



Mr. Schultz responded that it would be 640 square feet.

Mr. Panico asked if they would be replacing the garage.

Mr. Schultz responded no, not at this time.

*Comm. Harger arrived at 7:06 p.m.*

**On a motion made Thomas McGorty seconded by Ruth Parkins, it was unanimously voted to approve Separate #4518.**

**SEPARATE #4574 EVEN BERNARD, 442 HOWE AVENUE, BUSINESS**

Mr. Schultz indicated that this is one of the remaining store fronts available across from Danny O's for a barbershop. The area is 300 square feet; hours of operation 10 a.m. – 9 p.m. Tuesday through Saturday. There will be two chairs/two stations, and it requires State certification. This location requires curbside parking and has municipal parking in the back.

Comm. Parkins asked what the barbershop would be replacing.

Comm. Harger responded that it used to be a pawn shop.

Mr. Schultz added that they would not be changing the sign.

**On a motion made by Ruth Parkins seconded by Thomas McGorty, it was unanimously voted to approve Separate #4574.**

**APPLICATION #09-11, RICAR, LLC AND MIANUS FOR FINAL SITE DEVELOPMENT PLAN APPROVAL FOR PDD #66 (MIX USE MARINA DEVELOPMENT) RIVER ROAD, (MAP 32, LOTS 16 AND 17, MAP 22, LOT 1) – REQUEST FOR WITHDRAWAL (APPLICANT INITIATED).**

Mr. Schultz stated that as he reported to the Chairman, the Applicant is dealing with issues raised by the DEP in letters dated March 24, 2009 and June 4, 2009. The critical components are the separation distance of the lower dwelling units to the public walkway; insofar as the economy is very tough, they thought it would be in their best interests to withdraw without prejudice and reapply after working out these issues with the DEP.

He read correspondence from the Applicant to himself dated August 10<sup>th</sup> indicating that they plan to resubmit as soon as the issues are resolved.

**\*See attached correspondence to Richard Schultz from Ricar, LLC dated 8/10/09.**

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept the request for withdrawal (applicant initiated) for Application 09-11.**

**APPLICATION #09-20, MERCANTILE DEVELOPMENT, INC. FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (BUILDING EXPANSION), 10 WATERVIEW DRIVE (MAP 79, LOTS 10 AND 11), LIP DISTRICT (PUBLIC HEARING CLOSED ON 7/14/09).**

Mr. Schultz read correspondence from the Fire Marshal concerning standard recommendations for approval and a letter from Mercantile Development Inc. concerning issues raised at the public hearing.

**\*See attached letter from James Tortora, Fire Marshal dated 8/11/09.**

**\*See attached letter 7/20/09 from the Mercantile Development Inc. to Richard Schultz**

Mr. Schultz commented that Staff will be dealing with this component and they will have to satisfy the concerns of the Commission before starting any earthwork.

He asked the Commission to discuss a variety of issues including the loading docks in the rear and how best to deal with noise abatement. As the Commission is aware, this is a permitted use, as of right. It is the size that triggered the public hearing. This is not an intense development with a lot of on site parking issues but mainly noise related concerns. They maintain an excellent environment in terms of maintenance of their lawns and shrubbery, and over the years, they have supplemented the buffer areas.

Mr. Panico stated that he had two technical issues to discuss after reviewing the site plans. There is a very heavy rock cut and earth excavation in the right rear corner of the site in order to get the road to circulate properly. He added that they have taken advantage of upgrading the road to minimize it as much as possible, but it is still a significant cut – some of it is rock but there is a significant amount of overburden. Mr. Panico indicated that where the overburden takes place, they run their slopes back in order to have a stable slope and, in his estimation, it is encroaching too much into the natural buffer strip along the rear of the building. He thinks they should request that they take measures either in the form of a step-back in an additional retaining wall back there to minimize that. Rather than trying to chase a natural grade, they should just do it with a retaining wall and avoid having to intrude so far back into a protected area.

Comm. Parkins asked if they could put a wall there, can they also put additional landscaping there to buffer the noise.

Mr. Panico responded that they could; it is probably going to be some combination of a little bit of sloping, some retaining wall and some additional landscaping and evergreen planting for a year round buffer back there.

Mr. Panico indicated that the second item of concern had to do with the potential noise problem because of the additional loading dock. They are dealing with what is presently there but they may have to consider some sort of a modified sound wall or solid fence up to a certain height to deflect some of those sound waves from those trucks that would go through the buffer area. He noted that he'll look into that further if the Commission wants him to and discuss it with the Applicant's engineer and architect.

Comm. Harger commented that she noted they wanted four new loading docks. She asked if interior loading docks would be possible like ones she had seen while working at Phillips Medical – tractor trailers and Fed X trucks pulled right into them.

Mr. Panico responded that no, there really is no way that they could do that because of the grading conditions. If they try to do something like that to get trucking out of sight, it would probably mess up the internal flow of their operations.

Mr. Schultz commented that if the Applicant chooses to do site work, they will make sure that they stay out of that location because it seems to be a consensus of the Commission. As Tony indicated, Staff will meet with the Applicant and hopefully, they will have a complete resolution for the September 8<sup>th</sup> meeting.

Comm. Harger asked about the whole addition and the jog in the back being used to make up for the interior loading docks.

Mr. Panico responded that he could not honestly answer that because he did not look at it from that point of view. He schematically looked at the flow of operations and concluded that it would probably be a burden to modify that flow by changing the loading docks.

Comm. Parkins asked if the noise was generated from the trucks backing up into the loading docks.

Mr. Panico responded that the noise has primarily been from the trucks running or idling, especially in the early morning hours, specifically wintertime, when there is no vegetation on the trees. In the summertime, it is probably noisy too in the early morning hours because people have kept their windows open at night. The problem began because trucks would show up early, even though they weren't supposed to have access back there, and they would idle for one or two hours.

Comm. Parkins asked if that was on the same grade with the neighbors in the back.

Mr. Schultz responded yes – it's Plaskon Drive.

Mr. Panico added that it behooves them to enforce the representation made that there will be gates. It will be easier now, because before they had a mixture of worker parking as well as truck circulation when the route went in there. It was difficult to isolate the trucking area; now that part will be serviced by a gate and can operate earlier than the rest of the place. They just have to keep the trucks from getting back there before 7 a.m.

Comm. McGorty commented that was one of the issues – that someone was letting the trucks go back there, so if the gates are kept closed - it should take care of that problem. The recommendation of the barrier helps too.

Mr. Panico stated that he can't say it is going to be 100% effective but he thinks it will be better than it otherwise would be. It will supplement the natural vegetative covering and they will be placed in such a position so that they are not visible from the neighborhood because they are isolated by the vegetation. Normally, he doesn't like those things because they become graffiti boards, but this is a controlled situation in an industrial area.

Mr. Schultz intervened in the discussion to suggest to the Chairman that they need to make a determination about moving this meeting to the Auditorium because there are people standing in the room and out in the hallway.

Chairman Pogoda asked if those in the room wanted to continue this meeting or adjourn because, he is assuming that the BOA has the Auditorium right now.

Mr. Schultz responded that no - the Auditorium is available.

Chairman Pogoda asked for a show of hands to determine if there was a consensus to move the meeting downstairs. The majority of those in attendance chose to move the meeting downstairs after the completion of the discussion on this application.

Mr. Panico concluded that he and Rick have a little more work to do in reviewing the landscaping plan depending upon some of the other decisions that will be made.

Mr. Schultz indicated that Staff will schedule a meeting with the Applicant. Mr. Panico commented that Staff isn't asking for an action tonight as much as a direction to prepare an action with the architect and engineer.

Comm. Parkins commented that she agreed with the suggestions for the barrier and the additional screening on top.

Chairman Pogoda stated that there is no action on this application tonight. Staff can discuss these recommendations with the Applicant. They have the noise meter so they can check that out regarding the compactor noise level.

**Recess to move Downstairs to the Auditorium 7:23 p.m.**

**STOP WORK ORDER: REPORT AND DISCUSSION WITH ADMINISTRATOR/ZEO RELATIVE TO CRANBERRY HILL ESTATES, ARMSTRONG ROAD**

Mr. Schultz indicated that Staff has provided a report to all Commissioners dated 8/11/09. As reported earlier, a Stop Work Order was issued on May 7<sup>th</sup> regarding the illegal removal of trees within the proposed open space and development areas of the Cranberry Hill Estates project. Additionally, a notice of violation with specific instructions was issued on May 8, 2009. Since that time the following correspondence has been received by the Department. Mr. Schultz indicated that copies of all the correspondence is attached to their reports.

Mr. Schultz indicated that the correspondence includes:

1. An intervention action letter by the Steiners and others prepared by Atty. Joseph Kubic dated 7/14/09.
2. Letter dated 7/16/09 from the Shelton Inland Wetlands Commission requesting that the P&Z Commission not lift the Stop Work Order until legal opinion from Corporation Counsel has been received.

Mr. Schultz commented that this has not happened and, furthermore, this matter is on this Thursday's Inland Wetland Commission agenda.

3. Letter from Atty. Steven Bellis for Cranberry Hill Estates dated 7/23/09 requesting that the Stop Work Order be lifted.
4. Legal opinion from Assistant Corporation Counsel, Atty. Ray Sous, dated 8/4/09 advising the Commission that there is no intervener status at this time and a Show of Cause Hearing is not mandated by the Zoning Regulations.

Mr. Schultz commented that this was also requested of the Inland Wetlands Commission. Normally, in the State Statutes, Inland Wetlands uses the technique of a Show of Cause Hearing when there is a violation within a regulated area. He believes that this matter will be taken up again this Thursday.

5. Letter dated 8/11/09 from Atty. Joseph Kubic addressed to Atty. Ray Sous requesting him to reconsider his letter of 8/4/09 and also not to lift the Stop Work Order.

Mr. Schultz concluded that Asst. Corporation Counsel and the Attorney for the abutting property owners discussing the legal issues regarding this matter; insofar as Staff has received a Tree Restoration Plan which was spelled out when

they issued the notice of violation, it is recommended at this time that the Planning & Zoning Commission direct Staff to do the following:

1. Make a referral to the Conservation Commission for a recommendation.

As the Commission knows, the Conservation Commission oversees all the natural resources within the City of Shelton.

