

Mr. Lesczak responded no, it was not.

Comm. Flanagan asked when it had last been occupied.

Mr. Lesczak responded that it had been occupied approx. three or four months ago. There had been a lady there with a number of cats but there has not been anyone there since.

Comm. Harger asked about the access to the second apartment.

Mr. Lesczak responded that the access to the second apartment would be via a front stair or a rear deck that he has proposed.

Comm. Harger asked if in the front of the building on the porch, the front door would open to the first floor.

Mr. Lesczak responded yes, from the exterior the only change will be a rear deck that is added to the building. In the front, with the exception of residing, there will be windows and the new front porch. It can be entered into a small vestibule with grated doors that would access the first floor apartment. An enclosed stairwell that goes up to the second floor that would access the second floor apartment.

Comm. Harger asked if that meant they could then access the first and second floor from the front door.

Mr. Lesczak responded yes, walk through the front door, straight to the first floor apartment or walk upstairs to the second floor apartment.

Comm. Harger asked if the second floor exit would be off the upstairs to the porch deck.

Mr. Lesczak responded yes, the exit would be the front stair or the rear outside porch deck door.

Comm. Harger asked about the condition of the basement and what it looks like right now.

Mr. Lesczak responded that for an older home, it does have high ceilings, a board floor. It is a sealed stone foundation that someone has patched up pretty nicely.

Comm. Harger asked if there was access to the basement from within the house.

Mr. Lesczak responded that yes, there is access from the first floor apartment only and there is a bilco door out the back.

Comm. Harger asked if right now there was no garage – but is there a concrete slab.

Mr. Lesczak responded yes, that's correct. There used to be a garage there but the Town had torn it down because of issues with the previous owner. Right now it is just a concrete parking spot.

Comm. Harger asked if the rest of the area was grassy.

Mr. Lesczak responded yes, all grass. The stone there is a retaining wall.

Mr. Schultz asked Mr. Lesczak to explain to the Commission how he would be going to deal with refuse – would he be having individual containers or a dumpster in the back.

Mr. Lesczak responded that he would have a dumpster up the driveway. When he purchased the property four or five months ago in the summertime, he put up a 20 yard dumpster just to clean up the yard that was in pretty bad shape. Unfortunately, he did not have any pictures of that.

Chair Parkins asked if the dumpster was just there for the renovation or if he would continue to keep the dumpster there for the residents.

Mr. Lesczak responded no, the dumpster has just been there for the clean-up of the surrounding yard.

Chair Parkins asked if, once the clean up is finished, the dumpster will be removed and he'll just use trash can receptacles.

Mr. Lesczak responded yes, trash cans with curb-side pick up.

Comm. Sedlock asked if all the neighbors were OK with this.

Mr. Schultz responded (inaudible)...

Chair Parkins asked if there was anyone in the audience who wanted to speak in favor of or against this project.

Mr. Jim Oram, 181 Division Avenue, Shelton addressed the

Commission. Mr. Oram stated that he resides at 181 Division Avenue with his wife, Patricia. They live about 200 feet down the hill and across Division Avenue from the house in question. Mr. Oram indicated that he prepared a letter to submit for the record.

Mr. Oram read his letter "Honorable Commissioners, we respectfully request that you approve the referenced application for a special exemption that will allow the conversion of the existing structure at 3 Orchard Street to a two family dwelling. The existing structure is vacant, seriously deteriorated. Private investment that could correct the situation should be welcomed. We request that you grant the approval with the following stipulations. The exterior of the house must be renovated, exterior staircases similar to those in the attached photos should be avoided."

Mr. Oram added that he had some photos of some of the staircases in the neighborhood that he is thinking of. He requested that it would be better to have interior stairs. They don't want to see some of the things that they've seen in the neighborhood.

"A backyard fence must be added to separate cars from children playing in neighboring yards." Mr. Oram explained that the slab seen in some of the photos is where the old barn used to be, and the barn used to provide a natural fence between the adjoining yards and this property. Without the barn there, there are literally kids playing on the swings about five feet from where the cars would be going in and out. So, they would hope that the fence would be included to separate that.

Mr. Oram submitted his letter and the photos for the record and for the Commission to review.

Comm. Harger asked Mr. Oram about the distance of the concrete slab from the other properties.

