

**REVISION 1**

The Shelton Planning and Zoning Commission held a special meeting on June 30, 2009 in the Shelton City Hall, Auditorium, at 7:00 p.m., 54 Hill Street, Shelton, CT. The Chairman reserved the right to take items out of sequence.

Commissioners Present:

Chairman Anthony Pogoda  
Commissioner Virginia Harger  
Commissioner Chris Jones  
Commissioner Patrick Lapera  
Commissioner Ruth Parkins

Staff Present:

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

Tapes (1) and correspondence on file in the City/Town Clerk's Office and the Planning and Zoning Office. Attachments are not available on the website.

**CALL TO ORDER/PLEDGE OF ALLEGIANCE**

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

**PUBLIC HEARING**

**APPLICATION #09-10, PETITION OF DOMINICK THOMAS ON BEHALF OF 714, LLC FOR INITIAL DEVELOPMENT CONCEPT PLAN APPROVAL AND PDD ZONE CHANGE (RETAIL SHOPPING CENTER) 405-407 BPT. AVE. (MAP 77, LOTS 26, 27, 28, 29 AND 30) continued from May 27, 2009.**

Mr. Schultz read a memorandum that he sent to Atty. Raymond Sous, Assistant Corporation Counsel, dated June 11, 2009 regarding the Planning & Zoning Commission's request for a legal opinion on Application #09-10 for the Crabtree zone change.

**\*See attached memorandum from Richard Schultz dated 6/11/09 to Atty. Raymond Sous, Corporation Counsel.**

**Atty. Ramon S. Sous, Assistant Corporation Counsel, 159 Main Street, Shelton, CT addressed the Commission.**

Atty. Sous indicated that on June 11<sup>th</sup> he responded to the Commission's request for opinion and succinctly stated that Section 8-2 of the Connecticut General Statutes gives this Commission the authority to establish regulations regarding zoning in the City. This Commission has adopted 34.5 that clearly states the establishment of the PDD shall be submitted to the Commission in writing and should be signed by the owner or owners of all parcels within the district. He indicated that he believes that this application is only signed by one of the owners of the effective tract and not by the other owner, the City of Shelton. As a result, his opinion is that the application is incomplete and should be withdrawn or denied with prejudice at this time. He thanked the Commission.

Mr. Schultz indicated that the Applicant has submitted a response to the opinion of the Corporation Counsel, and all members of the Commission have a copy. Atty. Dominick Thomas would like to comment on it.

**\*See attached memorandum from Atty. Dominick Thomas dated June 2009.**

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

Atty. Thomas stated that with all due respect to the opinion of the Corporation Counsel, as they see from his response, he disagrees with Corporation Counsel's requirement that the City has to sign. First, he will make the simple statement that a PDD was occupying two parcels of land, one on either side of the City street. There is actually no requirement, even though they encompass that City street in between that the city would be required to sign the application. But in this case, there is even a more complex issue at hand. The City, and if the city, in his opinion, is going to stand up and state that they want Access Road to stay the way it is, then they will withdraw or modify it, and most likely come in with something else.

However, in effort to explain why they did why they did it , he distributed a document – an FOI request for documentation that he received from the City Engineer's Office going back to 2007. It includes a memorandum from this P&Z Commission and a copy of this P&Z Commission's meeting minutes regarding an 8-24 referral to close off the Access Road intersection and have the entrance to Access Road come through the existing opening. He pointed out that the Commission's own Planning Consultant indicates that the opening is over a non-access line in the State Highway and that the State has chosen to ignore it.

Atty. Thomas indicated that he did not get these documents until recently; however, he knew they existed. He was told that was the plan, and that the City had decided and finally planned to do what they have talked about for 14 years – get rid of Access Road. At that point, and he wanted to clearly dispel the false rumor circulating that the Applicant expected it – as being false. The fact of the matter is that he anticipated that the City would treat Access Road the same way the State considers excess right of way. In this case, Access Road is not a zone-able piece of property in terms of the State of Connecticut. A zone-able piece of property, as the State refers to it, is a piece of excess right of way standing on its own that is permissible to build on within the zone. This is clearly not that case; it is only a .98 acre piece of property. Therefore, the State would treat it as what they would call assemblage.