2. Refer the Open Space Set Aside to the BOA for acceptance or rejection.

Although this project was approved, that hasn't been done yet. If the BOA rejects it, it will come back to this Commission and other venues will have to be considered including the Shelton Trust and/or a private homeowner's association. Mr. Schultz added that the timing is important to do those two referrals.

3. Work jointly with the Inland Wetlands Commission.

Mr. Schultz reiterated that there will be a meeting this Thursday where this will be discussed in more detail.

He added that with the Conservation Commission and other parties, this Commission, received a letter requesting intervenor status. It was read into the minutes. Corporation Counsel indicates that it should not be entertained at this time as well as no Show of Cause Hearing. Mr. Schultz stated that these are the three things that he believes the Commission should direct him to do. Lastly, based upon that, it is recommended not to lift the Stop Work Order at this time.

Mr. Schultz added that under the Zoning Regulations, they have a right to lift his order but clearly Inland Wetlands has sent a letter requesting that the Stop Work Order not be lifted prior to legal opinion and a further discussion at their Thursday meeting.

Mr. Schultz indicated that Atty. Bellis is here because his position is that his client has satisfied the Notice of Violation and the Stop Work Order should be lifted. Atty. Bellis would like to make comments to the Commission before a final decision is made.

**Atty. Steven Bellis, representing the applicant/developer of Cranberry Hill, addressed the Commission.** Atty. Bellis began by stating that generally when there is a violation, it is usually handled administratively by Rick Schultz and it doesn't get referred to the Planning & Zoning Commission. He noted that Rick formally sent a letter, a Stop Work Order, and a Notice of Violation letter indicating that they would need to do A, B, and C – and once that is satisfied, Rick lifts the Order. He commented that he doesn't see why this is any different. He doesn't understand why it is going before the Planning & Zoning Commission, and he doesn't understand why Rick doesn't just lift the order.

Atty. Bellis added that if there is going to be a problem with Wetlands, then they will deal with it at the Inland Wetlands Commission. There is no Show of Cause Hearing on Thursday. They specifically said in their minutes that they didn't want to issue a Cease and Desist or a Show of Cause Hearing at the Inland Wetlands Commission. Atty. Bellis concluded that, quite frankly, he doesn't think anything is going to happen on Thursday.

Atty. Bellis commented that his client, Mr. Mazzaro, has contracts and is anxious to get going on the project. He has signed contracts for sewer work on Armstrong Road, and he has signed contracts to clear the site and clean up the entrance way. There is absolutely no reason why this Stop Work Order shouldn't

be lifted because they complied with all four requests that Rick has asked for in his Notice of Violation.

Additionally, this is unlike any other violation that comes before Rick, because the developer didn't do anything wrong. He technically didn't violate any P&Z regulations. This is about a trespasser coming onto the property and cutting down trees and that is, what he calls, a superseding cause, it is no different than if there was a forest fire and the trees were burned. It is not the owner's fault – he didn't do anything wrong. There is absolutely no evidence that the developer violated any regulations; however they complied with Rick's Stop Work Order so that they could get a survey done to determine what trees were damaged and cut down in the proposed open space area. There was also a request that an arborist come up with a Restoration Plan whereby there would be replanting of trees. Legally, the developer doesn't have to do that, because under the law it's a superseding cause relieving the owner of any liability. They submitted the Restoration Plan because they want to work with the City and have a good project; they did it in the spirit of cooperation, and they are going to pay for the planting and for the trees.

Atty. Bellis indicated that he has a hard time with this being referred to the Conservation Commission and the BOA - none of that is necessary. The P&Z Commission, under its regulations gives the Administrator the right to issue and lift Stop Work Orders. Nothing is going to happen. Those trees are not going to magically come back if work continues on this project. There won't be any further violations. It doesn't make any sense to him from a logical perspective. What was done was done – the trees were cut down. Having them stop work on developing the project is not going to bring those trees back. They submitted a planting plan to get the trees back and they will come back – eventually, over time. Legally, their position concurs with Corporation Counsel that they have no intervenor status and there are no Show of Cause Hearings under the regulations. There are no proceedings to act on. There was a Stop Work Order followed up with a Notice of Violation to do A, B, C and D. The developer did A, B, C and D – end of story. It should have been lifted by Rick when he sent in his letter two days ago.

Atty. Bellis concluded that he doesn't know why it is before this Commission and he doesn't think it is going to help the situation at all to refer this to the Conservation Commission and BOA. They will deal with the Wetlands issues on Thursday. He noted that they have done everything that Rick has asked them to do and there is absolutely no reason to delay this any further. He explained about the urgency of the construction financing in place and that they have time constraints or they could default on their construction loans sometimes. He stressed that there are significant effects of holding this project up and he doesn't see how it is going to help get those trees back just by having them stop work.

Atty. Bellis recommended to the Commission that they allow Rick to take the action to lift the Stop Work Order. They have no problem with Rick or anyone else reviewing the restoration plan or making suggestions on it. They will work with the Town but there is no reason to not lift the Stop Work Order. He asked the Commission to let them proceed and work with Staff as they have done for 25 years in regard to the details in getting the trees planted. Even though they don't have a legal obligation, they are willing to do it; they've said it in writing and given Rick the plan. He concluded that he thinks that is more than fair.

Chairman Pogoda asked everyone to look at the Staff Report given to them by Rick regarding Cranberry Estates. He asked them to go about six pages in to the memo from John Cook. He wanted to read a portion of it aloud into the record.

"For the above reasons the Commission has submitted a request for analysis by Corporation Counsel to address a number of questions. The Inland Wetlands Commission requests the P&Z Commission not lift the Stop Work Order until Counsel reviews and responds back to the Inland Wetlands Commission on the discussion points generated by the counsels of the two parties."

Chairman Pogoda commented that he thinks Rick also made the recommendation that the Commission direct Staff to hold off until Inland Wetlands discusses it with Asst. Corporation Counsel.

Comm. Jones asked if the other counsel would be allowed to speak.

Atty. Kubic asked if he could briefly address the Commission.

Chairman Pogoda responded yes, but he asked for some consensus from the Commissioners first. He noted the recommendations that Rick read and what he just read from Inland Wetlands and added that he realizes what Atty. Bellis has said to leave this up to Inland Wetlands. But Inland Wetlands has requested that this Commission hold off on this and not lift the Stop Work Order until all discussions with Corporation Counsel and the affected parties are resolved.

Comm. Jones responded that was contradictory because Atty. Bellis wants to lift the Stop Work Order but Inland Wetlands doesn't want it lifted.

Chairman Pogoda indicated that was correct, Inland Wetlands would like them to hold off doing anything.

Comm. Parkins commented that Inland Wetlands doesn't want them to do anything until they confer with Corporation Counsel, but Corporation Counsel has already indicated what his recommendation is.

Chairman Pogoda commented yes, to leave the Stop Work Order in place.

Comm. Parkins and Comm. McGorty disagreed - Corporation Counsel didn't recommend that.

Mr. Panico commented that, apparently, it leaves Inland Wetlands uncomfortable with Corporation Counsel's decision and they are asking him to re-examine his decision in light of the comments raised at their meeting.

Comm. McGorty asked what they are looking to discover here – is there something that they are missing here.

Chairman Pogoda responded that he has no idea...

Comm. McGorty stated that they have concurred there was wrongdoing and it sounds like it is a matter of a restoration plan approval to put the trees back where they were.

Chairman Pogoda doesn't think it is an issue of who is right and who is wrong. It is something that the Inland Wetlands Commission is questioning. He doesn't know what questions they have – Staff has not gotten anything positive or negative back from them.

Comm. Jones commented that Inland Wetlands is telling them to hold off and their Administrator is saying hold off - so he thinks that they should hold off. They take Rick's advice 90% of the time.

Comm. McGorty asked if there was anything still outstanding because it sounds like a restoration plan now and approval of that plan. He asked if he was missing something.

Comm. Parkins stated that their purviews are two totally different things. Inland Wetlands has their own regulations and P&Z has theirs, so for them to hold a Stop Work Order – she doesn't really get it either.

Comm. McGorty responded that it sounds like everything was cleared and they've agreed to replace the trees.

Chairman Pogoda commented that he doesn't think anyone is denying that.

Comm. McGorty indicated that he was curious why they are holding this up – is there something deeper on the line here?

Chairman Pogoda responded that he is only going by Staff's recommendation at this time and the recommendations listed – especially #2.

Mr. Panico asked Rick if this Stop Work Order was all encompassing or does Inland Wetlands have their own Stop Work Order.

Mr. Schultz responded no, (inaudible).

Mr. Panico posed that if Rick was to decide to lift his Stop Work Order, in effect, it would pressure the Inland Wetlands Commission to issue theirs.

Mr. Schultz responded yes, that's correct, because they would be bound to issue their permit unless there are issues that they have to identify.

Mr. Panico commented that they apparently have some issues. As an accommodation to the Inland Wetlands Commission, he suggests just leaving it in place.

Comm. Parkins agreed that they should work with the other commissions, but in fairness to the applicant, they are going to make him wait 30 days for a decision that is going to be made this Thursday. Because this Commission can't act again and Rick can't lift that Work Order until the next P&Z meeting, correct?

Mr. Schultz commented that he can, he has the authority to do that – however, this Commission also has the authority to direct him to lift it, if they so choose, tonight or at a special meeting.

Mr. Panico suggested they could advise him not to lift it until they've ruled on it.

Comm. Parkins commented that her concern is that this is on Thursday – it's just two days away and if they decide that there is no cause to keep the Stop Work Order, she doesn't think it would be fair to the applicant to have to wait until their Sept. 8<sup>th</sup> meeting for them to lift it.

Comm. McGorty asked if the Inland Wetlands Commission just wanted to review the legal opinion from Corporation Counsel.

