

challenge with this building because of all the additions to it with different materials. They would like to have the existing brick flow throughout. He indicated that he has received approval to get rid of the red and yellow on the canopy. The canopy will be similar to some others that have been approved recently with a raised panel look and some crown molding. He has not received approval from Shell about their corporate trademark to allow them to release the yellow and red banner because he would prefer to go with something white. He'd like to dress up some of the columns that already exist and continue the brick theme.

Mr. Shepard indicated that he felt this was a straightforward application because it is an existing building that has had many additions; it is being upgraded and being given a uniform motif. It gives a facelift to the property and gives it a more New England look.

Chairman Pogoda asked them to address the issue of the drive-through in the back, what would be done with the property in the back and if there was going to be any blasting, would they be putting up a wall...

Mr. Shepard responded that, as they know, there is a hillside there with a lot of ledge. With that hillside, they looked at the building and didn't want to encroach on the ledge cut too much. There is a little bit in the back of the building very close to the ledge. In regard to the wall detail, they want to keep a clean face on the backside, in case they can't keep a clean face for the rock cut.

Chairman Pogoda asked again if there would be any blasting.

Mr. Shepard responded that he did not want to do any blasting; they may have to do hydraulic hammering; that is why they shaved the building down so that they wouldn't have to blast. It is cheaper to shave the building than to blast into the hillside.

Chairman Pogoda asked about the curb cuts – do they have to get with the STC on those.

Mr. Shepard responded that they are using the same curb cuts that are there and closing up one - so they are actually doing one less curb cut. The only thing they don't have right now is storm water retention. They are putting storm water detention in and turning it in to the State drainage system.

Chairman Pogoda asked about how many parking spaces there were.

Mr. Shepard responded that they would stay with the existing parking spaces with only one parking space being taken out to make the drive-through.

Comm. Harger asked about how many drive-through windows - she indicated that she sees one on the left side elevation and asked how many are on the rear side.

Mr. Butler responded that it is actually on the rear side; he showed the corner of the building that matches with the cut on the site plan. He stated that there is only one drive-through window and it's on that back angle. On the layout it says left side elevation, but because of the cut of the building, that is what is seen when looking at the left side.

Comm. Harger asked how wide the driveway was.

Mr. Shepard responded that it was 12 feet and they have the bypass for the window that widens out to 18 feet.

Chairman Lapera asked about the curb cuts – it looks like the plan shows three curb cuts. He asked if there were four curb cuts there before.

Mr. Butler responded that they were decreasing the size of the curb cuts.

Comm. Harger asked how many parking spaces would be in the new area.

Mr. Shepard responded that it meets the regulations with a total of 26. He took the different uses and applied the parking spaces required.

Chairman Pogoda asked to see the layout of the dumpster area.

Mr. Shepard showed that location on the site plan.

Chairman Pogoda asked if this was going to be a food establishment.

Mr. Butler responded that he did not have a tenant as of yet. He doesn't have a chain in mind or anything; he was working with a couple of Mom & Pop operations.

Comm. Jones asked about the square footage of the coffee shop, and if they would they be downsizing the Auto Parts Store.

Mr. Butler responded that it was 750 square feet for the coffee shop and the retail for the parts store is approx. the same. Most of the area is prepped for the coffee shop and the storage for the parts store.

Chairman Pogoda asked if there were any other questions or comments from the Commission or members of the audience.

Comm. Lapera asked about the arrow to the right on the drawing going past the parking spaces - he asked where it was exiting to.

Mr. Butler responded that it was going to the property next door; it's a continuation of the driveway.

Rick Schultz asked about the condition of the sidewalks there.

Mr. Butler responded that the sidewalks were in very good condition there.

Comm. Lapera asked if the size of the canopy would be larger or smaller than what is presently there.

Mr. Butler responded that it would be the same size as what is there.

Comm. Lapera added that at one point they had some issues with the canopy being in the right of way, he asked Rick if that was an issue here.

Mr. Schultz responded that it was not.

Comm. Harger asked if the canopy would remain free standing the way it is now.

Mr. Butler responded that it would. There were no further comments or questions.

On a motion made by Patrick Lapera seconded by Ruth Parkins, it was unanimously voted to close the Public Hearing for Application #09-07.

Bruce Butler/Butler Commercial Services, LLC for Special Exception/Site Plan Approval.

OLD BUSINESS

APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE SEPARATE #5073, MONUMENT SIGN AT 350 BPT AVENUE

Mr. Schultz indicated that the Commission advised Staff that this monument sign was installed without the benefit of a zoning permit. Staff contacted the applicant, TJ Tadduni from the Draft House to submit an application and come tonight to discuss this with the Commission.

Anthony Tadduni, owner of Draft House, Monroe, CT addressed the Commission. Mr. Tadduni apologized for putting up this monument sign without their approval; it was his misinterpretation that the monument sign was approved at the time that his building sign had been approved. He has submitted the application for a Certificate of Zoning Compliance with Mr. Schultz since that time, and he apologized for the misunderstanding. He indicated that he'd be happy to address any issues that the Commission has with the sign he has put up on the monument.

Mr. Schultz indicated that the Commission was disappointed that he did not stay with the same font as the others.

Mr. Tadduni responded that although they are all green, the font is different for Hertz logo and the New Alliance logo doesn't really match either. He apologized about the font but added that he didn't really think any of the signs in that monument looked the same.

Mr. Schultz commented that it's a white background with red letters...correct?

Mr. Tadduni responded yes.

Comm. Jones asked what colors the others had.

Mr. Tadduni responded that there were three - Hertz has black and gold; New Alliance has blue & red lettering

Comm. Parkins commented that those are corporate logos, so there's a little bit of difference there than with a sole proprietor.

Mr. Tadduni responded that he didn't understand why that matters.

Chairman Pogoda commented that the corporate logo has to be the same here as it is in California. The other ones there – the liquor store and the pizza place are single operations.

Mr. Tadduni asked if they had more rights.

Comm. Parkins clarified that local sole proprietors have more leeway and corporate people have no leeway in the signs they can use.

Comm. Jones suggested that they leave it the way it is; he's a small businessman just trying to stand out. It's like he says, the other signs have different colors too. It is not that bad, he asked the other Commissioners if they drove by and looked at it.

Comm. Harger responded that it stands out alright – when she first drove up Bridgeport Avenue, it looked a little bit out of place. It didn't quite blend in with the others on the monument sign.

Mr. Tadduni responded that he takes full responsibility for putting that up without approval– it wasn't intentionally done and he apologized.

Chairman Pogoda asked the Commissioners if they wanted him to pull the sign down and replace it; he does have an application in now with Rick.

Comm. Parkins responded that she would like to give him the benefit of the doubt that it wasn't done intentionally.

Comm. Lopera added that if the sign at any point gets replaced, it is not approved until he comes back and gets approval. So if that one comes down for any reason, he needs to come back to the Commission.

On a motion made by Patrick Lopera seconded by Comm. Jones, it was unanimously voted to approve the Application for Certificate of Zoning Compliance Separate #5073 for the monument sign for 350 Bridgeport Avenue.

SEPARATE #5075, MONUMENT SIGN AT 6 RESEARCH DRIVE

Mr. Schultz indicated that this was tabled at the last meeting until Staff could consult with Mr. Scinto. Mr. Scinto indicated that the way he sees the corporate signs being installed is with Liquid Lunch going to the left center of the building and the other corporate sign for the main tenant of the building. Mr. Scinto told Staff that they'll see no other sign requests for the building. He showed a site map of the corporate location and the location of the signs. Mr. Schultz added that this is the headquarters for Liquid Lunch and they have multiple locations – but this is the Commission's call.

Chairman Pogoda commented that generally, they have 3 or 4 tenants, or whatever is permitted, posted on one monument sign in front of a building; he doesn't see the necessity of having separate monument signs in front of the same building.

Mr. Panico asked what would happen if another tenant comes along and wants more identification.

