Development (PDD#60).

He commented that he wanted to advise the Commission that the open area would be 75 feet from building to building. The actual easement for the pedestrian way itself was going to be 40-45 feet. The pavement width would be

12 feet. They could reject this, handle it administratively or have a public hearing.

Mr. Panico added that the width of the easement was almost as wide as double the width of this room. It was a good size strip.

Chairman Pogoda commented that he recalled that in the Initial Development Plans, there was considerable amounts of discussion about leaving that site open for a multitude of reasons. Without taking anything away from the developer, they gave him the option to redistribute those units even if they had to take another level on the end building and put it up there to leave open space and as much view coming down Wooster Street as possible. He recalled that there was a lot of discussion with the developer about that site. They approved the initial development plans with that site open without the 53 units there.

Mr. Panico stated that he understood the developer to be saying that if that modification wasn't made than he wasn't going to close title on that property.

Comm. Parkins agreed that that building would just stay there – a factory in middle of these new condos and redevelopment.

Mr. Panico commented that to extend that analysis further was that what it means was that the City would have to pony up and do it. So the question would be do they sit back and hope that the City might at some time pony up, buy that piece of property, clear it and make a park or do they settle for 50% of what they were looking for.

Comm. Parkins commented that it wasn't just buying it, it was moving it too.

Comm. Lopera asked if they approved the development plans that said that was going to be open space or did he even show it as open space.

Mr. Schultz responded that he didn't show it, they made that condition.

Mr. Panico responded that they injected the fact that it would be nice if he could find someplace else to put those units. They thought that he did or was going to take title and then shuffle the units but he's saying that he's dealing with different people on different parcels so he can't treat it that way. If he can't justify the acquisition of that real estate then he doesn't acquire that real estate.

Chairman Pogoda commented that it was told to them at the time that he had all the property under his control.

Comm. Lopera stated that if they approved a development plan that showed that as open space then doesn't he have to provide that as open space?

Mr. Panico responded that literally he had it under his control; he had an option to buy it.

Mr. Schultz added that the Applicant has a right to request a modification so he's requesting it. He's asking if it would be done administratively or through a public hearing.

Comm. Sylvester commented that he thought he was doing more than asking. He's telling us that if they don't do it, he won't buy it.

Comm. Parkins agreed that he had told them that. But the owner of the property was not going to sell it to him except for a certain price for the whole

package deal. He's building him a new facility and paying him so much money for this property.

Comm. Sylvester added that he can't afford to pay that much money for the property and build on it - so they were being dragged into the economics of this where they shouldn't be.

Comm. Parkins agreed that it's not economical for him to do that – absolutely.

Comm. Sylvester reiterated that was the problem he had with this.

Comm. Lopera commented that the plan they approved provided that was going to be open and that was what he thought he was getting. This was the second time he's been surprised with a developer all of a sudden coming in a changing the stuff and he agrees with Tony.

Comm. Harger asked if he was referring to Page 7 where it says “the Commission recommends a reconsideration of a residential use of adjacent Site E with the possibility of eliminating any building development on this site.”

Mr. Panico responded that it wasn't cast in stone; they would investigate what the possibility was. It wasn't cast in stone that there would be no development; they said they'd like to see a view corridor kept through there. The question was if they were ready to accept half of that view corridor.

Chairman Pogoda commented that it was shame on us then for not mandating that it was to be left open. When he approved the initial development, they were working towards the redistributing of those units someplace else. It wasn't cast in stone but they would be working toward doing that. Evidently, it's changing.

Comm. Harger commented that he had brought up that the reason he flipped the building and the parking on that site was because, based on discussions at P&Z meetings, he included retail in the back to make it more of a destination place. He was trying to accommodate some feelings that the Commission expressed.

Mr. Panico responded that the marketplace would determine if retail ever goes back there.

Mr. Schultz commented that they didn't want to lose the procedural component. He can't go ahead and submit a detailed plan because it will be denied because of the inconsistency from the initial development plans.

Comm. Sylvester thought it was good that this discussion was taking place because there's a lot here, and to have a committee hearing these things, and everybody not hearing it puts other people at a disadvantage. These were big decisions that they were making from a Committee point of view to make a recommendation. Certainly, he wasn't sold that Site E should be open. It's all coming from the economics of it, it's all the market, it's all about the money available, it's all about profit and loss. It's hard to make a good planning decision based on that kind of information.

Mr. Panico stated that essentially what the developer did was create some kind of a view corridor and he had a significant strip here and a significant opening there. So he decided to just shift it over, narrow it up a little bit and combine these two and make the view corridor that way. In that way, he would be able to give a reasonable view corridor. It wouldn't be 100% (75 ft) but a reasonable view corridor and he still retains some economic viability to that parcel of land.

Comm. Sylvester commented that it wasn't just a view corridor, but how many units were going on that piece to make it economically viable to buy.