Mr. Schultz responded yes, and any other legal issues because there were trees that were cut in their jurisdictional area and trees that were cut in their non-jurisdictional area.

Chairman Pogoda added that as Atty. Bellis stated, Rick has the authority to set or lift the Stop Work Order but he thinks there is more here to be resolved by Inland Wetlands.

Mr. Schultz commented that he will be making those referrals too.

Comm. Parkins commented that is what they're trying to figure out. Comm. McGorty agreed that it sounds like it but wasn't visible to them.

Comm. Harger asked Rick if he was aware of what their concerns are.

Mr. Schultz responded that he wasn't aware of anything in great detail. They were asked to have a Show of Cause Hearing and they decided not to. He believes that is going to be revisited again by the interested parties. He also knew that they did not discuss it in great detail and they would like to think about it, which is why they sent that referral to Corporation Counsel.

Mr. Panico commented that he thinks that the input and evaluation by the Inland Wetlands Commission is very important to the appropriate resolution of this entire problem. The reason being that, in addition to the direct violations of their regulations, the appropriate solution that they have been perceiving to date would involve some other impacts on wetlands and the relocation of some facilities that had previously been approved in different locations. But now in light of the unauthorized clearing that has already taken place, they would like to minimize the further clearing to accommodate approved facilities.

Comm. Parkins asked if there would be an amendment to the site plan.

Mr. Panico responded that there would be an amendment to the site plan to relocate some of the facilities that were going to necessitate further clearing into areas that don't require the clearing.

Mr. Schultz added that they withdrew that though – its status quo – they aren't going to present that.

Atty. Bellis commented that that there were six trees cut down, not in the wetlands but in the buffer which is a 50 foot area.

Mr. Schultz responded that it is a jurisdictional area – an upland review area.

Comm. Jones asked how many trees in total were cut.

Atty. Bellis responded that there were trees cut in non-wetlands area.

Comm. Jones asked how many total trees were cut.

Atty. Bellis responded that about 31 were cut.

Comm. Jones asked if the developer had any knowledge that this tree cutting was taking place.

Atty. Bellis responded no, absolutely not.

Comm. Jones asked again if he was certain of that.

Atty. Bellis responded that he was positive and there was no evidence of that.

Chairman Pogoda stated that he wanted to allow Atty. Kubic to speak.

**Atty. Joseph Kubic, Harlow, Adams & Friedman, Milford, CT addressed the Commission.** Atty. Kubic indicated that he read Atty. Bellis's letter and he didn't believe that any case he cited said is on point.

He is also concerned with Atty. Sous – he wrote a letter to Atty. Sous regarding his opinion about intervention and his letter stated, if it wasn't an intervention or something to intervene in – it now is - because a Stop Work Order has been issued and it's on record.

Atty. Kubic stated that he is going to submit three new intervention pleadings so that it is before the Commission again so that he doesn't lose his status. For the record those are identical to the previous except there are only two interveners currently on it and it has a different date.

Atty. Kubic noted that the purpose of the Show of Cause hearing is to establish liability because there is an issue with what happened on this site. He added that they don't oppose any of this. They just want to get to the bottom of it, restore it and move on. They think it is good project but think it should be done right.

Atty. Kubic indicated that he wanted to introduce John Troutman, an expert for the interveners, who is going to make a brief statement.

Chairman Pogoda asked what this would be about – because this has been pretty much discussed – to the death – over the last couple of meetings. He asked what this was concerning.

Atty. Kubic responded that he was an expert. He wasn't trying to make a case or anything...

Chairman Pogoda asked – then why the testimony? He indicated that he wanted to know the reason why Mr. Troutman would be speaking.

Mr. Troutman began to speak but Atty. Bellis objected, for the record, because they didn't have intervener status and shouldn't be presenting any kind of evidence. He'd like to have the record reflect that. This gentleman should not be speaking. This is between the developer and the Planning & Zoning Commission – and that's it.

Chairman Pogoda indicated that they don't need any more information but he wanted to know what his comments were about. He added that they are full of information until they get information from other commissions.

**John Troutman addressed the Commission.** He stated that he had information here that was pertinent, it is new information, information that they don't have right now; so they may be operating in an incomplete vacuum. He just wanted to present this information in the form of a short letter, three comments and he is done.

Mr. Panico asked if the information was germane to the P&Z Commission's decision.

Mr. Troutman responded that it was, absolutely.

Comm. McGorty asked if it had anything to do with liability or who's done any of it.

Mr. Troutman responded that he felt it was essential that the Commission get this information before they proceed.

Chairman Pogoda stated that he can give it to Staff without making any additional comments.

Mr. Troutman thanked the Commission and provided the letter to the Chairman with 11 copies for the Commission and Staff.

Chairman Pogoda commented to Rick Schultz that they don't need any action on this so he was going to move on to New Business.

### **New Business**

#### **APPLICATION 09-23 TERRA DEVELOPMENT, LLC FOR RE-APPROVAL OF FINAL SUBDIVISION APPROVAL (MARSHALL MEADOWS: 3 LOTS), NELLS ROCK ROAD**

**End of Tape 1A 7:52 p.m.**

Mr. Schultz indicated for the members that were not on the Board – this is regarding the white colonial around the corner on Nells Rock Road that they approved. He stated that the Applicant failed to record the mylar map within the statutory timeframe so it requires a re-approval. Staff is recommending approval with all the previous conditions. He said a motion would be in order to accept the application and reapprove it.

**On a motion made by Chris Jones seconded by Ruth Parkins, it was unanimously voted to accept Application #09-23 for review.**

**On a motion made by Thomas McGorty seconded by Chris Jones, it was unanimously voted to accept Application #09-23 with the previous conditions noted.**

#### **APPLICATION #09-24, UNITED METHODIST HOMES FOR MINOR MODIFICATION OF DETAILED DEVELOPMENT PLANS FOR PDD #26 (BACKUP GENERATOR), 580 LONG HILL AVENUE (MAP 41, LOT 29) – ACCEPT FOR REVIEW.**

**On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to accept Application #09-24 for review.**

**Bob Condin, representing United Methodist Homes, addressed the Commission.** Mr. Condin indicated that he wanted to provide some background about the generator. The building that it is adjacent to is called Wesley Heights Middle Court which is an apartment building that is being completely renovated to make it suitable for licensed assisted living services. It has 90 apartments in it. Connecticut Public Health Code requires that an assisted living community have a generator to provide emergency power. Additionally, as part of the renovations, they've put a fire suppression sprinkler system throughout the entire building. The sprinkler system has an electric pump to boost the water power. In the event of a power outage, it is a requirement that the sprinkler system have a backup generator.

The anticipate that the generator will run under the following circumstances: a weekly test of about 15 minutes scheduled for late morning and during the monthly test of all electrical equipment under full load for about 30 minutes (scheduled for late morning).

Mr. Condin explained that it would also be used when they lose power from United Illuminating because of a tree falling on the power line, inclement weather, etc.,

and during periods of peak electricity demand (summer A/C season) when requested by UI for a few hours in the afternoon. During the loss of power from UI to that area of Long Hill Avenue where Wesley Heights is located, the generator will enable Wesley Heights to maintain its lighting, heating, operate its walk in refrigerator/freezer and continue to operate the kitchen where meals are prepared for its 90 residents.

Not only will the 90 apartment residents be able to remain in their apartments, but the public areas of the building can then also serve as a shelter for residents at the adjacent 90 cottages at Wesley Heights and for residents of the Views, which is a condominium community adjacent to Wesley Heights, if they are without power.

Wesley Heights will communicate with the occupants of the adjacent residential units at the Views to advise them of the testing routine for the emergency generator system, the circumstances during the summer months when the generator may be used as a supplement to the UI power grid and the availability of Wesley Heights as a shelter during power outages.

Mr. Condin noted that Wesley Heights will work with the Shelton P&Z Commission to design a landscaping plan that will adequately buffer the emergency generator structure from the adjacent residential units and to install the landscaping once the plan is approved. Jim Swift, PE and Landscape Architect is here to present the initial landscaping plan and he'll be happy to answer any questions the Commission has.

Commissioner Harger asked how big the unit was.

**Jim Swift, PE & Landscape Architect, addressed the Commission.** Mr. Swift responded that it is pretty big – and fairly tall. The planting that they plan to put around will get as tall as the generator.

Comm. Harger asked how many feet high it was.

Mr. Swift responded that it was about 12 ... (inaudible).

The Commissioners were shown photographs of the generator.

Comm. Harger asked if this was an accurate representation of it.

Mr. Swift responded, yes, that's it.

Mr. Panico showed the location of it on the site drawing and the view that the different residential areas had of the generator.

Comm. Parkins asked if this has already been installed.

Comm. Jones asked if this was installed prior to the Commission approving it.

Comm. Parkins responded – yes, that's what Jim just said.

Chairman Pogoda asked if he had a timeframe as to when he planned to start it up and test it.

Mr. Condin responded that he spoke to the electrical contractor and they aim to have everything done by mid September, and that is when they would plan to start it. And since Staff asked for an opportunity to hear it in operation, it would probably be around another month or so.

Chairman Pogoda indicated that he would let the rest of the Commission members know so that they can all go up there and hear it.

Chairman Pogoda added that he's heard generators before – but this is a rather large unit. He doesn't know what sound it makes and he doesn't care what decibel level it is – 200 or 1. He still wants to hear it for himself. He noted that there are homes right across the street from it and he wants to know how loud it is going to be for them. There's no fuel there now but -he would like to be present when they start it up and he'd recommend that all Commissioners be there – Rick will make them all aware of when that is and they can all go up and listen. Then they'll make their decision – although, it's there already. He added that it was presented to him that, supposedly, this is a new unit and it has all kinds of soundproofing in it - but it's still a diesel unit. As it was mentioned, they will be testing it once a week, with a longer test once a month. He reminded everyone that during peak periods for UI or if there's a possibility of brown-out, this electricity can be used or sold back to UI.

Mr. Condin responded that he wanted to clarify that - it wouldn't be sold back to UI. They would just power Wesley Heights with it and, therefore, UI would not have to provide power to Wesley Heights.