Mr. Oram responded that it is practically right in the backyard. There are cars coming in and out, so he thinks a stockade fence - so that the headlights could be seen in the back windows of the houses next door. If the kids are playing out there, they are very close to the moving cars.

Chair Parkins asked if there was a drop there from the location of the driveway to the backyard.

Mr. Oram showed the location of a drop by one house and the point at which it levels out.

Chair Parkins asked if there was anyone else from the audience wishing to speak for or against this application.

John Todice, 130 Wakelee Avenue Extension, Shelton, CT addressed the Commission. Mr. Todice indicated that he was in favor of this gentlemen's application for the renovation to this home.

Chair Parkins asked if there were any other comments from the audience. There were no further comments. She asked Mr. Lesczak to address Mr. Oram's comments about the exterior staircase and the fence.

Mr. Lesczak responded that his initial thoughts for the exterior staircase were that it would be off the back. Roughly, the measurements he took were for a 6x6 pressure treated deck with a white hand rail and stairs off the back. That had been his initial thought. As far as the fencing, whether it is natural landscaping or some kind of picket fence, he has no problem with that.

Chair Parkins commented that there is really just one staircase that is there – correct.

Mr. Lesczak responded yes, correct and he thinks that he submitted a drawing of what his elevations might look like – what his proposal is.

Chair Parkins asked if he was proposing to put any kind of overhead enclosure or anything like that.

Mr. Lesczak responded no, he wasn't going to. Again, that is a rough drawing, but that was his initial thought to satisfy the fire codes.

Comm. Pogoda asked how he felt about the type of fence that Mr. Oram proposed.

Mr. Lesczak responded that he would be more than happy to meet with him regarding the selection of the fence. His only concern had been that he didn't want to put in a stockade type of fence because it might create a boxed in alley effect.

With no further comments, Chair Parkins asked for a motion to close the public hearing.

On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously voted to close the public hearing for Application #09-37.

APPLICATION 09-38, MARK IV CONSTRUCTION, INC. FOR TEMPORARY SPECIAL EXCEPTION/SITE PLAN APPROVAL (FILLING AND GRADING), 11 LADY SLIPPER DRIVE (MAP 24, LOT 42), R-1 DISTRICT

Comm. Harger read the call of the hearing and correspondence dated January 26, 2010 to Richard Schultz from Robert Kulacz, City Engineer.

***See attached correspondence dated 1/26/10 from City Engineer, R. Kulacz.**

Jeffrey Gordon, principal Codespoti Associates, 504 Boston Post Road, Orange, CT addressed the Commission.

Mr. Gordon stated that he was a landscape architect and planner representing Mark IV Construction Company. He submitted notification letters and certificates of mailing. Mark IV retained their firm to try to develop a remediation plan for a fill operation that was performed at 11 Lady Slipper Drive. It is their estimation that approximately 7,000 cubic yards of fill was placed on the property, which is a lot of material. Mr. Gordon indicated that they were able to do some forensic work to try to find out what was there beforehand; because when they got there the work had already been done – trees has been knocked over and the fill was placed and graded down to where it is now.

Mr. Gordon stated that he was not able to speak to the homeowners to try to ascertain why the work was done prior to getting permits. To the best of his understanding, there had been a lack of communication with some individuals not familiar with the regulatory process. It was communicated to Mark IV that they could put in all this fill (inaudible, low volume). And basically, they thought that was the process.

He stated that he wanted to show some pictures that were in the possession of the homeowners prior to the work taking place, and why some of that was done, in order to provide a better understanding.

Mr. Gordon posted the photographs for the Commissioners and explained the photo of the rear yard has been leveled off. He referenced the location of the fence as being the end of their property in the rear - at which point it had dropped off 25 – 30 feet precipitously.

Mr. Gordon showed a “before” photo with the fence falling over. He showed the a small area in the back of the house to the cliff. He commented that it would be very interesting to note that they had a septic system too. In contacting Valley Health, the fact that this was installed prior to 1973, there are no records as to what it is or where it is. They don't know if it's a cess pool, a series of dry wells, leeching pits, or whatever but it drops straight off and they were looking to develop a cushion, a backyard, whatnot. He added that it is understandable what there motivation was, if not how they went about getting there.