Atty. Thomas stated, in other words, once it is no longer a public right of way, the State can do two things. First, they will offer it to the City for a price - not for nothing, but because it has no public use anymore, the City doesn't want Access Road. He continued to say that not one person in the course of this process, from the beginning through right now– not Atty. Sous, not the BOA members they spoke to and not the Street Committee – said anything. As they went through the discussions, Atty. Sous brought up that the City has an Ordinance and its City property that they will sell at auction. Atty. Thomas indicated that they can't sell it at auction because it's a crazy ~~spite~~ strip.

Atty. Thomas indicated that he would rather deal with the State because he knows how they work. All of this has been under the assumption that the City intended on getting rid of it. As seen from the plan, the City was going to do a temporary fix by blocking it off and curving it off and they went to the DOT.

Atty. Thomas discussed the DOT and the last memo dated October 2008. The engineer that worked on this for the City(not the City Engineer, Robert Kulacz) and the DOT indicated that they were approached but never issued a permit. The engineer was told to stop working on it because it was implied that there was no need to work on it anymore because the developer would take care of it

in a more permanent status. So they backed off and did not spend any more City money on it.

Atty. Thomas stated that he, therefore, went to the BOA, and began the process. As seen from his opinion, no one in the BOA objected. They referred it to the Street Committee. The issue was not if they were going to abandon Access Road, the issue was how were they were going to do it.

Atty. Thomas indicated that questions were asked such as what were the engineering issues and what were they going to do with Nells Rock because there are terrible drainage problems on Nells Rock. There are an enormous amount of drainage and utility projects that have to take place in Access Road. The City was not going to spend the money, so they sent it to the Street Committee.

Atty. Thomas referenced the minutes from May 5<sup>th</sup> regarding his presentation with Jim Swift. Bill Mooney, the Supt. Of Highways and Bridges asked Jim Swift a lot of questions about the drainage, sheeting, etc. There was nothing said about not wanting to close Access Road – or indicating that they thought it's a lovely, unique intersection. Atty. Thomas stated that no one said that and no one told them to stop. So that is why they proceeded.

Atty. Thomas indicated that when he was faced with the subject of auctioning it off and not selling it to the abutter, he looked at the deed and noted that it said it is for public highway purposes. He noted that if the City was ever going to auction off or keep Access Road, this property would be developed for whatever it could be developed for, with its main entrance on Nells Rock Road because that is the only frontage.

Atty. Thomas indicated that in his communications with the State and in the referenced correspondence, he was told that the property was for highway purposes only. Additionally, it doesn't matter if it was 60 years ago, it goes back to the State because the State took it by eminent domain. Now, it is the predecessor in title. The State took it and the State has the right to sell it and the right to offer it to the City; however, they indicated that they would never sell it to the City; it would create a ~~spike-strip~~spite strip and block a landowner from Bridgeport Avenue.

Since that time, Atty. Sous has been in communication with Christie Labella (and Atty. Thomas has been cc'd), the property manager assigned to this case. They have submitted this for an opinion to the Attorney General's Office to determine whether or not it could be reversed.

He discussed his communications with her regarding the policies. He very clearly explained the case, which is cited in his memo, Cornfield Point Association vs. the Town of Old Saybrook. He submitted this because the policy that they are basing the reverter on was in the 60's and the deed was dated 1948; however, in the Appellate Court case of Cornfield Point vs. the Town of Old Saybrook – the deeds were in the 1930's. And basically, the Court stated that when it is for a public highway purpose - that is it. The Town can use it for related public purposes, but it is still for public highway purposes. It is not a piece of property donated to the Town that they can sell. Therefore, he suggests, that if this is reversed in the State, this is absolutely no different than going to STC afterwards for their approval.