Chairman Pogoda asked if the electricity, at any time, would be sold back to UI.

Mr. Condin responded no – it's not that kind of a set-up.

Mr. Panico added that it would only be used during brown-out periods.

Chairman Pogoda asked if during those periods, it would run for two, three or, however many hours, or whatever is necessary just to get through the brown out period.

Mr. Condin responded yes, that's correct – and so that there aren't brown-outs in the neighborhood area when there are peak demands for air-conditioning or other power use.

Mr. Panico stated that in other words, their facility goes off line so that it can leaves the balance of the power for the rest of the neighborhood.

Mr. Condin responded yes, correct, they have a similar set-up for the Wicke Health Center in the front of the campus.

Comm. McGorty asked if this can be used in parallel with the grid or is it switched totally off the grid.

Mr. Condin responded that it switches – there's a transfer switch.

Comm. McGorty asked if some things would be off then – if they can't operate parallel – some things will be off in the building because they can't power everything, it's not big enough unit for that – right?

Mr. Condin responded that it's designed to power the whole building.

Comm. McGorty asked if it was everything or just key things.

Mr. Condin responded that the reason it was designed that way is because the building opened in 1970, and it never had a separate wiring for emergencies so they sized it to power the whole building and provide a place where people could stay in their apartments with heat and light.

Comm. McGorty asked if this would be seamless then, if they went off the grid – and no one would ever know.

Mr. Condin responded yes, correct.

Comm. Parkins asked if it was powered with gas or oil.

Mr. Condin responded diesel.

Comm. Parkins asked if there any manufacturer specs on the decibel levels this thing generates from certain distances. She asked if he had that available.

Mr. Condin responded that he doesn't have those. He looked through the specs they had and it was not in there – but they can probably get those.

Comm. Parkins commented yes – if there's any kind of noise abatement inside of it then there has to be some kind of specs on it.

Mr. Condin responded that from the specs he read, there is an inch of sound insulation inside the whole cabinet but he doesn't know the decibel level is. He added that he'd be happy to get that for them.

Comm. Jones asked, aside from the noise, is there any way of dressing that up with a fence or something?

Mr. Schultz responded that Jim Swift is here to go over the landscaping plan.

Mr. Panico commented that the aesthetics is what they have been attacking so far, but it's the noise that they're worried about.

Mr. Swift indicated that as they can see from the photos, there is also a transformer with the generator. They propose to install arborvitae – 6 to 7 feet tall, right off the bat. It is a species that will create a permanent green wall higher than the generator is – after some years.

Comm. Jones asked how high it was. Mr. Swift responded that it was about 12 feet.

Comm. Sedlock asked where this was in relationship to the people that live in the area – right across the street?

Mr. Swift responded yes, across the street.

Comm. Sedlock asked if when they look out their windows they would look right at this.

Mr. Swift responded yes, they would.

Comm. Sedlock asked what was in between this thing and the homes.

Mr. Panico responded that it's just the condominium street.

Mr. Swift showed the site drawing and pointed out the location of the generator, the driveway, the street and the condominiums.

There were multiple discussions at the same time (inaudible) about the location, position and distance of the generator to the residences.

Comm. Jones asked how far the generator was from the nearest front door.

Mr. Swift responded that it was probably about (inaudible).

Chairman Pogoda commented Jim mentioned a height of 12 feet - and he is going to recommend that they go way higher than that because people across the street are going to be putting up with this thing for two or three years until it grows. He added that they are going to hold off on this anyway until they hear it...

Comm. McGorty added that they really need to hear how loud it is in order to determine the correct barrier for it.

Chairman Pogoda agreed, that they really need to hear the noise generated from it because, if it is really loud, they may need more noise abatement – like, perhaps, a wall put up there. He doesn't want to decide on this at all right now. He asked if the Commissioners had any more questions for the applicant or Jim Swift.

Comm. Parkins asked if they would be allowed to continue to use this and test it while this is being reviewed.

Chairman Pogoda responded that they aren't using or even testing it – it is just installed but they can't use it until the Commission decides. The Commission members will be advised when they are ready to test this. They can go up now to see it or wait for the noise test.

Mr. Panico commented that he thought that with the appropriate landscaping, it could be made aesthetically pleasing – not what it looks like today. The visual part can always be addressed.

Chairman Pogoda asked the neighbors from the Views if they wanted to speak.

**Geraldine DiLibro, the Views of Long Hill, 432 Asbury Ridge Road, Shelton, CT addressed the Commission.** Ms. DiLibro commented that she doesn't always go out that way because they've been doing so much construction there. There's also a huge dumpster there that she's not happy about too - but that was another story. She didn't even know that thing was there until a week ago yesterday and saw this big metal thing there. She didn't even know what it was – only that it was already there.

Ms. DiLibro indicated that she went to P&Z on Tuesday and they were surprised to hear about it. They said they would go right out to see it, which they did. She thought there would be a Stop Work Order but they continued to put their wires in.

Ms. DiLibro indicated that it was important to note that none of the people in her Association were given any kind of notice that this meeting was going to be held tonight to discuss this. Only the few people she was able to contact at the end were told about it. She didn't have much time. They didn't receive a letter from management or any notification from their from their Board and there was no notice posted outside that there would be a meeting about this tonight.

She submitted a letter with a some signatures that she was able to get from her neighbors. She explained that they were all very unhappy but, had other commitments and could not attend tonight. She read a her letter to the Commission:

To the attention of the Planning & Zoning Commission:

On Monday morning, August 3, 2009, she was surprised to see a large metal structure across the street from units 443- 451 the Views, Asbury Ridge, Shelton, CT.

I am submitting these photographs to the Commission.

We object to this large metal structure being so close and in view from our front yards.

(She explained that many residents sit out in front in chairs and have grandchildren that visit them.)

How would you like to sit on your front lawn and look at this? She added that even if they put trees there, they will take a while to grow – and everyone might be dead by the time they grow. Also, deer always come in the area and nibble along the bottom of the trees – she's seen it in the area. Those arborvitaes will be eaten except for the ball at the top that manages to survive.

This is across a narrow street – not a beautiful street like Long Hill Avenue. It is a very, little narrow little street in which only two cars can pass – and they can't pass if cars are parked on the side.

She added that she was truly sorry that she didn't have the distance measurements from the condominiums at the Views of Long Hill to this generator. She just wishes she could afford an attorney.

This metal structure could have been placed around the corner on the road leading into their community with the same privacy structures that they are planning for their community.

She explained that coming down the road from Long Hill Avenue, the front of Wesley Heights administrative building has vacant land that are presently housing the construction trailers and across the street from there is an empty lot. No one would have had to look at the generator if it were put there. There was another spot to put it. It's not like there wasn't anyplace else. There's a house there with a large lawn that faces Long Hill Avenue.

She'd be glad to meet with P&Z to show them the area mentioned. What consideration has been shown? Some of the residents thought it was a temporary placement of this metal structure – thinking it was to be moved elsewhere.

She hopes they give this matter careful and due consideration. Respectfully submitted, Geraldine DeLibro August 11, 2009.

She added that she hopes that anyone has a relative living there will excuse themselves from making any kind of a judgment on this. She would have gotten more signatures for them but there was no notification. She stated that these people did not have a permit when they put it there – she asked that the Commission please keep that in mind. She concluded by saying that people living there are older and they are tired of fighting for everything. She thanked the Commission.

Chairman Pogoda thanked Ms. DeLibro for her comments.

**Betty Wallace, President of the Board of Directors of the Views of Long Hill, Shelton, CT addressed the Commission.** Ms. Wallace stated that the lady that just spoke speaks entirely for herself. She does not speak for the Board or for the administration.

Ms. DeLibro commented that she speaks for the residents.

Ms. Wallace responded that she can't do that either. She added that they knew nothing about this at all – they had no idea she was coming – they knew nothing about it.

Ms. DeLibro responded that she doesn't have to know I'm coming -- it's a free country.

Chairman Pogoda indicated that there really shouldn't be any discussion except to the Chair.

Chairman Pogoda recommended to Mr. Condin that he have an informational meeting with the adjacent residents – through the Board of the condos or whatever, so that the residents are aware of what is happening and what will be happening. At least tell the people in the vicinity – the structure is already there – and let them know what is happening – it would behoove him to let the residents know what the plans are for this. Let them know that they will have use of the facility if the power goes out for a/c, heat or whatever, and that this Commission is presently working on any sound abatement and aesthetics.

Comm. Parkins asked if Staff or anyone had gone up there to see if there was, indeed a better place, and if this could have been placed in a better location to benefit more of the Wesley homes. She hates have this set a precedent that it is better to beg forgiveness than ask for permission. In this situation, if this can be moved... She does not want this to set a precedent of this reoccurring.

Chairman Pogoda agreed that she was absolutely right, and he and Staff did go up to take a look at this. He was unpleasantly surprised as to what greeted him, knowing that they had not approved anything. This thing went through the Building Department.

Comm. Parkins stated that she would have to ask if it can be moved.

Mr. Condin asked if he could speak to that –

Comm. Jones commented why – it's after the fact now – it's already been placed. It's tied our hands and the neighbor's hands – it's there now and there isn't anything that they can do.

Comm. Parkins responded that was the purpose of having a Planning & Zoning Commission.

Chairman Pogoda agreed – looking and recommending for locations to put it.

Comm. Jones noted that they would have been able to look at this site map prior to install, and it would have been their job to decide where to put it and it would have been on record.

Comm. Parkins added that they've dictated where dumpsters can go.

Chairman Pogoda agreed, that's correct.

Comm. Sedlock asked if they should just consider that this structure isn't even there, because it was put there improperly – even though it is there. He asked if they could go up and say it can't be there and if they want that generator to be there, then it has to go in another spot.

Comm. Parkins asked if this would not have prompted a public hearing.

Mr. Schultz responded that would have been this Commission's call.

Mr. Panico added that it's the Commission's call; normally the installation of an emergency generator does not prompt a public hearing. They've done it in other areas in conjunction with office buildings and things of that nature. It never resorted to a public hearing.