Mr. Gordon showed how far they came back, various photos of the trees knocked down, the material dumped, construction debris, etc. Mr. Gordon explained that the material, from what they understand, is a soil material from some trench work in the town of Trumbull. It is a sand, gravel, stone, soil mix with some porosity, which is a good thing.

Mr. Gordon reiterated that the steepness of the slope, as the Town Engineer articulated, is a 1:1 slope and cannot be traversed. He told the Commission that when he went to the site he saw it from the top and went to the street behind. The neighbors allowed him to go through the yard and take photos from the back. In talking with the neighbors, it is partly how they developed some of the mitigation that they have tried to develop here.

He showed a photo of the view from the lower street to the backyard indicating the slope in the back. The neighbors discussed how they would like them to do something to make sure it is stable and do something so that they aren't looking at the embankment as well.

Mr. Gordon indicated that it is difficult to determine what the topography was before the fill because when they sent surveyors out, what they looked at was from the town's topo map and from aerial photographs to try to demonstrate what they have.

He explained that on the town's topo map it shows the topography with a big gap in the back because it is too steep to actually show a contour line in there because there's a 30 foot drop at that point.

Mr. Gordon showed the area that the field surveyors picked out as where the fill was placed now. He showed a drawing of what they think the topography was beforehand right at that fence line.

He showed another sheet with a drawing of a mitigation plan and soil erosion controls for stabilizing. He explained that because there is an undetermined situation with the depth of the fill, they are concerned with how it will settle, how is it going to soak up water, how is it going to settle in – there are some trees buried in there. Mr. Gordon explained that it is not the same situation as when someone goes and buries a bunch of stumps in one place in a lot and over time they decompose. At this site, there is a tree here, a tree there, and the decomposition is going to settle in there, so it's very difficult to determine what is going to happen there. He explained some of the concerns raised about putting some filtration out on the lower levels and if it would undermine any of those areas.

Mr. Gordon indicated that they felt the best way to stabilize the site would be to put in a little more fill at the base of the slope to kind of compact it in 6 inch lifts without any construction debris in there and that would be a strong, almost a block at the end of the door, to keep it from sliding open or promote things out. They would plant it with spruce, partly in response to what the neighbors on the downhill side who wanted to see a green barrier there as opposed to planting deciduous trees, where in the winter time, they would be looking straight through. They thought about some evergreens. There is a little bit of a flat area and in the new fill embankment, they would plant the spruce trees and hydro seed there. He apologized for a typographical error on the drawing which should indicate 1300 cubic yards not cubic feet that would be placed at the base. The 1300 cubic yards was anticipated to give it long term stability for the slope. The City Engineer's suggestion is to raise back the existing slope to a 2:1 slope. They can do that, using some of that material as a base. They are going to do as little a disturbance as possible to the existing area – that was thing – that there are a lot of unknowns to them.

Mr. Gordon explained the cross-section drawing and showed an additional drawing where he blew up the scale to provide an easier to read, better idea of how it looks. He pointed out the location of the existing house and a septic structure of some sort that was found. He explained that the cross-hatched area on the drawing depicts the fill that had taken place. He showed the proposed extra fill location at the base of it with the plantings. Mr. Gordon explained that what they anticipate has happened through the years is there's the septic system that is in a narrow 18 foot section. There would had to have been some break out at various times with the ? foot cut through the hillsides (inaudible) come down and put soil along the surface area. He commented that having the fill over here is some protection, but there is no standard now that would allow an 18 foot area that close to a house and that close to a septic system because it

would obviously break through the surface there. So even if the material is brought back, it does have the ability to migrate through that stony, sandy material there and not break down; that would be an unintended benefit.

Mr. Gordon stated that in looking at the Town Engineer's comments, there are many other things he mentioned that they would be willing to do. He concluded that these were his thoughts about how they planned to protect the area. The Town Engineer's thoughts are to cut back that slope using some of the material already there but not expand the footprint of the area.

They did check with Mr. Cook and they had the wetlands in the area delineated. The wetlands are at the rear of the property line. There is a 50 foot setback so if they were to expand the footprint as they intended, they would still be out of the upland review area with the Wetlands Commission.

He showed on a map of the area, that if they do expand the footprint an extra 20 feet, they would still be at least 113 feet from the nearest wetlands. There is a 50 foot review area and they are some 50 feet beyond it. That was the approach that they intended, but they are certainly open to any suggestions and will be as flexible as possible in closing off the area and satisfying those temporary special exception requirements.