Mr. Schultz indicated that he asked Mr. Scinto the same question and he claims that won't happen; however, this Commission knows otherwise. This is a Planned Development District and the Commission regulates the standards. It's not the generic zoning regulations. Because it's a PDD they determine the amount of signs and their location. They have the option of consolidating the monument for multiple tenants or having multiple signs.

Comm. Jones asked the owner if she was in negotiation with the other tenants who want to put a sign there.

Michelle Bialek, co-owner of Liquid Lunch, 6 Research Drive, Shelton addressed the Commission. Ms. Bialek responded that the other tenant is Energizer who is based in St. Louis, and she does not know what their intentions are regarding signs. She indicated that they signed the lease with Mr. Scinto that this was going to be their Headquarters and that they were a restaurant. They are not a commissary – they are a business, a tenant of that building. Presently, there is not even a #6 on the building. Right now, they are trying to let people know where they are. They live in town, they have a business in

town, and they are a part of the community. They are trying to do business. They receive daily calls from people confused as to where they are located.

Mr. Panico asked what people they were trying to identify their location to – prospective clients of the food operation or clients of the Corporate Office.

Ms. Bialek responded that they don't have anything to do with anyone else in that Corporate Office – but they are a tenant in that building.

Mr. Panico asked if they wanted to advertise their restaurant operation – that's who they are – they are a restaurant.

Mr. Schultz interjected that he thinks this is moving in the wrong direction. He explained that the Commission was in agreement with her in regard to her position as a tenant in the Corporate Office; he believes that most of the Commissioners were more comfortable with that because these subordinate activities - food establishments, are just that, but Liquid Lunch also has an office there and multiple locations.

Ms. Bialek responded that her main office is there, but she isn't going to sugar coat it and say it is mainly an office and she kind of has food there.

Mr. Schultz added that the Commission isn't going to allow her to put up A-frame signs with daily soup specials. If they approved it, that would be made a condition of approval.

Ms. Bialek responded that is not her intention. She doesn't even have that downtown. She indicated that she has her sign and website telling people what her specials are –it's very professional. Ms. Bialek added that she does everything professionally with respect to rules and regulations – downtown and at her Milford location.

Mr. Panico commented that having a food operation as a subordinate use in that office building was to serve the needs of the office workers. It was not to attract business from offsite customers to come there. In fact, when parking ratios are determined, there is no additional allocation given to prospective clients of a restaurant.

Ms. Bialek responded that Liquid Lunch is also a catering business where they need visibility from clients in other area office buildings so that they can bring their services to them. They are not just trying to bring customers in to their building. Ms. Bialek added that she does not quite understand – she understands it's a unique case.

Mr. Panico indicated that Mr. Scinto has cafeteria type operations in virtually all of his office buildings, and to his knowledge, none of them have a sign outside.

Ms. Bialek responded that she understands that – she realizes this is a unique case.

Mr. Schultz interjected that they are a subordinate activity – and Liquid Lunch knows that they are attempting to break new ground there. However, she does have Corporate Office there and she hopes that the Commission buys into that...also, Mr. Scinto...

Mr. Panico explained that there are other Corporate Offices there – where do they draw the line? Would they just allow them or do they suddenly have them everywhere because everyone is going to want to be identified. In the previous

application in the commercial center, there was justification for that signage. He wasn't sure if there was justification for this type of signage.

Mr. Schultz added that Mr. Scinto would like the Commission to know that he also wants to install a #6 on the face of the Building. He's proposing 2 additional sign proposals – another free standing monument sign for Energizer – and that's it for the lease agreement.

Chairman Pogoda commented that he feels that if he were in that building and wanted more exposure, and Energizer and Liquid Lunch had their own signs, then he would want his own monument sign. This is a PDD – and if they start putting monument signs everywhere – they are going to have a flood of monument signs - whether it is Mr. Scinto's building or any of the other corporate offices in town. This will happen, if they start setting a precedent. They are advertising that they have an office there. There is no reason that they can't go on one monument sign. They aren't there to advertise a restaurant business - it's a subordinate use for the tenants of the building.

Ms. Bialek responded that her business, and the company they have created, has become something other than what it started as. They've become something that people recognize. They aren't quite a restaurant or quite a deli – and they aren't just a cafeteria. She stated that she feels they've become a part of the community. She is put off a bit to hear that she is a subordinate use. She is a tenant paying rent just like everyone else there. She isn't just a cafeteria for that building. That is not what she agreed to or what she built this whole thing for.

Chairman Pogoda asked if she expected people to come off the street to use her establishment inside that building.

Ms. Bialek responded that they are offering catering services.

Chairman Pogoda asked if she wanted to provide daily food services for anybody coming off the street or to advertise the food establishment for lunch or other times of the day.

Ms. Bialek responded that they are a food establishment – so, apparently, yes.

Chairman Pogoda stated that, as Mr. Panico indicated, when they determined the parking configuration for that building, it wasn't calculated for a restaurant business such as it was for Mr. Scinto's il Polio. The headquarters office/catering service isn't going to generate the same traffic or parking requirement as a restaurant. The parking configuration for that building wasn't set up for that.

Comm. Jones asked what the configuration was set up for. Chairman Pogoda responded that it was configured for office space.

Mr. Panico asked how large her space in the building occupied.

Ms. Bialek responded that it was 5,400 square feet.

Mr. Panico calculated that it would be approx. 16 – 18 spaces.

Chairman Pogoda asked the other Commissioners for their comments.

Comm. Jones asked if there were negotiations for one monument sign for Liquid Lunch to share with Energizer. Chairman Pogoda added that was up to the landlord – it's a PDD.

Ms. Bialek responded that was never put out to them and that is why she's trying to do this.

Comm. Jones asked if they could go back and ask Mr. Scinto if they could share one monument sign.

Ms. Bialek responded that possibly; she told Mr. Scinto what she wanted to do and he agreed with what she presented to him for signage.

Comm. Jones commented that because of the route this thing seems to be taking...

Ms. Bialek agreed and added that she didn't want to make anyone angry – she just wants to do business in town.

Chairman Pogoda suggested to Ms. Bialek that she might consider withdrawing this application, speak to Mr. Scinto before doing anything else. He suggested that she drive around town because generally, they allow one monument sign per building.

Chairman Pogoda indicated that he does not want to set a precedent. They control strictly the PDD area and Mr. Scinto is quite aware with the rest of his buildings of what is expected in a PDD area. He indicated that it was up to her whether or not she wanted to withdraw, rather than have them deny this application.

Comm. Jones suggested that she negotiate with the landlord and indicate that she met with Planning and Zoning and they suggested a single monument sign. Maybe she could work this out with Staff.

Chairman Pogoda asked Ms. Bialek if she would like to withdraw this application and reapply after speaking to Mr. Scinto.

Ms. Bialek indicated that she would request to withdraw her application.

On a motion made by Patrick Lapera seconded by Virginia Harger, it was unanimously voted to accept the withdrawal for the Application for Certification of Zoning Compliance Separate #5075 for monument sign at 6 Research Drive.

ZONING ENFORCEMENT: 31 LUCILLE DRIVE

Mr. Schultz indicated that Atty. Herbst is here to make a presentation regarding this property and two of the Commissions will request to be recused from this discussion.

Comm. Jones requested that he be recused from this Zoning Enforcement issue because Atty. Herbst is a member of a law firm representing him on a legal issue.

Comm. Lapera requested that he be recused from this Zoning Enforcement issue because he used to reside at 31 Lucille Drive and was a neighbor of the Luckachina's for many years.

Chairman Pogoda announced that Commissioners Jones and Lapera would be recused from this Zoning Enforcement discussion.

Mr. Schultz explained that this was a Zoning Enforcement issue to be processed under Section 3.7 of the Regulations. The Zoning Enforcement Officer saw issue to withdraw any Cease and Desist Orders when requested by Planning and

Zoning. The Commission will hear that a formal complaint was issued and the zoning enforcement issues that are currently taking place. Mr. Tom Dingle is here to discuss how he handled it, what he is continuing to do for a resolution and Atty. Herbst will explain the position of the complainant.