Comm. Parkins asked if they ever installed one in a residential area.

Comm. McGorty asked if the neighbors had ever been in such close proximity to one before.

Comm. Parkins said these are condominiums – people buy them, they don't rent them, they are purchased– these people are homeowners.

Comm. Jones agreed and added that this generator would not have been put there if this had come to the Commission prior to install.

Chairman Pogoda commented that a more suitable site probably would have been found, or discussed at least. Maybe other sites were not appropriate, he didn't know why it was put in that location, but they would have been able to at least discuss it with the applicant.

Mr. Condin indicated that he wanted to speak a little bit about the location issue. One of the primary factors driving it was the proximity of the generator to the secondary service from the transformer and generator into the building. They looked at sites that were farther away. It was very much driven by the cost of the secondary service into the building. He wanted them to be aware that it was a cost issue.

Comm. Jones responded that they all understand that but that was to his benefit – not to the Commission's benefit or the homeowner's benefit. Of course, he wants to put it in his best location, but they are delegated to help find a proper location for everyone.

Chairman Pogoda stated that the next step would be to wait and let this thing get charged up and see what happens.

Comm. Parkins commented that she thinks they should go look at it before any further work is done.

Comm. Jones agreed and stated that he'd like an overhead view map of this whole complex, because, as Ms. DeLibro mentioned, there was a vacant lot nearby.

Comm. Parkins added that even just a walk-through would give them a better idea. There has to be a site plan on file already – she added that she thinks this merits a site plan.

Mr. Schultz responded that this is a Planned Development District and they have a composite...

Chairman Pogoda added that if everyone wanted to go out there, it would be even more important to see the physical layout versus looking at a drawing that shows the location of the homes. Seeing it provides the best perspective. This thing is big – there is no doubt about it. He thinks that would be a good idea to look at different sites that may have possibly been proposed. Everything has to be taken into consideration – other possible locations, cost, and residents in the

area. He added that he would not want that in his neighborhood. He knows that if something like that was put next door to him, he would definitely be offended. Even if they could do something with screening, he would have wanted to right to be able to say something.

Comm. Harger asked how much more work needs to be done on this before it was operational and ready to be tested – what is the game plan.

Mr. Condin responded that the main work is inside of the building now – to finish the wiring of the switching. As far as the generator itself, it hasn't been fueled. The generator manufacturer has not been on site to do any of the final hook-up but most of the work is now about the internal wiring and switches.

Comm. Harger asked if they were talking about weeks, or couple day's worth of work.

Mr. Condin responded that about mid-September would be a realistic timeline.

Chairman Pogoda asked if the conduit from UI was already in place.

Mr. Condin responded yes, correct.

Comm. Jones commented that from this picture it looks like the wires are all bundled up there right now but he said that they only have internal wiring left.

Ms. Delibro commented that was just a picture taken the day she saw it and now the wires are gone.

Chairman Pogoda commented that this is still in discussion. Rick can contact everybody to find out when they are available – maybe during a lunch hour or something and everyone can meet up there and look around. They will take it from there. Mr. Condin says it will be ready to be fueled up by mid-September.

Comm. Parkins stated that she would like to request that the work not be done until they have a chance to review this.

Comm. Sedlock agreed with Comm. Parkins that it shouldn't be hooked up until they go up there. He didn't see the sense in having them do twice the work and hook it up before they've determine that it had to go. They should go up there before it is hooked up – it will save them the additional work.

Chairman Pogoda indicated that in listening to all the Commissioner's comments, he informed Mr. Condin that he should hold off doing anything additional in regard to connections. If for some reason, like the noise, this thing may have to be moved - then they will have to unhook everything at their own cost.

Mr. Condin asked if it would make sense for him to explore the idea of fueling it so that they could start it up, independent of hooking it up, because it is going to be one of the Commission's deciding factors.

Chairman Pogoda responded that yes, that is the number one thing. If that thing is really loud, it is going to be the determining factor.

Comm. Parkins commented that it could be illustrated in the specs from the manufacturer though. Why bother starting it up. If it's 65 decibels at 10 feet then they will know...

Chairman Pogoda asked Comm. Parkins if she knew what 65 decibels sounded like because he did not know.

Comm. Parkins responded yes, that 65 decibels is the level of a normal conversation.

Comm. Jones added that this conversation is going up to 85 decibels though...

Chairman Pogoda stated that he wasn't going to make his decision on what it says its decibel level is - he just wants to listen to it himself. He knows that Bob said he could get those specs, but he wants to hear this thing running himself. If it's minimal enough, than it will only need a barrier.

Comm. Parkins commented that there is still the aesthetics of it.

Comm. Sedlock asked if this thing could be fired up without hooking it up to the building.

Mr. Condin responded that it could be. He suggested if there was perhaps a similar generator of the same power, same model at another location somewhere in Shelton that they could listen to.

Mr. Panico responded that their manufacturer would probably have to tell them that.

Comm. McGorty stated that it really should be listened to right there though because it is about the site and how far it will reverberate from the nearest buildings...

Comm. Jones agreed that they need to consider the residents of Spoke Drive because it is in their backyard too.

Comm. Parkins agreed that it needed to be heard in that location.

Comm. McGorty commented that the actual site is important – for the aesthetics, the sound – everything. It should all be accommodated for in one visit.

Chairman Pogoda that if it they could fire it up within the next week or two then they would be there to listen and to look at alternative sites. Then they can discuss what can be done for the aesthetics and screening it. He asked if there were any more comments or questions.

Comm. Harger asked if Mr. Condin would be getting back to Rick about when this will happen.

Chairman Pogoda asked Mr. Condin to notify Rick when this could be done within the next week or two – the sooner the better. That way, if it does stay there, they don't have to be put on hold either and they could get this thing on line.

### **PUBLIC PORTION**

Chairman Pogoda asked if there was anyone from the public who wished to address the Commission regarding any item that is not on the agenda.

**Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission representing Ed Newman who is present here tonight.** Atty. Thomas stated that Ed Newman is the owner of the Splash Car Wash located at 376 Bridgeport Avenue at the intersection of Platt Road. Atty. Thomas asked that this matter be put on the agenda tonight, but it was not; so, he is speaking in this public portion.

Atty. Thomas recalled that he had spoke before this Commission, although he thinks that there is only one Commissioner here who sat when this got approved year ago. They've been through court twice, spent an enormous amount of money, simply to ask this Commission that his client be allowed to put an oil and lube facility, which is in most car washes today, for the customers of his car wash. It has now reached a point, that he is in danger of losing his Car Wash and losing his business because of this.

Atty Thomas wanted to clear something up for the Commissioners who weren't here when this was approved. Mr. Newman asked to put in a car wash and after three separate applications, and after being told to put more than a car wash – he applied to put a self storage, a bank and car wash – it was rejected; a car wash and office building – it was rejected; office and some retail – he was rejected; a car wash and a restaurant – the restaurant was rejected. There was never any discussion of an oil and lube. He clarified that it is untruthful to state that there was ever any discussion that this was only going to be a car wash. This car wash has retail inside it as most car washes do – to buy windshield wipers, cards, etc. But at this point the expenses of operating a car wash have gotten to the point where his business is in jeopardy. They have gone through the courts; and the courts, because this is a PDD – have deferred. He has sat before judges in pre-trial who have said to him that he probably wouldn't win, but asked what the problem was.

Atty Thomas explained that the reason that they said this is because when this car wash was built, the Building Official required that the end pieces be built to do oil and lube – that is, completely fireproof. In the area where this car wash is located, they have Professional Tire doing oil and lube, AT&T doing oil and lube, and two car dealerships – there is oil and lube taking place in this whole area. Adjacent to this car wash is a garbage/recycling center and a construction company. Across the street, where there used to be a gym, which burned down – it's an OPD, there is someone storing construction vehicles. They have been before this Commission before offering anything they want – a one year approval, anything, and his client has been rejected for an oil and lube that would have no additional employees and no additional traffic. He's been operating for some four years without one traffic problem.

Atty. Thomas continued that in addition, he went to the State to buy a little piece of property in the front, and the City with no engineering basis whatsoever said they wanted to buy it. The State came to him and said that there was a drainage easement in it. He told them that yes, P&Z Commission ordered them to put a detention pond where the drainage easement is. They told him to take it out and he told them no – go pound sand. Planning & Zoning made them put it in and now the City is buying it – and, he's said this to the Mayor and to the BOA - there's no reason at all. Even the City Engineer said that they don't need it for anything – they don't need it for drainage and they don't need it for the road. They bought it anyway. Atty. Thomas added that they don't take care of it – it gets rubbish in it, they don't clean it – they don't do anything with it.

Atty. Thomas stated that now this has gone beyond the applications. It is impacting his client's business. The building there is substantially greater and of better quality than anything needed for an ordinary car wash. If they weren't going to let him have an oil and lube - than they should have just let him build a little metal building with a couple of tunnels in it. And certainly not have the Building Official come in and say it has to have fire proofing in all these areas for the potential of an oil and lube.

Atty. Thomas noted that he has asked throughout this whole thing – over and over again for Counsel of this City to meet and discuss all the issues. There were some issues with his client regarding landscaping, and he took care of it.

The bottom area, which is now owned by the State is a mess, the City can't get it until he cooperates – and he is not cooperating.

Atty. Thomas stated that all he is asking this Board for is to sit down and consider it. Mr. Newman is up here to renegotiate with his bank because, as good as the car wash is doing, he can't generate enough income without the oil and lube business which would generate no additional traffic problems. There are oil and lubes all over the place in this area. This is next to an industrial area. For one year, large cranes have been parked and stored across the street, but his client keeps getting turned down. There was never a discussion about an oil and lube – the whole question after he was entirely approved was that they didn't want the restaurant and the car wash. So they took away the restaurant. There were good reasons for that discussion regarding access to the lower end of the site and intersections with Todd Road.

Atty. Thomas asked the Commission to consider it. He would like to have a discussion with Staff about this. His client would consent to a one year trial period. That is how confident he is that they wouldn't even realize it was there. He would like to at least have the courtesy of a serious discussion on this issue. Then he will bring it before the Board via a Certificate for Zoning Compliance requesting that it be permitted as a customary accessory use. He thanked the Commission for allowing him to speak in the public portion.