Comm. Harger asked Mr. Gordon what kind of plants they would propose to get rid of all the large cinder blocks.

Mr. Gordon responded that the large exposed materials would have to be removed. They plan to top dress the area with topsoil, woven fabric and hydro-seed it.

Comm. Harger asked if the plans are to bring in some large equipment to move it out.

Comm. Harger asked if his thought process in the end would be to grade it and make a landscaped lawn.

Mr. Gordon responded that it would be a flat area that could be lawn and they'll try to get a hydro-seeded slope with evergreen trees. He showed the location where he plans to put a 4-inch top soil cap, plant evergreen trees on the trench and hydro-seed the embankment to get some stability.

Comm. Harger asked if this was the type of slope that a homeowner could possibly maintain – like in cutting the grass.

Mr. Gordon responded that you would need a 3:1 or a 4:1 slope to run a mower. Right now it is 1:1.

Comm. McGorty added, it's pretty vertical.

Comm. Harger expressed her concern that this was a nice lane before he executed this, and she can't believe that the adjoining property owners have to look at this – not to mention the loss of vegetation.

Comm. Flannery asked a question about the retaining wall and what kind of retaining wall would they have. She posed the question of what might take place in the event of a heavy rainstorm, if the septic breaks, or the pipes burst inside the house causing flooding into the backyard. She brought up the situation that occurred with the house on the ledge at North Oak Street.

Mr. Gordon responded that there is no retaining wall.

Comm. Flannery commented, then that's a problem – there should be a retaining wall.

Mr. Gordon asked her why she would want a retaining wall where there is soil.

Comm. Flannery responded because of erosion – what if there is a heavy rain or a pipe breaks, she wouldn't want all this eroding into the neighbor's backyard.

Mr. Gordon asked her to clarify what she meant by erosion.

Comm. Flannery responded - erosion.

Mr. Gordon responded that he understands erosion. He's a member of the International Erosion Control Association. A retaining wall that traps water behind it is an engineered feature that could fail whereas a slope where there is surface run-off could not fail.

Comm. Flannery commented that she was just saying that there was a problem in Shelton a few weeks ago.

Mr. Gordon responded that situation was a water burst in a foundation.

Comm. Flannery asked how he could know that would not happen in this house - with all that fill there she is very concerned about the neighbors.

Chair Parkins asked if the house had a dirt foundation.

Mr. Gordon responded no, it's a walk-out basement.

Comm. Flannery commented again that she is worried about all of that – just washing into the neighbor's yards. She explained that she had been there and walked all around the property.

Mr. Gordon commented that he'd like to understand her better and asked where exactly she was concerned about the break down taking place.

Comm. Flannery responded that anything can happen – rains, septic breaking, and pipes bursting – where does that leave the neighbors when everything falls apart and it comes into their yards.

Mr. Gordon responded that the whole idea here is to prevent it from ever falling apart. That is why they had the plan on putting the material at the base of the fill slope, where they can monitor how it is installed, put it in 6 inch slips, compact it and build it up. It's the unknown that they are concerned about – but by putting in something that they can engineer and observe is what they consider the correction for the site.

Comm. Harger indicated that her concern and asked if he really knows what is buried in there. She commented that they can see what is visible on the outside surface but what about what is inside.

Mr. Gordon responded that it is a homogenous mix of sand, stone, and the construction debris that they've been encouraged to understand has been used along the edge as a stabilizing feature, which is not obviously something that they want to do, but... There were some trees buried in there and that would be something that they can't just go in and retrieve without ripping the whole site apart. But those are areas that in 10 -15 years they could get some deflection. But it's not something like a sink hole where there is a large area of dumped

organic material, like a collection of tree stumps, but he does anticipate through the years there is going to be some leafing of that area.

Comm. McGorty indicated that he had taken some photos at the site and he asked Mr. Gordon about the left side of the driveway where there is a silt fence and there are bales of hay with an excess runoff that will obviously come down the driveway and follow that down. He asked what the plan would be to retain that because it looks like it is going to end up in the neighbor's yard.

Mr. Gordon responded that they need to keep in mind that whatever is downhill had always been downhill, and the water always did go down there.