Atty. Timothy Herbst, Owens, Schine & Nicola, P.C., 799 Silver Lane, Trumbull, CT addressed the Commission. Atty. Herbst indicated that he represents his clients who are present, Jack and Barbara Luckachina. They are owners of property at 48 Long Meadow Road, Shelton, CT.

Atty. Herbst indicated that he sent a letter to the P&Z Dept. to the attention of Rick Schultz as well as Corporation Counsel, Mr. Welch and Mayor Lauretti. He has copies of that letter with him as well as the accompanying exhibits sent with it. He asked if any of the Commissioners wanted a copy of that letter with exhibits.

Atty. Herbst distributed copies of the letter to the Commissioners along with copies of a site plan drawing of the property to be discussed.

Atty. Herbst indicated that he wanted to walk through the violations that exist on the property to give them a succinct status of where they are at. Two weeks ago they postponed this presentation with the condition that all enforcement proceedings would be stayed – with no zoning enforcement actions taking place - so that that could properly assess the violations on the property and what actions the Commission would want to take.

In this two week period, his clients have informed him that certain removal actions have taken place by the property owner with respect to some of the violations on the property.

He referenced a series of photographs to illustrate what is on this property. He indicated that the Luckachina's property is directly adjacent to 31 Lucille Drive. He showed pictures of commercial vehicles on the Lucille Drive property which clearly denotes that commercial activities are taking place in a residential zone.

He pointed out specific items in the photographs of the backyard: a shed with trucks coming to and from it; a gazebo; a deck on the side of the property which is in violation of the side setback laws. He showed a photo of a pre-existing, non-conforming shed which has been enlarged and modified; it is also on the site plan.

Chairman Pogoda asked what the commercial use was for those vehicles.

Atty. Herbst responded that they believe Mr. Brandt has a home improvement business; however, on the Internet, that home improvement business lists a different address than this residential address. He indicated that his clients will attest to the fact that there is a high volume of activity which suggests that commercial activities are taking place.

Over the course of the last two weeks, the large metal shed discussed, has been taken down; however, the foundation and supporting columns remain.

Chairman Pogoda inquired about the commercial vehicle again. He indicated that it looks like a pick-up truck and he asked if the sign was a permanent sign or a magnetic sign. If it is a magnetic sign, it can be peeled off; he is allowed to keep the pick-up on his property – it's not considered a commercial dump truck.

In regard to storage, Chairman Pogoda commented that he is allowed to run a business, if he has come before the Commission to request a home office. He

asked what type of equipment and materials were in the yard - because that could be an issue if it is contractor, painting or construction supplies.

Atty. Herbst responded that if the process had been honored, and if permits had been obtained, or if certificates of zoning compliance had been obtained by the property owner to allow for the construction of the shed, the deck, the gazebo, and the awning on the side of the home, they would not be here tonight debating if a commercial enterprise is going on. None of these things obtained the proper permits and approvals. Their position is that there are at least 6 violations that are not in compliance with Zoning Regulations.

Atty. Herbst indicated that the shed was constructed on or about April 2007 in the backyard of 31 Lucille Drive. Between May and September of 2008, his clients communicated with P&Z concerning the shed, and to date they have been unable locate any type of application, building permit or certificate of zoning compliance. The State Building Code, as the Commission probably knows, indicates this type of project requires something to be in compliance.

Atty. Herbst stated that Mr. Dingle issued a letter to George and Eleanor Brandt indicating that the shed must be removed by July 1, 2009. The letter goes back to the summer of 2008. There was no rationale provided as to why it would take almost a year to abate the violation. He noted that also in late July – early August 2007, Mr. Brandt installed electrical wiring from his house to the shed. He also installed water from his house to the shed.

Atty. Herbst showed on the photos that the distance from the house to the shed is approx. 40 feet. Although it is not entirely conclusive, this suggests that something of a commercial nature is taking place in the shed.

He recapped that there is a non-conforming shed on the property that has been expanded and enlarged without the necessary permits or approvals. It is his client's position, that once you expand or enlarge a non-conforming use, that non-conforming status extinguishes. It is their position that this shed is in violation of side and set-back requirements as is the deck that was built on the side of the property.

Atty. Herbst indicated that his clients began this process of notifying the Zoning Dept. about the violation on the side of the property with respect to the deck that was built in violation of the side setbacks. They were told both orally and in written correspondence that if the deck was 3 years or older, it is therefore, subject to the protections 8-13A of the General Statute giving it non-conforming status.

Atty. Herbst stated that they know the deck was completed sometime in late 2005. His clients stand by the fact that they contacted P&Z before that three year window expired. The burden should not be on his clients to justify when this deck was constructed as it has been.

He stated that burden has been placed on them by the Zoning Enforcement Officer. The burden of proof in establishing that it has been there for three years should be on the property owner who constructed the deck. And when compared with the gazebo, the ZEO has indicated that he is not going to make an enforcement issue of the deck.

Atty. Herbst stated that in similar correspondence, the ZEO instructed the property owner to deconstruct and move the gazebo. The gazebo was constructed in 2004. So if they are going to follow this 3 year rule, as the ZEO suggests in correspondence and oral comments, then the gazebo should stay

and the deck should go – if anything. He raises this point to demonstrate the inconsistencies in the rules and regulations uniformly and fairly.

Atty. Herbst suggested to the Commission that there is case law which allows for a P&Z Commission to direct their ZEO to record a Cease and Desist Order on the Land Records. In this instance, it may be prudent because on this property, no permits or approvals were obtained. In the interest of protecting the character of this residential zone and not comprising the process and the fundamental zoning regulations, he thinks that it would be prudent to ask their ZEO to record a Cease & Desist Order on the Land Records which provides clear and definitive timelines of when the property owner must cure and abate the violation. They have different timelines with no basis or standard articulated. He is asking the Commission to ask the ZEO to proceed with taking enforcement action that has clear, uniform enforcement standards and record that decision on the land records to ensure compliance. Once compliance has been satisfied by the Commission acting as an administrative body, it can release that notice on the land records once the violations have been abated. Atty. Herbst offered to answer any questions from the Commission and he requested the right to speak after Mr. Dingle addresses the Commission.

Chairman Pogoda asked Tom Dingle if he wanted to address the Commission on this matter.

Thomas Dingle, P&Z Zoning Enforcement Officer, addressed the Commission. Mr. Dingle requested that he be allowed to go into Executive Session.

Mr. Schultz responded that he did not think that was covered under State Statutes – its personnel issues and pending litigation.

Mr. Dingle indicated that he would like to consult with Tom Welch, Corporation Counsel.

Atty. Herbst commented for the record that his clients have more than satisfied the standard of aggrievement as abutting property owners to this property. He is going to object to any attempts to go into Executive Session and he wants to state that for the record to protect their legal rights.

Chairman Pogoda asked if any of the Commissioners had any questions. Mr. Schultz asked if they needed any clarification on any of these issues.

Comm. Parkins responded that she understands that there are issues with inconsistencies in carrying out regulations. She understands that there have been no permits for the work that has been done, but she would like to know if the structures that are there, if they had permits, are allowable.

Mr. Schultz responded yes, absolutely.

Comm. Parkins asked if this was a matter of these structures being an eyesore, or is it a matter of principle that they haven't followed the law and regulations or is it that they are not being enforced consistently.

Atty. Herbst responded that he would agree with the premise that there are some things that could be allowed on the property but, for example, as he alluded to, there is a deck that from any visual observation, appears to violate the side setbacks for the zone. He showed the location on the site plan. The shed which also has issues with side setbacks was enlarged. He would submit that the shed is a non-conforming use and it was expanded or enlarged and

loses its non-conforming use – so there is a problem with the setback requirements with respect the shed and deck.