Atty. Thomas continued that they are making the application with the understanding that they will buy excess right of way; just as they are making this application with the understanding that they have to have a traffic light. If this Commission approved this, it would probably be with a traffic light and

substantial widening to the intersection entrance of Nells Rock and Bridgeport Avenue.

Atty. Thomas indicated that if the STC says no, they will have to come back; that is just the way this State is set up. They don't have a uniform application system where they can get State and local approvals simultaneously. The same thing would apply to the use of the excess State right of way over which they have laid some of the development.

They also have the option of proposing to cross Access Road and proposing a traffic light. He doesn't think anyone wants that. His suggestion is that even though there is no guarantee when the Attorney General's Office will respond, they could continue the public hearing to the August P&Z meeting. He has a petition that is 300 hundred people strong and is growing in support of their project.

Atty. Thomas continued to say that they would like to allow two things to happen – to allow the Attorney General render an opinion, if that is necessary, and to see if he can get what he has been asking to have for over a month now – which is for the City to sit down and discuss this issue. When he first realized there was going to be a reverter, he proposed that they all go up to Newington and sit down to discuss it. The issue is that the City is not going to get its money, that's the problem. The City thought it was going to get the money but now the State is getting it. But if the City wants to keep Access Road the way it is, then somebody has to have the guts to stand up and say it. Don't let them go through what they've been through.

He asked them to please reference the May 5<sup>th</sup> Street Committee minutes and the correspondence from the City Engineer which make no mention of any abandonment. He asked them to look at the City Engineer's report about closing up the intersection – the greatest thing since sliced bread. They were acting based upon what they felt was the intent all along – the abandonment of Access Road; the incorporation into it and the movement of this entire parcel up to Bridgeport Avenue, and the rectification of serious traffic problems at that intersection. All of which is substantiated in the FOI records that he received.

Atty. Thomas stated that if the Commission denies this without prejudice, his clients will have to make a decision as to what to do. He doesn't believe that would be appropriate because he does not believe that there would be any requirement because the State is the true owner of that property as non-roadway. There is no requirement for the State to sign off; they will never get them to sign off. With respect to the City, if they take the position that they want Access Road to stay the way it is – because, even the drawing in the FOI stuff is wrong -- The City was actually going to discontinue portions of Access Road which would have reverted it to the State. They were going to grass it over. So rather than have this public hearing go through two long sessions again repeating it, he suggested that they continue it for a month and let the people sit down and discuss it with the AG and go forward. It is State property. On the Cornfield case, he thinks that the State didn't have any alternative than to say it reverts back.

It is the same as an STC approval. When they are done, they complete the purchase of it. The State will make an offer to the City, and the City can still block it, and it is a risk they take in attempting to purchase it. However, he is pretty certain the State would sell it. If they don't, he would go to the State to negotiate a lease arrangement or license agreement. The end result is going to be the same. There is really no benefit to repeating it; especially when they can give the extension of time; there is no mandatory approval and they can continue the hearing in August. He thanked the Commission and indicated that

he would be happy to answer any questions regarding the documentation submitted. Also, he added that Jim Swift was present to answer any technical questions.

Atty. Sous responded that he has listened to the dissertation but he doesn't believe that all the statements Atty. Thomas has made are true. He added that they are based upon conjecture. The thing that the Commission needs to look at is - it's like apples and oranges - they are the Planning & Zoning Commission, and he is the Attorney for the City and also for the Board of Aldermen. The Town actually owns this property; they have a deed to it and that deed to the property belongs to the City and the Board of Aldermen. And the BOA alone, have the right to make a decision on transferring that property. Granted, the deed might have covenants and what have you, but that is something that the Attorney General's Office is going to issue an opinion on and they don't know when that will be. But whether or not the Attorney General's Office issues an opinion one way or another, it is not for this Commission to decide. It is up to the Board of Aldermen to decide. So one thing that Atty. Thomas left out is that the Board of Aldermen would have to act upon this proposal between now and this August meeting.