Mr. Panico responded that the number of units were the same as what he was going to put there to begin with – 53 units.

Comm. Sylvester stated that it was 53 on a shrunken piece. It's shrunken because he didn't initially have that opening to the water there. He was not saying it was wrong, but he was saying that they were getting dragged in to the economics of it.

Mr. Panico responded that it wasn't a shrunken piece though. He wasn't conveying 75 feet as the public area. He's conveying 40 feet which he was always going to do. He used the map depicting the buildings to show where it was.

Comm. Sylvester asked where the 75 feet came from then?

Mr. Panico responded that it was from taking the open parking area and putting it on the other side for a view encroachment. He's utilizing it. This building has basically just slid over to the left hand edge of the site. He combined an open slot here and combined it with this open slot here to obtain a generous open slot. Seventy-five feet of open view area was not a little alley way.

Comm. Lopera asked if there would be cars in there?

Mr. Panico responded that the cars would be down below the street level. The only way to enjoy this would be to come down Wooster - the eye goes across that property. He wasn't trying to be an advocate; he was trying to explain the evolution of why he was able to put the same amount of development on the same amount of real estate. He's not losing real estate. He repositioned the building and in doing so opened up an area that otherwise was encumbered with the building. Mr. Panico commented that if they carry their analysis through, despite the fact that they may think that wasn't what they were buying into, that's the fact of life today. Either they make this thing economically feasible for the developer to do and it gets done or it sits there and never happens.

Comm. Lopera asked what building was down there now.

Comm. Parkins responded that it was Better Packaging.

Mr. Schultz indicated it would be knocked down in its entirety.

Mr. Panico added that it was not suitable for any use.

Comm. Lopera asked how big the building there now was - Better Packaging?

Mr. Panico responded that it was virtually property line to property line.

Chairman Pogoda commented that they would see it on Saturday. He reconfirmed the e-mail discussion about meeting a 9:00 a.m. this Saturday, April 26th. They'll meet at the Birmingham. They will take a walk and answer all of these questions like the one mentioned about the size of the Better Packaging building. They'll take a look at the pond across the street, the canals and get a better sense of things. He indicated that Rick and Tony would be there. He mentioned to Comm. Lopera that he could get a better sense of how big that building was.

Mr. Schultz added that Tony would be bringing the coffee. This would be rain or shine.

Chairman Pogoda added that they have to seriously think about this. He doesn't want to take anything away from the developer. As a last order of business, he read an announcement from the Conservation Commission from Teresa Gallagher regarding a public meeting sponsored by the Army Corp that had been scheduled for June 25th at 7 p.m. in the Auditorium. Everyone would be allowed to speak. No time limits. The Army Corp would be inviting representatives of the DEP and the State Archeological Office. It's for everyone's information.

Comm. Sylvester asked about the strip after the cul-de-sac – that's still City road as he understands it but how would it be ...

Mr. Schultz responded that the developer has agreed to upgrade the access way. To what degree they don't know yet. The Commission will see plans for Site G.

Comm. Sylvester commented that it would seem to be to his benefit as a developer to do that.

Mr. Schultz added that he said he would upgrade the access drive from the cul-de-sac to the hydroelectric facility. It's City right of way. It provides access to the locks.

Comm. Sylvester asked if the cul-de-sac was going to be open.

Mr. Panico responded that beyond the cul-de-sac would be like a driveway.

Mr. Schultz added that they need to determine the treatment, the width...

Comm. Sylvester commented that this was the segway to the whole open area that they're fighting for and trying to preserve – the riverfront, the canals, the locks, that's the whole thing. He still says there's not enough parking for people to access this property that they're working so hard to preserve.

Mr. Schultz used a planning map of the Riverview Park area to show a good location for a major parking area if the City were to improve it by providing a walkway, which exists although informal, that could go to the cul-de-sac area.

Comm. Sylvester commented that in talking about the development of the Riverfront, the walkway, the openness – they're talking about a beautiful piece of property that could be used by the public. But they have to provide access and find some way for people to get here.

Mr. Panico asked if he was talking about the McCallum piece? Was there discussion that the City buys that?

Comm. Sylvester responded no but they need to start having a thought process that would allow people to get there, park and walk there, enjoy the scenery.

Mr. Schultz stated that he looked up the old actions from the 1980's that insured pedestrian access, both fishing and boating. They preserved that, they just haven't maintained it to the degree it could be. He added that they would see it on Saturday.

Comm. Sylvester added that it was also an educational piece – the locks and the hydroelectric power were insured. That whole thing was something that they need to keep thinking about somewhere in the back on their minds.

Chairman Pogoda added that was another good reason to meet and walk around on Saturday.

On a motion made by Patrick Lopera seconded by Thomas McGorty, it was unanimously voted to adjourn at 9:40 p.m.

Respectfully submitted,

Karin Tuke