Comm. Parkins asked to see where the Luckachina's house was located.

Atty. Herbst indicated that the drawing was a site plan of the Lucille Drive property; however, he showed the location of the Luckachina's house in relation to it. He indicated that they can see the backyard from their house.

Comm. Parkins commented that the front of their house is facing the rear of this property – the yard.

Atty. Herbst indicated that he believes that the deck and the shed are a regulation problem. There is a problem with a property owner honoring the side setback requirements for this residential zone. On top of which this deck has been a source of – going back and forth with the Zoning Enforcement Officer – and his clients were advised that it has been there for three years – so prove it hasn't been there for three years.

Mr. Panico asked which side of the site map his clients were on.

Atty. Herbst showed the location of his client's home on the site drawing.

Mr. Panico asked what the source of this map was – where did it come from?

Atty. Herbst responded that the map came from the Zoning file.

Mr. Panico indicated that it has no identification on it. He asked what the reason was for the relocation of the gazebo.

Mr. Schultz asked Tom Dingle to provide some information to clarify some of these issues.

Mr. Panico asked Tom Dingle if he requested the relocation of the gazebo or did the Applicant say that is what he wanted to do.

Thomas Dingle, Zoning Enforcement Officer, responded that it did not comply with Inland Wetlands. Mr. Dingle wanted to state for the record that the Complainant, with the neighbor, worked on the gazebo with the neighbor, worked on the shed – the shed was stored in his house for two years. Something happened between these two neighbors that were good friends and now everything is coming to Planning & Zoning. His clients came to him and made a complaint about the shed and it has grown from there.

Atty. Herbst responded that his clients disagree with that assertion.

Barbara Luckachina, 48 Long Meadow Road, Shelton, CT addressed the Commission. Mrs. Luckachina stated that she originally called P&Z because the homeowner at 31 Lucille Drive put a sign advertising his business out on Long Meadow Road close to her driveway. She asked them to come out and look at it – the sign had been on Lucille Drive in front of his house off and on for a number of months. He put the shed up. Her husband did not help him put the shed up. He did not help him put the deck up and she does not know where that information came from. They have told Mr. Dingle that many times. He helped him put the gazebo up because the homeowner asked for his help.

Mrs. Luckachina indicated that when she called about the business sign, she asked P&Z to look at the shed – it's a large, metal shed – not wood. It is industrial-looking. He started putting exhaust pipes on it. There were skylights

on it that were on 24 hours a day. She asked P&Z to come out to look at the shed to determine if it was a violation or not. That is why he came out to the house. She did not originally call about the shed.

Mrs. Luckachina indicated that she specifically asked if this information was being kept quiet because she didn't want to start anything with the neighbor. He said it would be kept quiet.

Mrs. Luckachina continued that when he came out to look at the sign, he saw the other violations, and that is how that map was made because Mr. Brandt was told to make a map with everything on his property.

Chairman Pogoda asked for clarification – he asked if somebody made this map?

Mr. Panico commented that it looks like something that would come out of a subdivision application.

Chairman Pogoda asked if they were stating that he just made this map.

Mr. Luckachina responded that a surveyor came and put that map together.

Chairman Pogoda asked if this map was from City Hall records.

Mr. Luckachina responded that they received it in the mail.

Mrs. Luckachina responded that was what was given to her by the P&Z Dept. and they were told that was how Mr. Brandt was going to bring his property into compliance.

Chairman Pogoda asked Tom Dingle the source of the map.

Mr. Dingle responded that it came from the applicant at Lucille Drive.

Chairman Pogoda asked about the exhaust pipes she claims were coming out of this building.

Mr. Luckachina responded that the exhaust pipe was for a heating unit that he put in. There was also a 100 amp – 200 amp electric service put in there. All inside this metal structure was wood-working equipment, vacuums, and sanders for his business. This was set up as a manufacturing facility with power coming from the house, circuit breakers on the wall. Mr. Luckachina added that in regard to the deck itself, in 2004, he had prostate cancer. The deck was put up in 2005 and he wasn't willing to go out there and put himself back in the hospital. His doctor advised him not to do strenuous work; therefore, if anyone says he helped him put the deck together, that is a false statement. He helped him put the gazebo up many years prior. He commented that the shed was bought from Sears in pieces and sat in his shed in original boxes for many years. Mr. Brandt bought into a home improvement business and built a shed on his property with his partner of that time. He did nothing to help him build that metal shed.

Mr. Dingle asked Mr. Luckachina if he agreed to the deck and if he made a deal with him about the deck on the side of the house.

Mr. Luckachina did not respond.

Chairman Pogoda asked about the nature of the manufacturing being done inside that shed.

Mr. Luckachina responded that he was manufacturing stuff for homes - he's in a home improvement business – cabinets, countertops. He bought a small backhoe and made a trailer in his backyard. He is setting up a business. As for that truck – it is a dump truck – it has a dump hoist in it to go into business doing sidewalks with masonry equipment. He's a general home improvement person. He has a home office but has expanded it – he has storage, 2 vehicles with signs for his business (a van and a dump truck). One of those vehicles is there 24/7.

There were further comments from the Luckachinas regarding the signs on Mr. Brandt's vehicles and his parking of his vehicles in their driveway and their complaint to P&Z to remove the business signs from the trucks. They indicated that nothing has been done since December of last year.

Mrs. Luckachina also indicated that in August of 2008, after talking to the P&Z ZEO for months, she was told that they had to prove the date that the deck was built. Her Alderman told her to go to Town Hall and look up the information in the Assessor's Office. The data card indicated that the deck was built in 2000. She knew that was not the correct date so she went to speak to Mr. Dingle. He told her that the deck would stay up because it has been there since the year 2000. She asked Mr. Dingle if Mr. Brandt ever denied putting the deck up and Mr. Dingle told her he did not. Mrs. Luckachina claims that Mr. Brandt didn't own that house in the year 2000, so it can't be true.

Mrs. Luckachina stated that she was very upset because they were told that they had to type up a statement comparable to a police statement and have it notarized. She indicated that for five months they have been told that they have to prove it.

Mr. Schultz stated that he wanted to clarify a couple of things. He indicated that this was the first time that a complainant has decided to come before the Planning & Zoning Commission. They have a right to exhaust all avenues including coming to P&Z. As the department head, he tries to establish resolutions. He could not get a resolution for this one. There are two avenues to take after him – the ZBA to reverse or modify the action or lack of action of the Zoning Officer or under the Shelton Zoning Regulations, come before the P&Z Commission. Mr. Schultz indicated that the P&Z Commission can direct the ZEO to issue, lift, etc. This is one of the few times a complainant opted to come before this Commission instead going to ZBA.

Mr. Schultz wanted to present three options, and he indicated that he believes Atty. Herbst has a resolution prepared too. One is to direct the ZEO to Cease & Desist immediately to cover all the complaints; second is to direct the ZEO to issue a Cease & Desist immediately to cover specific complaints and the third is to do nothing at all because they still have the avenue to the Zoning Board of Appeals.

Mr. Schultz added that he does not take this lightly because this Commission is very busy with other items, but they have chosen to come this way and the regulations allow for it. This is not often seen - this is the first time he has seen this in 24 years.

Comm. McGorty asked if these dates could be substantiated because he wants to have all the information to ensure that they've done the diligence on it.

Mr. Schultz responded that all of that can be directed to Tom Dingle.

Comm. Parkins asked how long the homeowner has owned this property.

Mr. Dingle responded that he's owned it for approx. 4 years.

Chairman Pogoda asked Tom about the wetlands issues involved here. He asked if the Wetlands Officer looked at this.

Mr. Dingle responded yes.

Chairman Pogoda asked if the Wetlands Officer has put a stop on this.

Mr. Dingle responded that there is a package of about 14 pages that he gave to the attorney – his entire file, so there are copies of everything from his file. However, it does not include the formal complaint sent to the Mayor's Office against him - which his Boss has.