Atty. Sous stated, on behalf of them, and he cannot speak for the BOA; he doesn't know what they are going to do. They have it on their agenda this time but he is going to advise them that have to wait to hear from the State regarding what will happen with this property. He commented that the Commission asked him a very narrow question, and he answered it very succinctly - that the Applicants have to sign. The property is included in the PDD and, therefore, the City would have to be added and have to sign it. It is not this Commission's position to accept that. It would have to be the BOA making a motion to be added on and ask that the property be transferred - that the zone be changed, and that hasn't happened. They don't know if the State is going to give this property. They don't know if the City - they don't know anything at this point. If the City and the BOA don't act at all, Access Road remains owned by the City. Atty. Thomas indicated that if the BOA makes that decision, he would withdraw his application.

Atty. Sous commented about Atty. Thomas claiming that the BOA or others haven't said that they would or would not abandon Access Road; they have not made a decision. So in all deference to the BOA, the Commission has to leave it up to them and their process to sell City property and go through the motions. At this point, no decision has been made and a question has been asked of him as to whether their name should be on the application. Atty. Sous responded that his answer to that is that it should be or the application is incomplete. The Commission may want to request a withdrawal or deny without prejudice or even continue it; but they still don't know what the BOA will do between now and August. They may do nothing on this matter and the State of Connecticut may not render an opinion on this matter before August. So the question then becomes that they don't know where this is going. Therefore, if the property has to be modified, they would have to do a new PDD application anyway; that is his opinion.

Chairman Pogoda asked Atty. Thomas if he was going to withdraw his application at this time.

Atty. Thomas responded that it is his client's opinion that this matter should be continued. They do not believe that there is any need to withdraw it. He understands what Atty. Sous is saying; but the bottom line is that it is their position is that this is State property. He stated that he is looking for some direction - and here is the problem - he relied upon communication and documentation with town officials indicating that this was going to be

abandoned. If in fact the City is not going to abandon this, he would disagree with Atty. Sous that there is any requirement that he would have to file a new PDD. They could come in and modify it. The Commission has the right to approve a PDD as presented, or to approve it to a lesser extent, but not to expand it. Jim Swift could present a plan cutting out Access Road but it wouldn't seem to do any good. It would be a traffic nightmare. Is that what the BOA wants? Are they afraid to stand up and say they don't want to get rid of Access Road? Once they say that they want to discontinue that portion of Access Road, it will become State property. It will not be sold. If the City is going to try to auction it off to the highest bidder, they would be cutting off their frontage to Bridgeport Avenue. But their position is to continue it. Mr. Swift has drawings that depict this application without Access Road; and they have a road going across Access Road out to Bridgeport Avenue with a light. It is not impossible. It is done.

Therefore, Atty. Thomas restated that his position is to continue. He indicated that he would be glad to make a presentation to the BOA. He'd be glad to accompany the City, or on behalf of the City, go to Newington and say to the DOT that the City deserves some money and make the City part and parcel of the negotiations within the next 30 days. Therefore, he believes this matter should be continued. He thanked the Commission.

Chairman Pogoda stated that at this time, it appears that Commission needs to follow the recommendations of the Assistant Corporation Counsel and accordingly, the Commission should deny the request for an extension and deny the application without prejudice. If the Commission members feel that way, he would need a motion to vote.

Comm. Chris Jones made the first motion to deny the extension on the public hearing on Application #09-10. Comm. Lapera seconded the motion.

Comm. Parkins asked a question regarding the letter from the State of Connecticut dated June 9, 2009 from Atty. Sous to the Connecticut State Department of Transportation indicating that it takes 60 days for review and notification of what the determination is. She asked if that response would put this beyond the August meeting.

Atty. Sous responded that he spoke to Ms. LaBella and they are going to try to get him an opinion. However, the problem is that it is not just their opinion. The BOA has to be on board; so, there are two issues here - let's not get misled by just the opinion coming from the Attorney General's Office. The BOA will make an opinion on it after they hear from the AG's office as to what they want to do. They may pull their request for Access Road, or they may not, depending upon what they feel. He can't speak for them.