Comm. McGorty commented that it looks as though it is redirected and because of the radius of that fill - it could follow that down. He added that he took some photos from the street behind the house. He walked that portion of the property and in the area of the silt fence and the hay bales; he thinks any water is going to take the path of least resistance there. It already seems to be making its way down the left side which would result in the neighbor's in the back potentially having a water issue.

Mr. Gordon responded that as near as he can tell from the older information that was available – what has happened is the precipice that they had has been moved down (he showed the areas on the site map). There is a discharge on the north end to a town easement and that discharge comes down a natural drainage way that has not been altered. And that goes into the system over in the area Comm. McGorty mentioned. There appears to have been a drainage swail along the property line and now that would have been moved about 10 or 15 feet beyond that property line. But still the water always came down that way and it now just comes down a little further...

Comm. McGorty responded that he thinks a lot of things have changed because the topography has changed. He thinks that all bets are off as to where the water used to run. It is going to be redirected to the outside on that 1:1 bank where there is nowhere for it to go – it's between a rock and a hard place, so to speak – and it's going to hit the neighbor's property. But now there is going to be a funneling of all of that water into the same area, and these people, he's assuming, also have leeching fields and septic systems, and now they are going to have problems. That would be his concern.

Mr. Gordon responded that he can understand his concern and using the site map, he showed the path of the road drainage as comes through this easement, discharges, goes through the wetlands, travels and drains into a low point. He added that it will still travel that route but now it's detouring a little bit farther south to get there. It is still going to the same low point.

Comm. McGorty commented that there's erosion and it's going to go where it wants to go, and it looks like it is heading toward the neighbor's backyards. The trenching is significant and easily seen with all the rain they've had.

Mr. Gordon responded that it can be remediated and part of the grading adjustments can be done to rechannel that (inaudible comments..)

Comm. McGorty indicated that he thinks that needs to be done – that goes without saying...

Mr. Gordon explained that before this fill happened, there was a lightly to moderately wooded area so the coefficient of runoff of water coming along the surface would go little slower but now that it is graded off. It still is not a paved

area, but it's still a little thicker until it finds its way to this wooded area which would slow it down again.

Comm. Sedlock asked if this fill was put in here without a permit – is that correct?

Chair Parkins responded yes, that's correct.

Comm. Sedlock asked why they are looking to go 2:1 – why aren't they looking to make it a more gentle grade, like 4:1 or 5:1. He asks because then it wouldn't look so horrible to the people who have to look at it and he questioned the size of trees that they would have to put in there to hide this from the people who have to look at it. He asked if they planned on planting small trees, because then they'd have to look at this for a number of years until they grow.

Mr. Gordon responded that it has been his experience that there is an optimal size tree to plant that will integrate and grow – it's not a very small tree or a very large tree. A large tree would take a long time to caliber up and start to grow. The fact of the matter is that if you have a cliff 18 feet off the back of their house and you have a vertical surface that the people looked at before - now that vertical surface has moved down another 60 or 70 feet. But right now it is not vegetated so it really stands out, but they were looking at a vertical surface no matter what. Now it's come a little closer, it needs to be cleaned up and planted so it will blend in a little bit better. As far as a flatter slope, the family that is living there – their intent, obviously, they bought a house with no backyard and wanted a backyard – so to make a more shallow slope - they are just going to have to haul a lot of stuff off of the site.

Comm. Sedlock asked why they weren't going to (inaudible).

Mr. Gordon responded that he's the guy that comes along after all the eggs fell out of the basket and they are asking him to take the eggshells out of this and make an omelet. He's trying to do what is the best for everyone and what is the least painful because if a ton of truckloads come in to take the material out – then they have to run the trucks back through the neighborhood again and be disruptive that way. He asked what the balance, as Commissioners, they need to find, to get something that is properly planned, keeps the peace, and works out well for everybody. He concluded that was what he was there to try to do.

Comm. Sedlock asked what his intent on the grade was – 2:1, 3:1 ...

Mr. Gordon's response was inaudible.

Chair Parkins asked if there was anyone in the audience wishing to speak for or against this application.