Mr. Dingle indicated that Mr. Brandt has agreed to cooperate. It has been a tough winter. He agreed to move the gazebo to be in Wetlands compliance. He agreed to take down the shed. He had a date to get a demolition permit and he got a demolition permit. He gave Mr. Brandt until July 1st to remove the shed because it oversized. He took out a permit to put an addition on his house so whatever was in the shed will go into the addition on the house. He's put on a third car garage. The foundation is in now, the walls are up, and the shed is down other than the platform.

Chairman Pogoda asked if the shed was down.

Mr. Dingle reiterated that yes, the shed is down, he went up there today.

Mr. Panico asked about the second shed.

Mr. Dingle responded that the second shed was there when he bought it. He put on some little box thing that doesn't touch the ground – and he doesn't know why it's there; however, he feels it's a non-issue.

Chairman Pogoda asked about the water and electricity being brought out there.

Mr. Dingle responded that he copied the Building Official and that was part of the original complaint that he wrote up. He's not sure if it was on the telephone or he came in, but the Building Official was notified of the electricity and water to the shed. You can have electricity to your shed; you can have water to your shed.

Chairman Pogoda asked if you need a permit.

Mr. Dingle responded that you should and that's why he notified the Building Official for electricity. The problem with the shed is that it is over 250 square feet of floor area so he was given the opportunity to take out a permit and reduce the size of the shed, but he chose not to do that. He could have gone for a variance for the shed, but he chose not to do that. He surveyed the property and put up a nice vinyl white fence down the property line. These two men were good friends at one time - something happened – he does not know what happened.

Mr. Panico asked if the shed issues revolve around the larger shed, not the smaller one.

Mr. Dingle responded that the smaller shed – and that right addition are probably what they're talking about. The shed has been there forever, but that little piece that is a 3'x4' addition is an issue now.

Comm. Parkins commented that is what makes the non-conforming use go away, right?

Mr. Dingle responded that no permit was taken out to add that small box.

Comm. Parkins asked if a permit had been taken out would it make the non-conforming use go away.

Mr. Dingle responded that it isn't non-conforming – a shed can be as close to 10 feet to the side property line.

Mr. Panico commented that the shed itself may not be conforming – but it looks like that little addition is.

Mr. Dingle responded that the addition may not be conforming to an Inland Wetlands being 50 feet away from a regulated area requiring a Wetlands Compliance application. John Cook chose not to make an issue of it.

Chairman Pogoda asked if a permit was taken out on the deck.

Mr. Dingle responded that he would give them the story about the deck. Mr. Brandt came in when he bought the house...

Chairman Pogoda asked when the house was bought.

Mr. Dingle responded that it was at least 4 years ago. Mr. Brandt came in, and he believes that he had an earlier survey than that and they told him that he needed a variance for the deck. He asked why and he was told that the house didn't even meet the setbacks of 30 feet for the zone that it's in. Mr. Dingle indicated that he told Mr. Brandt that if he did anything other than a 4'x4' platform with a set of stairs, a variance will be required. Mr. Dingle indicated that he never heard from him again.

Mr. Dingle continued that 2 years and 10 months later or almost 3 years later, when the complainant brought in his copy of the information, he remembered and relayed that a variance should have been taken out for that deck. Mr. Dingle stated that they couldn't find any variance or building permit for it. Mr. Dingle added that Mr. Luckachina told him that he made a deal with Mr. Brandt that he could put up the deck but if either of them moved, the deck would have to come down. Mr. Dingle informed him that he can't make deals like that.

Mr. Panico agreed and stated that property owners can't make deals with each other in violation of zoning.

Mr. Dingle responded that he tried to explain that to him – that a deal can't be made on a deck. It is either in compliance or it is not in compliance. It requires a variance or doesn't require a variance. But it was there for almost three years before he made a complaint about that deck. Something happened with these two neighbors and now they are bitter enemies. And now Mr. Brandt can't put on his hat without cameras filming him on his property, building this addition... Mr. Dingle concluded that they made a deal that the deck was OK --but now he has to go to court and explain to a judge why these two guys said it was OK, but now it's a zoning violation.

Comm. Parkins commented that it was obviously a blatant disregard for the zoning regulations if he knew he needed a variance for it.

Mr. Dingle responded that the gentleman next door said it was alright, helped with it and allowed it and said it was fine for three years – and now it's not.

Comm. Parkins commented that the gentlemen next door doesn't have the right to grant a variance.

Mr. Dingle agreed.

Mr. Luckachina commented that in October 2004 he had prostate cancer and did not help him build a deck.

Atty. Herbst asked the Chairman if he could return to the issue at hand. He is hearing a lot of discussion about these neighbors having problems and fighting. He suggested that they eliminate the subjective element. This is an objective review about the zoning regulations and if they have been honored. If they haven't been honored - Have they been violated? How long have they been violated? What enforcement action has been taken?

Atty. Herbst commented that this is not about one or two violations. He would not come to this Commission as an attorney representing these people if he did not think that these violations were egregious enough to warrant attention.

There was discussion about the parameters here – whether the P&Z Commission directs the ZEO to take a certain level of action by way of a Cease & Desist Order. If the Commission decides not to do that, then his clients can appeal to the ZBA and after that go to the Superior Court if they think that is appropriate.

Atty. Herbst stated that he fully understands and respects the role that ZBA plays in challenging the decision of the ZEO but the enabling legislation of this State empowers the P&Z Commission to determine how the regulations shall be enforced. The ZEO works for the P&Z Commission in the City of Shelton. If the P&Z Commission of the City of Shelton is not satisfied with how the regulations are being enforced, if there's an inadequacy or an inconsistent standard with how they are being enforced, and if there is a subjective component that has guided the enforcement process rather than objective component, then he believes it is prudent for the P&Z Commission to direct the ZEO to specifically address the shed, the gazebo, the deck, the awning on the deck, the non-conforming shed which lost its non-conforming status.

Atty. Herbst indicated that he checked the regulations and reviewed the side, rear and front standards for this residential zone. He stated that he can't find where it says that there is a ten foot requirement for an accessory structure. He sees a side setback requirement of 30 feet. It is violating the side setback requirement of 30 feet on both sides with respect to the deck and the shed. Atty. Herbst stated that was why they were here – they were asking for fairness. Jack and Barbara Luckachina have done nothing wrong. They played by the rules. Check the zoning files for everything done on their property, they have filed the necessary permits and have gotten the necessary certificates of zoning compliance. They should not have hire a lawyer to make sure the zoning regulations are applied fairly, uniformly and consistently, and risk jeopardizing their property values and the property values of everyone else in the neighborhood.

With that Atty. Herbst respectfully requested to the Chairman that this Commission take the necessary actions required for the ZEO to specifically address the issues raised tonight. Additionally, he asked that the decision be recorded on the land records. He provided a case law that allows for that (Cabinet Realty Inc. vs. P&Z Commission Town of Mansfield, CT 17 CT Appellate 334, 1989 case from the Conn. Appellate Court allowing the P&Z Commission to record a Cease & Desist Order on the Land Records). He indicated that it would provide this Commission with the leverage to ensure that those conditions are

honored and those violations are abated before title can be transferred to another property owner.

Also, Atty. Herbst requested that the ZEO's shall not issue a Certificate of Zoning Compliance for the garage addition, which is currently pending, until all of these violations have been cured and abated. He thanked the Commission.

Mr. Dingle requested that the Commission table this tonight to allow for further discussion. He indicated that he believes the Luckachina's have hired an attorney to continue harassment of this neighbor. This is pure and simple harassment. The gazebo is not in any zoning violation today. The shed is not in any zoning violation today. The deck was agreed to by the two neighbors and has been there for over three years when Mr. Luckachina was informed that he cannot make those kinds of deals with a neighbor. There is a permit for the addition that meets all zoning requirements. The oversized shed is down. Mr. Dingle indicated that he told Mr. Luckachina that he was not going to go to court for the signs on his vehicles until all other issues were finished. In regard to the dates – he took out a demolition permit. He had more time to take that shed down but he chose to take it down now. He is continuing to do everything that has been requested.