Atty. Sous continued to say that the problem is that they are being put in a box here by the Applicant because they are being pressured to ask the BOA to make a decision. Atty. Sous added that he represents all Boards and Commissions in this Town, and he can't have one pushing against the other. It is the Board of Aldermen's prerogative to make that decision when they want to make it. And that may not be at all – he doesn't know.

**On a motion made by Chris Jones seconded by Patrick Lapera, it was unanimously voted to deny the request for an extension on the public hearing completion period for Application #09-10.**

Chairman Pogoda indicated that he had a motion to deny the extension of the public hearing. He asked if there were any other comments from the Commission. He asked for a motion to deny this application.

**On a motion made by Chris Jones seconded by Patrick Lapera, it was unanimously voted to deny Application #09-10 without prejudice for reasons outlined in Assistant Corporation Counsel's letter dated 6/16/09.**

Chairman Pogoda announced to Audience members that there would be no Public Portion this evening and that the public hearing for this application is concluded at this time. There was a loud applause from public members present in the audience.

After a five minute recess to clear the Auditorium, the Commission continued the meeting with Old Business.

### **OLD BUSINESS**

#### **APPLICATION #09-17, PLR ENTERPRISE, LLC FOR MODIFICATION OF SITE PLAN APPROVAL (BLDG EXPANSION), 415 BRIDGEPORT AVENUE (MAP 63, LOT 10), IA-3 DISTRICT**

Mr. Schultz presented drawings of the site plan for PLR Enterprise to the Commissioners. He stated that this is a proposed 3,300 square foot addition to an existing industrial building. He indicated that he had two reports to read from the Fire Marshal and the City Engineer, and he informed the Commission that the Applicant was in attendance to answer any questions.

**\*See attached correspondence to R. Schultz from Fire Marshal, J. Tortora dated 6/26/09.**

**\*See attached correspondence to R. Schultz from City Engineer, R. Kulacz dated 6/26/09.**

Mr. Schultz indicated that the overall building would be 9,300 square feet. There are presently two tenants in that one building. They have overhead doors, but Staff asked them to show the 6 parking spaces.

#### **Paul Fazzino, 18 Beverly Lane, Shelton, CT addressed the Commission.**

Mr. Fazzino indicated that right now the existing tenants drive right in. If they need to park their vehicles in front of the overhead doors there is no problem as long as they park in their own rented spot.

Mr. Schultz indicated that this is spec space and an Occupancy Permit will have to be obtained. He asked Mr. Fazzino if he was anticipating a single occupant or multiple occupants.

Mr. Fazzino responded that it would be a single occupant for the 3,300 square foot area.

Mr. Schultz indicated that the applicant shows some additional evergreens and arborvitae as the Commission requested seven years ago on the other side.

Comm. Lapera asked for clarification about the parking spaces. Mr. Schultz explained that there were 6 spaces and most of the tenants just physically drive right in because there are large overhead doors – this is for contractor storage.

Chairman Pogoda asked about the location and number of garbage refuse containers and if there was a location for tools and equipment.

Mr. Fazzino responded there was a sufficient number of refuse containers and all tools and equipment could go inside. Mr. Schultz responded that there was no outside storage of junk related material. The applicant keeps a very clean site and also occupies it himself.

Mr. Schultz showed drawings of the proposed architectural.

Comm. Jones asked how long he had been at this site.

Mr. Fazzino responded he has been there 10 years.

Comm. Harger asked if this was the building that had a baseball field and batting cages in the back.

Mr. Fazzino responded that the body shop is the building all the way in the back has the batting cages behind it.

Mr. Schultz responded that this is a metal building that the Commission hasn't approved in many years, but insofar as it is in the back, the applicant is requesting the continuation of the metal panel type. Mr. Schultz asked if this was a flat roof building with a membrane.

Mr. Fazzino responded yes, there was a little bit of pitch to it. The first half has a stucco effect on the first half of it and a masonite look to it.