Comm. Jones asked when the last time was that an application was presented.

Atty. Thomas responded that it was about a 1 ½ years ago. Initially, he did an application first for a Customary Incidental Use and then he did a modification to the PDD agreeing to whatever standards and they had to appeal both of those – and they lost because it is a PDD. A PDD is a zone change and the courts deferred to this Commission on the PDD. That is part of the thing that they have to deal with -- but there's a car wash across town that does oil and lube.

Comm. Jones asked why it was denied the last time.

Mr. Schultz responded because the Commission's initial resolution said no subordinate or accessory activities – it's in the resolution.

Atty. Thomas stated that he keeps saying that and it was not.

Mr. Schultz responded that he's only saying what Staff told the Commission – he can dispute if he wants to...

Atty. Thomas indicated that the statement that is on file says "customary and incidental uses." Atty Thomas indicated that he drafted it, it was vetted, and it was recorded.

Chairman Pogoda responded that it was also rejected by the Courts – twice.

Comm. Parkins asked, because she uses this Car Wash, that there are three bays that were obviously approved for the building - what are they for?

Chairman Pogoda responded that they were for detailing. The applicant has a right to submit an application and anyone that wants to can look at the record that reflects the denial both times - it can be made available.

Comm. Parkins commented that she would like to see those records.

Chairman Pogoda asked three more times if there was anyone else in the audience who had comments or questions for the Commission. Since there was no response, he asked for a motion to close the public portion.

**On a motion made by Thomas McGorty seconded by Ruth Parkins, it was unanimously voted to close the Public Portion of the meeting.**

### **Other Business**

### **APPROVAL OF THE MINUTES – 5/27/09, 6/9/09 AND 6/23/09 – TABLED**

### **242-245 LONG HILL CROSS ROAD: REQUEST FOR 90 DAY EXTENSION TO FILE RECORD MAP**

Mr. Schultz indicated that this was the Salemmes – the two lot. Obviously, the industrial building didn't come to fruition so the applicant has two 90-day extensions that they request to delay the recordings. Obviously, there are tax implications. Staff recommends approval.

**End of Tape 1B, 8:40 p.m.**

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept the request for a 90 day extension to file a record map for 242-245 Long Hill Cross Road.**

### **8-24 REFERRAL: LICENSE AGREEMENT BETWEEN THE CITY AND MAYBECK FOR PROPERTY AT 279 SOUNDVIEW AVENUE**

Mr. Schultz distributed packets that he prepared for all the Commissioners regarding this referral. He indicated that, as the Commission is aware, the City of Shelton purchased the property identified as 279 Soundview Avenue. There is a license agreement between the City and Maybeck to continue farming on the property. Obviously, this is something that the Commission has always encouraged. They've done it on the Toll Farm, the Clapick Farm and other areas of the community. He read a letter from the City Engineer indicating that he had no issues with farming activities.

**\*See attached letter from Robert Kulacz dated August 4, 2009.**

Comm. Jones asked what the length of the license agreement was – the period of time.

Mr. Schultz responded that he did not have that information.

Comm. Jones asked Rick if it was correct that the BOA approved this 8-24 Referral already.

Mr. Schultz responded that it was subject to.

Comm. Jones stated no – he's got corn growing on this property already - this is way after the fact.

Mr. Schultz responded that it is still subject to and the Commission has to fulfill this statutory requirement.

Comm. Jones asked if he would cut all the corn down then – he's harvesting – what good is this referral and why is it even on their agenda.

Mr. Schultz responded that it is part of the due process.

Comm. Parkins commented that the BOA can override them anyway but it's a state statute.

Mr. Schultz responded that this was tabled from the last meeting because it ran so late.

Chairman Pogoda asked for a motion to report favorably.

Comm. McGorty made a motion to report favorably on the license agreement.

Comm. Parkins asked if they were voting on the agreement.

Comm. Jones added that they don't even know what the agreement is.

Chairman Pogoda asked that it be seconded for discussion.

Comm. Harger seconded for discussion.

Mr. Panico commented that they are reporting favorably for the long range planning and (inaudible due to multiple discussions).

Comm. McGorty asked what the term of this was – is this something that will be done annually.

Mr. Schultz responded that he thought that may be the case – but he will get that information.

Mr. Panico commented that it probably is an annual license agreement.

Comm. Parkins stated that she didn't feel comfortable voting on something that they didn't have any information on. She is fine with the concept but if it's a 30 year lease...

Mr. Schultz responded that it can't be – it can't be that long. He asked if anyone had been at the BOA meeting regarding the agreement. Comm. Jones attended but didn't know if it was an annual agreement.

Comm. Jones asked if he get to harvest this land every year.

Mr. Schultz responded yes - until he's told not too.

Comm. McGorty agreed he can do it for as long as the agreement says -it would be good to know what the agreement is though.

Comm. Jones commented that regardless, it is already planted – why are they even voting. It's the same thing as the Building Dept letting them put that generator there.

Comm. Parkins disagreed and indicated that they have the final say on the generator. The BOA has the final say on 8-24 Referrals.

Mr. Panico added that a negative 8-24 Referral here would require a stronger vote on their part.

Chairman Pogoda commented that if the Commission isn't comfortable voting on it than they'll hold off for more information or if the term is an issue – they'll hold off.

Comm. Parkins stated that she isn't opposed to the concept but would like more information about it.

**On a motion made by Ruth Parkins seconded by Chris Jones, it was unanimously voted to table the 8-24 Referral regarding the license agreement between the City and Maybeck for the 279 Soundview Avenue property until more information is received.**

**8-24 REFERRAL: DISPOSTION OF PORTION OF CITY OPEN SPACE PROPERTY LOCATED AT 279 SOUNDVIEW AVENUE**

Chairman Pogoda indicated that this is the house located on the property just discussed.

Mr. Schultz directed everyone to a page in the handout that shows a drawing of the proposed lot and how it is split. It is 240 feet along the frontage of Soundview Avenue and about 167 feet deep; it follows a stone wall to the west.

He stated that he was going to reference recommendations on this one. The Conservation Commission, in their second letter to the BOA dated 6/24/09 is opposed to the sale of the dwelling and one acre of associated land. They are also of the opinion that the entire property can be farmed. There are State programs to encourage that and furthermore, there can be lease arrangements to do all of that. The Maybeck is just a part, there is still other acreage but the Conservation Commission is looking into a State program for a wannabe farmer to use this land.

**\*See attached letter from the Conservation Commission dated 6/24/09.**

Comm. Jones asked if it would be a community garden type thing.

Mr. Schultz responded yes, and also Parks and Rec are in agreement not to sell the property. So there are two advisory boards against selling the property.

Comm. Parkins asked why the Parks & Recreation Commission was opposed to selling it.

Mr. Schultz responded because they are envisioning ball fields adjacent to it and the property is too valuable.

Chairman Pogoda commented that it could become an agricultural or educational (inaudible).

Comm. Parkins indicated that she was torn on this one. Her concern is the cost that the City would have to incur to keep this building up until it is determined what will be done with it.

Mr. Panico responded that it really should not be her concern. It's not a planning aspect – it is something that the City has to deal with. They took that piece of open space and they knew they would have to deal with it. Now, they have to determine if they want to leave that building there and devote it to some other municipal use, sell it, demolish it – there are a lot of ways of addressing those issues. From a long range planning point of view they have a 13 acre parcel of open space.

Comm. Parkins asked if the BOA was in favor of selling it.

Comm. Jones commented that the BOA is in favor of exploring the options and they can override this decision anyway whether they report favorably or unfavorably.

**On a motion made by Chris Jones seconded by Joe Sedlock, it was unanimously voted to report unfavorably on the disposition of a portion of City Open Space property located at 279 Soundview Avenue.**

**8-24 REFERRAL: REQUEST TO PURCHASE THE ABANDONED PORTION OF MIDDLE AVENUE**

Mr. Schultz stated that he was going to read some recommendations to the Commission again– copies of this correspondence is included in the packet handed out. In a letter dated April 8<sup>th</sup> the Conservation Commission recommends the sale of the abandoned portion of Middle Avenue right of way. The Parks and Rec Commission shows no interest in the property. Mr. Schultz also read a negative report from the City Engineer regarding the purchase of this city property.

**\*See attached letter dated 4/8/09 from the Conservation Commission.**

**\*See attached report from Robert Kulacz dated 7/14/09.**

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

He provided a copy of a 2001 City Engineer's Report and an P&Z's 2001 8-24 Referral in which they recommended the abandonment of the road at that point.

Mr. Panico commented that there is a difference between abandonment and disposition of property.

Atty. Thomas responded that there is a difference in the minds of the BOA and Assistant Corporation Counsel because they argue it, but there isn't in the mind of the law. Atty. Thomas indicated that this was given to the town for a road – the roads were deeded. The law is pretty clear that when a road is ceased to be used as a road, it reverts to the adjacent property owner and he represents the major adjacent property owner. There is no issue concerning the development of his client, JNTR Properties into two lots. They already received approval. They have no intention of purchasing this property but they ask that it be given to them because it is adjacent property.

Atty. Thomas showed the Commission the approval from the ZBA that they have. The zone line, as seen on the map, divides this property. The front is in R-4 2-Family. They tried to talk to the City and they have no intention of doing anything at all with Middle Avenue. They informed the City that they had no intention of buying this. He didn't know if this Planning Commission was ever consulted on this ordinance that they have to sell property. He added that if he were Corporation Counsel, he'd be concerned with the sale of City property, the way the City has it set up. Not this piece because it is under \$10,000 – no value at all, but it benefits the City's planning because they have obtained all those variances.

Atty. Thomas continued that, if in fact the City gives them the 25 foot strip bordering their property, and that is all they are concerned about, then all they will need is one variance. The rear lot becomes the conforming lot for the construction of a one family home. There is not going to be any additional homes or anything like that.

Mr. Panico commented – yes, if they gave him the entire right of way.