Chairman Pogoda asked if he ever came before this Commission for a home office.

Mr. Dingle responded that yes, he has been approved for a home office. He has no outside storage.

Chairman Pogoda asked how many square feet his home office was – was it the shed – where he was supposedly operating a business in that shed...

Mr. Dingle responded that he did not see inside the shed.

Comm. Parkins asked Mr. Schultz why he is at an impasse with this.

Mr. Schultz responded that he does not have the authority to direct the Zoning Enforcement Officers. He tries to bridge that, but he does not have the authority – this Commission does, and obviously, the ZBA.

Comm. McGorty recommended a motion – that in the spirit of cooperation for all the parties, that Staff work with the owner of 31 Lucille Drive to resolve all remaining zoning enforcement issues on or before May 12, 2009. Failure to comply by that date may result in the Commission directing the ZEO to issue a Cease and Desist Order and ultimately a court order for whatever outstanding issues remain.

Comm. Harger asked specifically what issues.

Comm. McGorty responded that it would be whatever issues are outstanding – the shed is a non-issue because it's gone....

Mr. Schultz added that he agrees with Comm. McGorty that they should let calmer heads prevail and work together on a resolution, if it can't be done by May 12th, the Commission will hear about it – it will be itemized by all parties and then the Commission will have the ability to proceed or not.

Chairman Pogoda asked why they have selected the date of May 12th – why are they giving him so much time because this has been going on a long time.

Mr. Schultz responded that, as a department head, time usually allows all parties to calm down. All parties realize what is before this Commission and the Commission has to enforce the regulations. That is not really a long period of time compared to the time which has already passed.

Comm. Parkins commented that it just sounds like another arbitrary date. Mr. Schultz responded that it's the time between now and the next regular meeting.

Mr. Schultz indicated that this Commission always wants Staff to work it out with the property owners and the complainants – that has always been the policy. They are at an impasse right now.

Comm. Parkins responded that she thinks it has escalated past that point now – that is why the Luckachina's are here before us. She commented that she can hear the frustration in the voices; they've been there and they are getting nowhere so that is why they are here.

Comm. McGorty commented that they are closer than they were. There is a shed that is gone – his business or whatever. There is possibly a couple of remaining issues, such as the awning.

Comm. Parkins indicated that she thinks the deck is going to be the biggest issue.

Mr. Dingle responded that the awning is not a zoning issue; retractable awnings are allowable, they have been advised of that.

Comm. Parkins commented that the awning was over the deck.

Mr. Dingle responded that the deck is 95 square feet – 8 x 10 plus a small landing for the stairs. It is a very insignificant deck.

Comm. McGorty commented that the 10 foot setback is the issue though.

Mr. Dingle responded that was correct.

Comm. McGorty commented that the setback needs to be addressed.

Mr. Dingle responded that he has to ask Corporation Counsel if he can issue a Cease and Desist for something that has been there for over three years. He doesn't believe that he has that authority.

Comm. McGorty indicated that the deck date is critical – and no one seems to really be able to get that date down.

Mr. Dingle responded that they saw a violation for over two years and had nothing negative to say about – how is it a problem now?

Mr. Panico commented that he can bring it to the property owner's attention that there is an allegation about the deck and documentation is required about the construction of the deck and see what that produces.

Mr. Dingle responded that if he thought this was done in a timely manner, he'd ask him to go for variance – but he said it was up for over 3 years.

He added that he needs to make a determination as to whether the deck was or was not there for a 3 year period.

Mr. Dingle responded that it was there for 3 years.

Chairman Pogoda indicated that they need some justification – are there any receipts and documents?

Mr. Dingle responded that he has nothing either way.

Comm. McGorty stated that is what needs to be substantiated.

Mr. Dingle responded that he knows a judge is going to ask for the documentation as to when it was put in. He doesn't have it. The Assessors Card says 2000.

Mr. Panico commented that he didn't own the property in 2000, how do you rationalize that?

Mr. Dingle responded that they should go and look at the deck – can anyone tell the age by looking at the deck?

Mrs. Luckachina indicated that she wanted to make one more comment about the deck being there in the year 2000. She stated that they received a letter from Mr. Dingle saying that the inspector took another look at the deck and changed his mind and said it was only up for one year; he could only determine that it was built in the year 2005. The inspector changed his mind from the year 2000 to it being another year.

Comm. Parkins asked if she had that letter.

Mrs. Luckachina responded that she did – it is in the packet.

Comm. McGorty asked if he built his own deck. Comm. Parkins responded that he probably did - he's a carpenter, right?

Mr. Dingle responded that he's a home improvement – a tile guy.

Chairman Pogoda stated that if the timeline, May 12th - is agreeable with the Commissioners – at that point, they'll let the ZEO query Corporation Counsel and they'll go with the recommendation that Comm. McGorty proposed.

Comm. Parkins added that it will be with the hopeful outcome that they are going to solve this.

Comm. McGorty responded that without them solving it, they should get the information that has been requested in regard to the date it was built. That is how it can be resolved – whatever the documentation states, that is what they will have to work with.

Comm. Parkins commented that they have to be willing to make a decision at that point because they don't want to come back on May 12th and discuss this for another hour and a half.

Comm. McGorty responded that it will be less subjective – it will be more about the facts...and it will be easier to make a decision.

Chairman Pogoda interjected that he hopes all parties can use this time to cool off and get the correct information because "he said, she said..." is just not going to fly.

Comm. McGorty agreed that the facts will speak for themselves. Comm. Parkins added that they can't allow any of that - it isn't their place to debate a neighborhood argument; they can only go by the facts and take an action.

Chairman Pogoda asked Tom McGorty to make his motion.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted that, in the spirit of cooperation for all parties, the Commission recommends the Planning & Zoning Staff work with the Owner of 31 Lucille Drive to resolve all remaining Zoning Enforcement issues on or before May 12, 2009. Failure to comply by that date may result in the Commission directing the ZEO to issue a Cease and Desist Order and ultimately a court order. Commissioners Lapera and Jones recused themselves from this Zoning Enforcement Issue due to conflicts of interest.

APPLICATION #08-23, RICAR LLC AND MIANUS FOR FINAL SITE DEVELOPMENT PLAN APPROVAL FOR PDD #66 (MIX USE MARINA DEVELOPMENT) RIVER ROAD, MAP 32, LOTS 16 & 17, MAP 22, LOT 1) – DISCUSSION AND POSSIBLE ACTION.

Mr. Schultz indicated that Staff recommends that they table action because of outstanding issues that have to be resolved.

On a motion made by Patrick Lapera seconded by Virginia Harger, it was unanimously voted to table Application 08-23, Ricar LLC and Mianus for Final Site Development Plan Approval for PDD #66.

APPLICATION 309-02, PRIMROSE COMPANIES FOR FINAL DETAIL DEVELOPMENT PLANS FOR SITES C AND D (MULTI-FAMILY AND COMMERCIAL USES), PDD #60, CANAL STREET (MAP 129, LOTS 17 AND 18) – DISCUSSION AND POSSIBLE ACTION.

Mr. Schultz indicated that Staff has prepared a report/resolution and he has correspondence to read from the Fire Marshal and the City Engineer. The Applicant has been made aware of these deficiencies and he would like to address them.

***See attached letter to Richard Schultz from James Tortora dated 3/24/09.**

Mr. Schultz indicated that the Fire Marshal was not recommending approval at this time.

***See attached letters(2) from the City Engineer, Robert Kulacz, dated March 24, 2009.**

Mr. Schultz indicated that Mr. Kulacz recommends tabling this application until his stated deficiencies are addressed.

Mr. Schultz indicated that it might be prudent to have the Applicant address these deficiencies because if the Commission feels they are sufficient; the Application can be tabled and direct Staff to work with the Applicant.