Thomas Hanko, 6 Greenfield Drive, Shelton, CT addressed the Commission. Mr. Hanko stated that the rear of his property directly abuts the Applicant's property. Mr. Hanko indicated that as far as neighbors being notified of anything – no one ever notified him of anything. He was a witness to truckload after truckload of debris being dumped off at this property. The first or second truckload that he witnessed involved asphalt, slabs and concrete slabs that took trees down. He confirmed that he was concerned with the view that he has of concrete slabs and asphalt slabs on the exterior surface of the mountain but he is also concerned about the asphalt and concrete that were part of the 1st, 2nd, 3rd, 4th and 5th truckloads. Mr. Hanko commented that, he may be mistaken, but he thought asphalt was not a material that can be used as fill. He added that it breaks down and there are environmental concerns with asphalt. As far as the runoff with the water, there has always been an issue in the

springtime after the thaw, heavy rains with flooding on his property. There is no question that the situation is going to be magnified by what has taken place here. In regard to the trees that were knocked down – Mr. Hanko indicated that when he looks out his back porch it is part L’Ambience Plaza and part Hamburger Hill – it looks like a bomb exploded. He is opposed to what has already taken place. He opposed to any special consideration that is given for this applicant.

Richard Sporko, 7 Ladyslipper Drive, Shelton, CT addressed the Commission. Mr. Sporko indicated that he is unfortunate to live next to this gentleman at 11 Ladyslipper; he stated that he lives on the north side of him on 7 Ladyslipper Drive. Mr. Sporko stated that when he looks out his window now he sees a platform or a wall of dirt. He indicated that his wife took some pictures that she wants to share with the Commission. He told the Commission that they cannot imagine what this looks like – the last gentleman who spoke nailed it. Everything he said is true. Everything he wanted to say was just said by Mr. Hanko and the City Engineer – it is exactly as they state – perhaps, understated. Mr. Sporko questioned that it was 7,000 yards of fill – because when he looked at the map and pulled copies of this, it looks more like 15,000 yards of fill. It is like a 26 foot depth from the house down to where the bottom is. If they have any doubts just look where it is piled right now; he invited everyone to come to his home to take a look at it.

Mr. Sporko reiterated Mr. Hanko’s comment that trees had been cut down – not just a few trees – a lot of trees. He asked about Item #3 - the construction debris and if anyone knew the origin of this construction debris. Did the contractor decide to add some of his material to this to make this into landfill? Although this area is serviced by public water, there are also wells in this neighborhood – some people have both. He asked if this fill had been tested for asbestos and lead?

Mr. Sporko commented that he really didn’t get it – how something of this magnitude – and now they want special exceptions for it? Except him to take some of it out. They want a yard – fine, let them have a 5:1 grade – down about 12 feet – at a minimum. Like the other gentleman said – he thinks it should all be removed. They started this without asking... shouldn’t that be how it finishes? He thanked the Commission.

Comm. Sedlock asked Mr. Sporko if he could submit the photos that he mentioned.

Chair Parkins commented to the audience that all the Commissioners have been to the site and they are aware of what it looks like.

Mary Peck, 10 Greenfield Drive, Shelton, CT addressed the Commission. Mrs. Peck stated that she lives directly behind this mess – on Greenfield Drive. She commented that it looks like there was an avalanche or some kind of disaster. She has lived in her house for 11 years and it had always been a nice, woodsy slope – not too steep to walk up – her 10 year old son used to play on it.

Mrs. Peck commented that she thinks the applicant just had total disregard for their neighbors. They just wanted a backyard and didn’t care about anyone else. It is very selfish because they didn’t care about how it would look for anyone else – they were just going to get their yard. Mrs. Peck commented that they are educated people – she commented that she believes the man who owns 11 Ladyslipper is a lawyer. She reiterated that it looks terrible.

Mrs. Peck commented that she has a well and a septic and now she is very concerned with all the asphalt that is in there. She stated that she thinks they

need to dig it all up – not just what is on the surface. She added that it has been very upsetting to have this nice backdrop for all these years and then all of a sudden - it has just completely changed – and it is very ugly with trees sticking out in all different directions. With the trees buried that way, any part of them that are alive are going to die anyway. It takes years to grow trees. Mrs. Peck indicated that she'd like to see a more gentle slope – even if they have to lose some of their yard – and she'd like to see mountain laurels and other plantings to make it look natural again. It looks horrible.