Atty. Thomas responded that they have to because they about the whole thing.

Mr. Panico asked about the abutter on the other side.

Atty. Thomas responded no, it's half – 25 feet.

Mr. Panico indicated that for a conforming interior lot they need 30 feet.

Atty. Thomas responded that they have 30 feet. They have a variance for 20 feet but with the 25 they are able to create an access way of 30 feet making the rear lot totally conforming and then use, as they believe this Commission would want, a common driveway.

Mr. Panico asked if he would take 10 feet off of the existing parcel that was there.

Atty. Thomas showed the site drawing to explain the location of the lots and the variances obtained.

As far as the purchase issue, it could be conveyed because his client isn't going to spend money on something that he would never use – it's a cliff. He wanted them to understand that in 2001, this Commission voted on the abandonment and in 2001, the City Engineer said that the owners of Lots 33, 50 and 51 (he showed them the lots on the site drawing) shall not be opposed to the abandonment and the City should retain an easement for public utilities and discharge of water. In other words, in 2001, the City Engineer was assuming that it would go to the two owners on either side.

Atty. Thomas asked that the Commission could report favorably because it's making the lots more conforming. They already have the variances and they have told ZBA that, if they get this, they will return to ZBA to remove their variances and make these lots more conforming.

Chairman Pogoda stated that to simplify it, they have the right on this lot to build this home. But if they abandon this portion or allow the sale of it - it opens it up to two marginal lots that potentially have wetlands on them.

Mr. Panico explained that there are two 50 foot lots back there on the left hand side of the right of way that are landlocked at the present time.

Atty. Thomas responded that they are not landlocked – under 13-8-55 of the Connecticut General Statutes, in 2001 when they discontinued that portion of Middle Avenue, they have a statutory right of way to the nearest public street.

Mr. Panico commented that they if they don't own it in fee they can't build on it (inaudible)

Atty. Thomas responded that is what the City of Shelton thinks is the regulation but the regulation is confiscatory, so he's sure that Mr. Salemme - who even may hire him and would be glad to say "give me a building permit." The Commission says "no" and then the City of Shelton says "fine just buy these two lots." Under Connecticut State Statutes, once a road is discontinued, they have a right of way.

There were multiple discussions about this but they were inaudible.

Chairman Pogoda asked for a motion, he indicated that the City Engineer is recommending unfavorable.

Comm. Harger asked about how extensive the watercourse was.

Mr. Schultz responded that it is small in size, but they have a lot of wetlands soils there. He added that this is a marginal area for development.

Comm. Parkins asked if they still had to get Wetlands approval.

Mr. Schultz responded yes, absolutely.

Atty. Thomas asked if they were still discussing their property. Mr. Schultz responded no, yours is not the issue – it's a non-issue.

Mr. Panico commented that there are two 50 foot lots about 5000 square feet each; and he hasn't walked the lots, but apparently Lots 50 and 51 are encumbered by wetlands. So from a practical point of view, the odds of them being able to develop it is going to be the same whether this is abandoned or not.

Comm. Parkins asked for clarification that this was already abandoned.

Mr. Schultz responded yes, it is just raw land. It doesn't have paper road status.

Mr. Panico added that it was abandoned in 2001 and the P&Z Commission supported the abandonment of it.

**On a motion made by Chris Jones seconded by Virginia Harger, it was unanimously voted to report favorably on the request to purchase the abandoned portion of Middle Avenue.**

#### **8-24 REFERRAL: DISPOSITION OF CITY PROPERTY LOCATED AT 58 PERRY HILL ROAD**

Mr. Schultz indicated that he would reference several recommendations. He read a letter from the Conservation Commission, dated May 14, 2009 recommending that the City not sell the property at 58 Perry Hill Road where a house is currently located.

He read a recommendation from the Parks & Rec Commission recommends that it not be sold and they have a map showing the 1.3 acres.

He read the City Engineer's Report dated 8/6/09 recommending that it not be sold.

**\*See attached letter from the Conservation Commission dated 5/14/09.**

**\*See attached correspondence from Robert Kulacz, City Engineer dated 8/6/09.**

**On a motion made by Chris Jones seconded by Joe Sedlock, it was unanimously voted to report unfavorably on the disposition of City property located at 58 Perry Hill Road.**

#### **8-24 REFERRAL: REQUEST FOR WATER MAIN EXTENSION FOR TREELAND ROAD, BROWNSON DRIVE AND MARK DRIVE**

Mr. Schultz indicated that this one is pretty straightforward and he read the City Engineer's Report endorsing the proposal to extend public work.

**\*See attached correspondence from Robert Kulacz, City Engineer dated 8/11/09.**

Mr. Schultz stated that this is a neighborhood area – a pocket without public water. New residents have moved in and they are of the opinion to extend public water.

Chairman Pogoda asked who requests the public water.

Mr. Schultz responded that the public initiates it – if there is enough interest it gets to the Street Committee level then they have the final vote.

Chairman Pogoda commented that this is beneficial to all of them and they've been trying to do this all over town, if possible.

**On a motion made by Virginia Harger seconded by Chris Jones, it was unanimously voted to report favorably for the request for water main extension to Treeland Road, Brownson Drive and Mark Drive.**

**8-24 REFERRAL: PROPOSED ABANDONMENT/DISCONTINUANCE OF A PORTION OF ACCESS ROAD**

Mr. Schultz indicated that the Conservation Commission, in a letter dated May 14<sup>th</sup> – indicates that they see no value in that portion of Access Road. Parks & Rec had no interest in it. He noted that all the Commissioners were aware of the issues because they had a public hearing on this. He read the City Engineer's Report.

**\*See attached letter from the Conservation Commission dated 5/14/09.**

**\*See attached report dated 8/11/09 from Robert Kulacz, City Engineer.**

Mr. Schultz reminded the Commissioners of the comments brought up by the other businesses at the public hearing – Viking Tool, Blanchette's – as to what the design solution was going to be. These are the issues that they need to discuss.

Mr. Panico added that is very important because they can't take that road away from the abutting automobile dealership without a guarantee that they are going to have access directly to Bridgeport Avenue and not having to rely just on Nells Rock Road. He added that he thinks it is important to have that there in place to provide reasonable access to the future development of that property regardless of what that development might be.

Chairman Pogoda commented that he was going to question that before the public hearing got withdrawn; the fact that the people on the other side would have only one way out to get to Bridgeport Avenue. There was no access provided for them in the middle. Chairman Pogoda added that they didn't know whether or not the State was going to continue to utilize that portion that is open right now or determine if it was going to be moved. They are still waiting for something from the State or Corporation Counsel as to how the City is going to handle this. It really has nothing to do with them but at the time that they denied this without prejudice because they were waiting for Corporation Counsel.

Comm. Jones commented that they still have no answer.

Mr. Panico indicated that the in City Engineer's report – the 4<sup>th</sup> point is the most important thing. He wasn't sure why the City Engineer in the 3<sup>rd</sup> point felt obligated to mention the compensation involved because that is between the BOA and whoever else is out there.

Atty. Thomas commented that they do have an answer from the State and he'd like to them understand it so that they don't have to waste their time discussing this. He continued to say that the State is not going to render a legal opinion. The State has a reverter and the State is valuing the property for the purpose of determining if the city wants to purchase it.

Chairman Pogoda responded that he would like to hear that from Corporation Counsel.

Atty. Thomas indicated that he and Corporation Counsel have spoken to Christine LaBella. The problem is that she got it confused and it was undervalued. The entire Access Road and conduit is the transaction that they are referring to in 1948. The City was deeded it. The State condemned both of them and they were given to the City so Ray Sous made it clear to her that they weren't interested in purchasing the rest of it – Todd Road...

Mr. Panico stated that the purchasing part is something between the Applicant and the City, however, that needs to be worked out as well as whatever the dollars are.

Atty. Thomas responded that the State thing relates solely to dollars. This is a discontinuance request – that's all this is.

Mr. Schultz indicated that there are too many unknowns here...(inaudible)

Atty Thomas responded that he objected to Rick because there aren't too many unknowns. They have sent them...(inaudible)

Mr. Schultz stated that he knows the businesses in that area and to say that these commissioners are ready to understand what the design solution is wrong. He added that he gets the calls...

Atty. Thomas indicated that he wanted to show the Commission what they approved a few years ago.

Mr. Panico responded that all this Commission approved a couple years ago was to terminate the intersection... (inaudible)

Atty. Thomas responded that they went to the State – he told them exactly what happened. He told them that the engineer that was hired by the City Engineering Department was told to stop working on this proposal because the developer is going to take care of the problem. The State of Connecticut said this proposal to terminate and to continue to use a break and non-access line.

Atty. Thomas indicated that the non-access line is that point – there has never been an issue. That cut is a non-access line. Jim Swift contacted the State of Connecticut directly – the new director of District 3 - who said they would do that.

He continued to say that what they looked at in 2007 was a temporary thing until that property comes all the way out. The discontinuance – all the developer wants to know is - if they are going to discontinue the road. If not, fine. They will come in with a proposal that either crosses it or puts the main entrance on Nells Rock Road. He suggested that they read the stupid ordinance that the City has to sell City property because they've created a situation where non-zone able property can be sold for spike strips. But in this case, the City is not going to be involved in the sale of this.

Mr. Panico responded that this Commission's primary concern is that if they terminate or agree to a disposition to a portion of that right of way to a point, more likely the southerly property line on the old Crabtree site. How are they going to connect the remaining Access Road to Bridgeport Avenue?

Atty. Thomas stated that they already have a connection coming out from Wal-Mart.

Chairman Pogoda responded that this Commission finds that connection unacceptable.

Atty. Thomas asked if their position would then be that they don't want to abandon Access Road.

Mr. Schultz commented that they just want a design solution.

Mr. Panico added that they are willing to entertain the abandonment and disposition of that portion of Access Road that affronts on the property in question provided there is a reasonable connection of the balance of Access Road to Bridgeport Avenue.

Atty. Thomas responded that they trying to present that but their applicant was told to withdraw it without prejudice.