John Guedes, President, Primrose Companies, addressed the Commission.

Mr. Guedes indicated that he is before the Commission tonight in regard to the continuation of the program for the Shelton Riverfront Development. This Commission has acted on the first two sites, the Birmingham and the Radcliffe. Now they are moving on to Site C and Site D and will continue.

Mr. Guedes indicated that Sites C & D have gone through a number of changes. He recalled that Site C is made up of an existing commercial building and there are 3 additional buildings on the site.

Mr. Guedes commented that there have been a number of issues that have been raised by the Fire Marshal and the City Engineer. Unfortunately, he did not meet with the Fire Marshal to explain that this whole complex has gone through various reviews by various committees. The last review was with the State Traffic Control Commission that put certain requirements on the site which included a continuation of traffic flow. He will be meeting with the Fire Marshal to review this. For the most part, the intent was that fire apparatus would service these complexes from the street. If the fire vehicle did have to pull in, they would maintain an at least 24 foot main drive.

In regard to the issues with the City Engineer, the existing structures on site are meant to remain as is. The commercial building, even though it does not currently meet the flood elevation, has been occupied for the past 100 years. The total renovations for the building are not going to exceed 50% value of the building. The onsite building that is to remain does have a small partial basement; it has only 6 feet ceiling height. They aren't intending to use that space for anything – not even the utilities. Again, the major issues are with the fire issues brought up by James Tortora. He will meet with him to provide an understanding of how the STC approved this project.

Mr. Guedes concluded that on this particular project, there was a lot of thought that went into it with the participation of the State Traffic Control Commission. Some of these issues were addressed. As far as the easements referred to on the Radcliffe site, that easement map has been approved and recorded by the City.

They are in the final stages of the two sites. He met with Staff to review some other concerns specifically with parking; his goal has been to continue to address the 2:1 ratio for parking. This is part of the master plan of development so whatever they are doing as they move further north, they are taking the requirements into consideration.

He indicated that they were currently before the Inland Wetlands dealing with the issues of the canal and the partial fillings. He offered to answer any questions the Commission has at this time.

Chairman Pogoda stated that this application was going to be tabled until all of these issues with the Fire Marshal and the City Engineer get resolved.

On a motion made by Patrick Lapera seconded by Thomas McGorty, it was unanimously voted to table Application #09-02, Primrose Companies for Final Detail Development Plans for Sites C&D, PDD #60, Canal Street.

APPLICATION #09-05, LONG HILL CROSS ROAD, LLC FOR FINAL SITE DEVELOPMENT PLANS APPROVAL FOR LOT A (INDUSTRIAL BUILDING), PDD #69, LONG HILL CROSS ROAD (MAP 51, LOT 29) – DISCUSSION AND POSSIBLE ACTION.

Comm. Jones requested to continue to be recused from this Application.

Atty. Steven Bellis, addressed the Commission, representing the Applicant. He indicated that the only change since the last time they were here has to do with some comments from the City Engineer that they received from Rick Schultz today.

He was able to get the Engineer to make those changes and they have been incorporated on the plan. They are rather minor. He had questions regarding the field survey and the grade in the parking area.

Fred D'Amico, Registered Engineer and Surveyor, 9 Park Road, Oxford, CT addressed the Commission regarding the City Engineer's issues. Mr. D'Amico stated that the pipe outlet for the proposed catch basins needed an invert. He also requested that the catch basin have a four foot sump, and they added that note to the drawing. On the second sheet, there was a cross section with a scale that was mislabeled so they changed it.

Mr. D'Amico explained that they put in a note regarding the differences between the field survey and the Town's aerial survey. He showed one lot in particular that is considerably different than what is shown on the 1988 aerial photograph.

Atty. Bellis added that in response to one of the Commissioner's questions, they put a proposed easement area on Lot B in the event that a large tractor trailer truck would have the ability to turn.

Mr. Panico indicated that they need to find a better way to do that. He stated that he couldn't react because it is the first time he is seeing this drawing.

Atty. Bellis stated that these were the same drawings that were shown to the Commission before; the only difference is the correction that the City Engineer wanted – they are no different.

Mr. Panico commented that they were under the impression that they were redoing the parking layout. He recalled looking at one that had a completely different parking configuration.

Mr. Schultz indicated that he wanted to read some other correspondence from the Fire Marshal and City Engineer.

***See attached letter to R. Schultz from James Tortora dated 3/24/09.**
***See attached letter to R. Schultz from City Engineer, Robert Kulacz, dated 3/20/09.**

Chairman Pogoda indicated that there were a couple of areas of concern – the first being Mr. Panico's issue and the other about the trash enclosure. It has to masonry – it has to be changed.

Mr. Panico suggested changing the location of the main driveway and creating a parking court in a different location. Then the main driveway can come past the front of the building so that a truck can come in and pull up and back in.

Mr. D'Amico responded that he could take a look at that.

Mr. Panico asked what the minimum number of parking spaces they need to provide. He noted that there were 16 on the site plan.

Mr. Salemme responded that they had 13 on the original; they had 14 last time and the Commission wanted to see a couple more, so they created a couple more. They need to have at least 13.

Mr. Panico commented that this is a sole tenant building and they know who the occupant is and he has a certain number of employees so they know what their parking demand is.

Chairman Pogoda suggested tabling this until the next meeting and get the areas of concern out of the way.

Mr. Paul Augustine, 8 Lynne Terrace, Shelton CT addressed the Commission regarding this Application.

Mr. Augustine indicated that he's been a resident of the Long Hill Avenue district for many years. He speaks here only from a standpoint of safety. Long Hill Cross Road was a barren road in 1950, extremely curvy with small dips and rises and in some areas the visibility is not more than 50 feet. He personally went out and measured the tightest restrictions – 20 feet from (inaudible...) He doesn't think today they would allow a new road to be built to carry this volume of traffic at the width of this road.

Mr. Augustine added, for the record, that that road currently has 2 child/daycare centers, factories, offices, it's also the access road for school buses to get to Long Hill School. It also carries trailer truck traffic to go to the convalescent homes and (inaudible). He thinks that the continued development of this road should be preceded by some plan to redevelop Long Hill Cross Road into a wider, safer, flatter road. It can't continue to carry increased traffic volume – it is an accident waiting to happen. There are retirement areas and convalescent home that use that access road very often. He asked the Commission to think about his comments.

Chairman Pogoda responded that he understands where Mr. Augustine is coming from; however, these issues should be brought to the Board of Aldermen. They are the ones that control the roads themselves; this Commission has nothing to do with that. They can only concern themselves with the things that are about zoning.

Mr. Augustine concluded that he has heard concerns here about truck traffic on that road – he added that his driveway is wider than that road by 50%.

Chairman Pogoda responded that Mr. Schultz just informed him that it is in the Plan of Development as a recommendation. It is an area of concern. With no further comments, he asked for a motion to table this application.

On a motion made by Thomas McGorty seconded by Patrick Lapera, it was unanimously voted to table Application #09-05, Long Hill Cross Roads, LLC for Final Site Development Plans Approval for Lot A, PDD #69. Comm. Jones recused himself from this application.

PROPOSAL OF THE SHELTON P&Z COMMISSION TO AMEND THE ZONING REGULATIONS BY AMENDING SECTIONS 2&3: CERTIFICATES OF ZONING COMPLIANCE AND ADMINISTRATION AND ENFORCEMENT (PUBLIC HEARING CLOSED ON 2/24/09) – DISCUSSION AND POSSIBLE ACTION

Chairman Pogoda asked for a motion to table Section F under Old Business item on the agenda.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to table the Proposal of the Shelton P&Z Commission to amend the Zoning Regulations Sections 2 & 3 (Cert. of Zoning Compliance and Admin. & Enforcement).