Comm. Harger asked if the potential tenant would also be contractor storage.

Mr. Fazzino responded yes.

Chairman Pogoda asked for a motion if there were no further questions. Mr. Schultz read the draft motion for Application #09-07 for the modification of P&Z Application for PLR Enterprises with the noted conditions and requirements mentioned by the Fire Marshal.

**On a motion made by Virginia Harger seconded by Patrick Lopera, it was unanimously voted to approve Application #09-07.**

## **NEW BUSINESS**

### **PROPOSAL OF THE SHELTON PLANNING AND ZONING COMMISSION TO AMEND THE ZONING REGULATIONS AND BUILDING ZONE MAP BY AMENDING SECTION 21: (DISTRICTS) SUBSECTION 21.1 BY ADDING AQUIFER PROTECTION AREA, ADDING A NEW SUBSECTION 21.8 DEFINING AQUIFER PROTECTION AREAS AND BY DELINEATING THE DERBY WELL FIELD (APA3) ON THE MAP – SCHEDULE A PUBLIC HEARING DATE.**

Mr. Schultz reviewed that the two Aquifer areas approved by the Commission last year in the White Hills area on a displayed site map of the area. He showed the location of a third Aquifer area beginning westerly at Sound view /Meadow Street going all the way across the Derby that was recently approved by DEP. The Town is now obligated to show this on a Building Zone map which they will have to take that to a public hearing. Additionally, they need to amend the regulations that establish what an APA overlay district is and to explain it.

The red dots on the map indicate the homes that would fall within the aquifer areas. Those homes have to come in for permits from Wetlands and Zoning. The Shelton Inlands Wetlands adopted the regulations that go with the

protection Aquifer Protection areas. So they have two land use boards – Planning & Zoning has to delineate on the official zoning maps so when people come in for new constructions or additions it will be identified and then they will go to the Wetlands coordinator to do their due diligence and indicate what they are storing. For example, when a homeowner builds a shed or a pool house, they need to identify what harmful materials they may be they are storing in the event that there is an issue.

Comm. Parkins asked if that restricted the use of pesticides or fertilizers for land owners.

Mr. Schultz responded that he wasn't aware of that but he would make copies of the Inland Wetlands regulations that deal with this so that the Commissioners have it.

Comm. Lopera asked if that aquifer ran from the River to Sound view Avenue. Mr. Schultz responded yes. There were further questions and comments about the Aquifer areas but it was inaudible due to multiple discussions.

Comm. Parkins asked if it was by State Statute that Zoning controls the Aquifer. Mr. Schultz responded that the recommendation would come from them but this body would not regulate it - Inland Wetlands actually regulates it.

Comm. Harger asked if this Commission was just responsible for identifying it on the Zoning map.

Mr. Schultz responded yes, and also to coordinate the permitting – and Inland Wetlands is the first step. He added that they have Flood Hazard Areas, Wetlands Regulated Areas, Aquifer Protection areas and Coastal Area Management. The State would like this done by the end of July. He explained that they will have five public hearings on July 14<sup>th</sup> meeting including Chavez Bakery, Farrell Corporation (Mr. Scinto), Mercantile (addition), Aquifer Protection, and the brewery/pub restaurant downtown.

**On a motion made by Patrick Lopera seconded by Virginia Harger, it was unanimously voted to accept and schedule a public hearing on July 14, 2009 for the Proposal of the Shelton Planning & Zoning Commission to Amend Regulations & Building Zone Map by amending Section 21: (Districts), Subsection 21.1 by adding Aquifer Protection Area, adding a new Subsection 21.8 defining Aquifer Protection Areas and by delineating the Derby Well Field (APA3) on the map.**

**On a motion made by Patrick Lopera seconded by Ruth Parkins, it was unanimously voted to adjourn the meeting at 7:55 p.m.**

Respectfully submitted,

*Karin Tuke*

Recording Secretary, Planning & Zoning Commission