Mr. Panico stated that the second part of that is, if that is effectuated, he does not have access to Bridgeport Avenue from his client's property because it is cut off by the non-access line.

Atty. Thomas responded that he will deal with the State – he has no problem dealing with the State.

Mr. Panico commented that if they abandon that road and dispose of it than they have limited the access to that property solely to Nells Rock Road - and that is not desirable.

Atty. Thomas responded that they are creating a chicken and egg situation. The only way they are going to get access to Bridgeport Avenue on that basis is to say to them "go ahead and show us what your development is so that you could get the traffic out." But they made him withdraw the application.

Atty. Thomas stressed that the bottom line is – do they want to keep the road system the way it is? This solution – in 2007, the State is not going to accept it. They've talked to them. They've accepted it. He asked them if they wanted to discontinue the road in front? If they do want to discontinue it than they will come in with a development that goes out onto Nells Rock Road – that comes out into the intersection. They have no other alternative.

Mr. Panico responded that what he is hearing from this Commission is that they would like to get rid of that piece of Access Road providing the new normal terminus of it is connected to Bridgeport Avenue.

Comm. Parkins commented that she was sorry – but she didn't recall that conversation.

Mr. Panico responded that they had that conversation, in part, when they were reviewing the proposal and at Staff level they have had some discussions about it. He asked to be corrected if he was wrong, but if she feels a dead end termination to Access Road is appropriate than so be it. However, Staff was laboring under the presumption that a dead end condition for the remainder of Access Road at the northerly end of Access Road was unacceptable.

Comm. Parkins commented that she understands what they are saying, but she doesn't recall that there was a consensus on it.

Chairman Pogoda responded that it may not have been a consensus, but it was a discussion point because how would those people going to get out.

Comm. Parkins responded that they would get out the same way they got in.

Chairman Pogoda responded that it would be unacceptable because how are all those trucks going to make a left turn without a signal light.

Atty. Thomas commented that all the Wal-Mart trucks do.

Chairman Pogoda disagreed and said they aren't coming out of that road. That is not proper planning. He told Atty. Thomas that it was not a design solution that they were comfortable with. At the hearing, there were comments from people with businesses back there who were concerned about that.

Atty. Thomas commented that Viking Tool is concerned. What they have said is that if it wasn't for PLR Industries, who just got approval for an expansion for their business from this Commission – PLR Industries got the property from PTM who got it from Shaungay who, at the time, in the mid 1990's was having a tremendous argument with Crabtree Haas, as it was known then. So he created an absolutely stupid deed to create a spike strip. A few years later, money talked and Crabtree Haas bought the other piece and developed the two pieces. Atty Thomas said that in the 1990's he's quite surprised that a subdivision was permitted with two spike strips going up it.

Atty. Thomas continued that now he is trying to win the lottery without buying a ticket – they are negotiating with him. They have said, if he would get all the people to the left, then they will create an interconnection with their project them to allow them to come out at the light.

Mr. Panico commented that the interconnection he just mentioned was on the original concept plans that were provided - but when they got the final plans that were submitted -that was no longer included.

#### **End of Tape 2A 9:27 p.m.**

Atty. Thomas responded that was because of PLR and they were going to work through that. They also had the option of creating a terminus – and they talked to the DOT about it – a right hand/right out terminus adjacent to their property.

Atty. Thomas indicated that they aren't going to get any answers if they don't let them develop this. It's a conundrum – a chicken and egg situation. If they want any answers than they have to be allowed to develop it. At this point, his client is a little bit ticked to have spent the money he spent and then be told to withdraw it without prejudice. So now with this 8-24 Referral to abandon the road, this Commission is saying that some people objected, they can't get out the other end – so, no - you want to keep the road – fine - then they'll come in with another proposal.

Mr. Panico commented that if they take another devil's case scenario here – what if this Commission supports the abandonment and it does get abandoned and conveyed out but he is unsuccessful with negotiating with the State of Connecticut to break that access line. Now, they will have lost all their other situations and they want to re-open a car dealership – which they have every right to do. The only problem is that now the only way to get into that dealership is at the end of Access Road or around the corner off of Nells Rock Road. Then you have created a box.

Atty. Thomas responded that normally he would respond by saying yes, anything is possible. However, he stated that he has a tendency to do his homework and he's been talking to the State since Joe Crabtree owned it. And the fact of the matter is that every time they talk to the State, they ask him if he is going to take the entire side and bring it out to Bridgeport Avenue. He tells them "no" and explains about the slope there near Viking Tool. The State wants – the DOT wants - that entire area brought out. There is not an issue. The State has never raised an issue that they won't do it. Not the STC – nobody has. Yes, they are taking a risk, but the risk is so miniscule that it is not even considerable. They want this done. They would like every single driveway on the entire side of that road to come out to Bridgeport Avenue.

Atty. Thomas stated that when they did Wal-Mart, this Commission and the Traffic Authority, wanted a light at the truck entrance and the State said "no." The State came back to Wal-Mart and asked them if they would get rid of Access Road and Wal-Mart said "no." The result was Wal-Mart paying for the upgrade of the light and the dead end. That was the beginning of it – 14 years ago it was discussed.

Atty. Thomas reiterated that all he is saying is that they need some direction but if they want a plan as to how to do it – it has to be them.

Mr. Panico responded that if he were to be the Applicant for this abandonment then it would behoove him to submit a proposal for an appropriate connection for the terminated end of Access Road until such time as an alternative plan is agreed upon for the future development of the property. Then there is something to fall back on.

Comm. Jones commented that, with all due respect, it seems as though Atty. Thomas is doing all the talking with the State. He asked where Corporation Counsel was in getting a response from the State and the DOT.

Chairman Pogoda responded that he did not know. Dominick can talk and get agreements from the State but until he gets something from Corporation Counsel – he's uncomfortable until he gets that.

Atty. Thomas commented that this 8-24 referral is not for the sale of this property. It is an 8-24 for a discontinuance – it has nothing to do with the State.

Chairman Pogoda responded that he understands that and he also has a recommendation from the City Engineer to report unfavorably on this 8-24 referral at this time.

Atty. Thomas responded that in other words – not to abandon Access Road. He responded OK then, the developer will operate appropriately and come back with another proposal. The bottom line is that the discussion with the State is the purchase issue not the discontinuance issue. The discontinuance issue is a planning issue. If this is a make or break than they have a property owner who is stopping them. That property owner is Paul Pazzino because he owns the strip of land that they can't cross unless they litigate. He doesn't know if his client is willing to litigate. But if they want an alternative at the north end – they aren't going to get it at this point - until he changes his mind.

Atty. Thomas concluded that this being the case, they can say keep Access Road the way it is until you do it and then they'll come in with a proposal to do it otherwise.

Chairman Pogoda asked for a motion on this 8-24 Referral.

Comm. Parkins indicated that she wanted to make a motion to report favorably on 8-24 Referral for the abandonment of a portion of Access Road. Comm. Harger seconded the motion.

Chairman Pogoda indicated that Tony had some comments for discussion.

Mr. Panico commented that he didn't like the Commission to take an action without being sure that their thoughts are down in the minutes so that they cannot be misconstrued down the road. He thinks that it is important to recognize if they had previously reported favorably on closing the connection of Access Road to Nells Rock Road. He believes that there is still no question that is the Commission's position. He thinks the Commission would indicate that they are supportive of the elimination of Access Road and its right of way that separates Parcel #26 (the Crabtree Haas property) from Bridgeport Avenue provided that said parcel to #26 has appropriate and legal access to Bridgeport Avenue adequate to serve reasonable future use of the property without having to rely on Nells Rock Road.

Mr. Panico stated that it is also important to provide an appropriate connection to Bridgeport Avenue at the point where Access Road abandonment would terminate. The City Engineer's comments are not unreasonable - his concerns were relative to utilities easement and surface use of those easements as well as placement of the construction cost burden on whomever the right of way is conveyed to.

He suggested that the Commission needs to be provided with additional clarification regarding those points, the design solutions, a time table, if possible, evidence of CT DOT approvals, etc. prior to rendering a final opinion on the 8-24 Referral before them. In view of that preceding discussion it was moved to table the action, move to report unfavorably or report favorably. Those are the significant points that the Commissioners are debating. They aren't necessarily of one mind on it but those are the points of debate.

Comm. Harger asked for clarification on the site map as to where the road closure would be.

Mr. Panico showed the point where they can put a barrier across Access Road if the abandonment takes place and where all of the properties in the back could get in and out.

Comm. Harger asked if there was any reason why this is going to impede traffic - like with large tractor trailers. Mr. Panico responded that he didn't know the answer to that. There was further discussion (multiple discussions- inaudible) about the property owners in the back and the traffic flow (inaudible)

Mr. Panico commented that he was hopeful that the Commission would express support for the abandonment and part of what the applicants are looking for. They have certain ideas with the details associated with doing it but the applicants just need them to express that they do want to do it.

Chairman Pogoda commented that they do want to do it but the bottleneck is what concerns him.

Atty. Thomas clarified that the State's position is that this is a temporary strip. They don't want anyone coming out there because it is dangerous. They want the property to come out on Bridgeport Avenue.

Chairman Pogoda asked each of the Commissioners if they had any further concerns or comments before asking for a vote.

**On a motion made by Ruth Parkins seconded by Virginia Harger, it was unanimously voted to report favorably on the proposed abandonment/discontinuance of a portion of Access Road.**

#### **PAYMENT OF BILLS**

**On a motion made by Thomas McGorty seconded by Joe Sedlock, it was unanimously voted to pay bills, if funds are available.**

#### **STAFF REPORT**

Mr. Schultz read the Staff Report dated 8/11/09.

**\*See attached P&Z Department Report dated August 11, 2009.**

Chairman Pogoda indicated that the next regular P&Z Meeting would be held on September 8<sup>th</sup>.

#### **ADJOURNMENT**

**On a motion made by Patrick Lopera seconded by Virginia Harger, it was unanimously voted to adjourn at 9:50 p.m.**

Respectfully submitted,

*Karin Tuke*

Recording Secretary, Planning & Zoning Commission