New Business

APPLICATION #09-10, PETITION OF DOMINICK THOMAS ON BEHALF OF 714, LLC FOR INTIAL DEVELOPMENT CONCEPT PALN APPROVAL AND PDD ZONE CHANGE (RETAIL SHOPPING CENTER) 405-407 BPT

AVE (MAP 77, LOTS 26, 27, 28, 29 AND 30), Restricted Business DISTRICT – ACCEPT AND SCHEDULE PUBLIC HEARING

Mr. Schultz stated that the Commission has 65 days to open up the Public Hearing. Staff recommends that this be a stand alone public hearing because they are anticipating a large crowd.

On a motion made by Patrick Lapera seconded by Thomas McGorty, it was unanimously voted to accept Application #09-10 and schedule a Public Hearing for May 19, 2009.

Other Business

UNITED RECYCLING OF SHELTON LLC: DISCUSSION BY JOSEPH SALEMME TO THE COMMISSION.

Mr. Schultz indicated that Staff has provided two pieces of correspondence. The letter from Atty. John Fallon explains the reasons why the P&Z Commission should not require a site plan application, including the public hearing. The second letter is from Asst. Corporation Counsel regarding an existing ordinance and its applicability.

*See attached letter from Atty. John Fallon, Owens, Schine & Nicola, P.C. to Richard Schultz dated 1/20/09.

*See attached letter from Asst. Corporation Counsel dated?

Mr. Schultz indicated that Mr. Joseph Salemme would be making a presentation explaining his pending application before the DEP. The DEP does want to hear from the local P&Z as to the Commissioner's thoughts and concerns on this proposal.

Comm. Lapera requested to be recused from this application; he realized that his firm has a client conflict here.

Mr. Joseph Salemme, United Recycling, 31 Soundridge Road, Shelton, CT addressed the Commission. Mr. Salemme indicated that he was here to discuss his situation with his existing business and the new business that they are operating up on Oliver Terrace.

Mr. Salemme indicated that at the request of this Commission, he submitted a Site Plan application a couple months ago that was very similar to one that was approved back in the summer of 2007. After that time, he hired an attorney for advice who adamantly opposed his resubmitting a site plan because they had been previously approved for basically the same thing about a year and a half earlier. He provided the Commission with a letter from Atty. Fallon in which he explains the reasons, and provides back-up statutes and court cases regarding their position.

Mr. Salemme stated that he has lived here his whole life and does not want to disrespect this Board in any way, but he wants to protect his rights. He wants to make himself available to the Board and to the Town for any type of discussion that would be in the town's best interests. This is also a situation where the DEP has to review and decide a volume and a processing issue with the type of solid waste that they handle and the recycling mechanical equipment that they have on site and what they do there. They have been going through that process for a couple of years now and it looks like they are getting closer to the end.

Mr. Salemme wanted to bring a couple of things to their attention that have changed. Originally they had planned to combine the 2 locations. He brought all the Commissioners up for a site walk and at the time he said that they were

combining the two; however, that is now not the case. At the DEP's request they want to handle each specific parcel separately – that is just the way that they do it. This is not for 32,000 tons, not for 16,000 tons – this is for 800 tons on 8 1/3 acre.

The Commission had asked for other information regarding DEP reporting that they do on a regular basis. He has copies available today for everyone. He has a traffic report that is not complete, but it will be completed shortly for the DEP and he'll be happy to provide that to the Town also.

Mr. Salemme concluded that he wanted to make himself available to the Town, the citizens, and the Commission. And with all due respect to the Commission, he had to take his attorney's advice and withdraw that Site Plan application due to the approvals that they already have on there.

If the Commission decides that they would like to do a public type meeting, he has no problem with that and he'll do the best he can to answer questions as honestly as he can. He noted that things do change in the DEP permitting process so he wanted to make everyone aware of that last change.

Mr. Salemme added that he did a site walk, invited the public and the town officials; they are proud of what they do up there. They want to recycle more. He isn't sure what some of the opposition is all about, but they are proud of what they do there. He hopes the town would endorse more recycling.

Chairman Pogoda commented that they would like a copy of the traffic report when it's completed.

Mr. Salemme responded that it would be completed for the DEP by April 1st and he'll be sure to get copies to Rick by next week.

Comm. Harger asked about things winding down – is he referring to the DEP.

Mr. Salemme responded that yes, the DEP – it has been a couple of years to get permits. It is extensive and expensive and they do not provide a timeframe. They can continue to request information and they have to continue to provide it. They request a lot of detail about storage and materials and they are continually required to submit quarterly water reports and conduct air testing throughout the year. He added that they do more environmental safety testing and reporting than anyone in town that he is aware of.

Comm. Harger commented that it is very closely monitored according to DEP regulation.

Mr. Salemme responded that the DEP is extremely thorough – they have to keep daily logs of trucks and materials. Compliance reports are mandatory and available to anyone who wants to see them. They are required to report immediately on any hazardous materials. The DEP really supersedes everything. They have a clean facility and they are very proud of it.

Comm. Parkins asked for clarification about the DEP separating the two – she was under the understanding that he had a facility and was moving to another one. She asked if he was now going to be in the new and the old facility.

Mr. Salemme responded that they don't plan to do that but the DEP won't review the permit as the same permit. They review it because it's on a continuous piece of property that has two separate pieces – that is what they told him. Mr. Salemme indicated that it is still his intention to move out and go to the back.

Depending on the economy and if it is as slow as it is, they are doing less than 200 tons a day now.

Comm. Parkins asked what the chances were of them operating at both facilities.

Mr. Salemme responded that there was very little chance of that; it doesn't make sense economically for them to do both.

Mr. Schultz wanted to clarify for the Commission that Connecticut State DEP is doing an independent and separate review; it is nothing to do with local P&Z; however, in talking with them, they do want to hear from the local P&Z authority. Mr. Schultz clarified that they do want hear, through Staff what the Commission's position is on this increase.

In the past it wasn't scrutinized as much as it should have been, but there is interest. The State will listen to recommendations. Clearly, as with telecommunications and affordable housing, there are other agencies that make the final decisions but, as with the Citing Council, they like the P&Z to have public informational meetings. It is important the Commission understands their role here and that everyone understands completely what is being proposed. If they comfortable with it, will they authorize Staff to write a letter to that effect. Because the previous 2007 application, the Commission felt comfortable with it and he was authorized to write a letter to the DEP.

Mr. Salemme mentioned that the DEP can have a public hearing if residents feel that they want to have one. He wanted to address an issue brought up by Rick Schultz about an ordinance that was passed in 1982 about recycling. He wanted to clarify some issues with it. Corporate Counsel just ruled that it has nothing to do with them, it is a moot point about the bulky waste and landfills discussed in the ordinance and it has nothing to do with the industrial or commercial materials that they handle.

Chairman Pogoda asked if the Commissioners or anyone in the audience had any questions or comments regarding this matter.

Irving Steiner, 32 Partridge Lane, Shelton, CT addressed the Commission.

Mr. Steiner asked a question about the site plan that has been referred to as approved in 2007. He has gone through the records and he hasn't seen any plan that was approved in 2007.

Mr. Schultz responded that it is his job to make sure that there is one there; that file has been gone through by a lot of individuals.

Mr. Steiner asked if he recalled if there was an approved site plan.

Mr. Schultz responded that absolutely, the Commission reviewed it. This is still an ongoing review for 90 Oliver Terrace. The traffic report will be important. Mr. Steiner commented that he reviewed the 2007 minutes and does not recall all the objections from the City Engineer about the non-existence of a site plan at that time.

Mr. Schultz responded that there was a site plan – but he felt there were deficiencies in it. The Commission disagreed with him – they don't have to adhere to the recommendations.

Mr. Steiner commented that he had the impression that the City Engineer said there was no Site Plan.

Mr. Schultz responded that there was a site plan, it was deficient, in his opinion. He told Mr. Steiner that he'd make sure there were copies available.

Chairman Pogoda asked if there were any further comments. There were none.

On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to adjourn at 9:30 p.m.

Respectfully submitted,

Karin Tuke

Recording Secretary, Planning & Zoning Commission