Mrs. Peck indicated that those trucks had been out there for a while but she had other things going on in her life so she didn't have time to address it. She was very happy that someone complained because it would be bad if they got away with doing this in a way that they were not supposed to. They were trying to get away with something and save money and now it looks horrible.

Mrs. Peck added that she lives directly behind it. They put a little black plastic fence there but she tells her son to stay away from it - because it's dangerous. The concrete and the garbage thrown in there have made it look like there's a dump behind it. She concluded her comments.

Chair Parkins asked Mrs. Peck how long the trucks were coming in.

Mrs. Peck responded that she isn't certain about the dates – she has had a lot going on in her own home and she has been working a lot. However, they were coming in around 8 a.m. and she thinks it went on for about a month and half. She indicated that she had been upset by the noise that would be going on – even around 4 p.m. after she picked her son up from school. It seems like it went on for a long time. Mrs. Peck was glad that someone complained because she was mad at herself for not being the first one to complain. She indicated that she and Mr. Hanko are the most affected by this. She hasn't looked at from Mr. Hanko's yard – but from her yard, it is a very obvious big mess. She added that even if the homeowner loses some of their yard – then they should lose it.

Mrs. Peck commented that she has lived in that neighborhood since she walked around the neighborhood with her son as a baby – she doesn't understand why these people bought a nice house with nice trees all around it, and then as soon as they're in there, they cut all the trees down. They had beautiful oak trees in the front that they cut down. She added that she didn't understand why they bought a home with foliage and greens all around it if they wanted a house with grass all around it. Mrs. Peck indicated that she thinks that they have ruined their own property as well – now they have a flat yard with a big drop. It looked so nice before with the way the house had been nestled in the woods. She concluded that she really does not know why they bought a home nestled in the trees and then did this – whatever expense it takes, they should have to try to get it back to what it was. That grade is too steep to even walk – it's loose, it's dangerous and it's an eyesore.

Lauren Sporko, 7 Ladyslipper Drive, Shelton, CT addressed the Commission. Mrs. Sporko indicated that she lives next door to 11 Ladyslipper with her husband, Richard, who just spoke. Before beginning her comments, she wanted to ask Mr. Gordon a question about the Applicant not knowing the laws about permits. She asked this because the residents of 11 Ladyslipper are Asst. State Atty. and Prosecutor Paul Gaetano and his wife, Elaine. These people know the law and she is not buying it that they did not know the laws. She added that she Googled Atty. Gaetano's name and he has a lot of misconduct issues that she feels reflect upon his personal life too.

Chair Parkins asked Mrs. Sporko to keep her comments related to this issue.

Mrs. Sporko apologized and continued to state that between October 1st and November 10th of 2009, the owners of 11 Ladyslipper Drive brought in approx. 15,000 yards of fill onto their property. After a couple of weeks, she approached one of the workman to ask him about it because she had never seen anyone bring this much fill and he informed her that the Gaetano's had a permit to bring in this fill. They were going to fill in the back by the driveway side. Mrs. Sporko stated that they have lived on the other side of that driveway for 32 years and everyone in the neighborhood has always been very nice. So she figured, the Gaetano's are nice people, he's an attorney – so she had no problem with it.

Mrs. Sporko continued to say that this continued from 8 a.m. until dinnertime. Her neighbor who is home all day told her that the trucks would come every half hour or hour and there was rumbling in the neighborhood all day long. After being away for a few days out of town during this time, she and her husband returned home to find a mountain of fill on the far side of the Gaetano's driveway that had been bulldozed across their back and side lot about 10 – 20 feet high within 10-25 feet of their property line depending upon where you stood. Mrs. Sporko added that their property line is the water easement – so this was about 20 feet from the water easement. On the other side of the water easement is their leeching field so if that floods back, it won't be too good.

Mrs. Sporko stated that she recalls being shocked and thought there had been an earthquake or something and a mountain had sprouted up between the properties. She added that she was paranoid to leave her home for three weeks because she was concerned that when she came back the pile would be higher.

Mrs. Sporko continued to say that in what occurred to be a hurried fashion, they bulldozed over some small trees and right into some very large trees snapping them over. She presented pictures of those trees to the Commission. She noted that one of the photos shows that one of the trees leans over the water easement onto their property. She can no longer walk the dogs down there because of this situation.

Mrs. Sporko explained that the landscape was and is frightening with trees and limbs sticking right out of the unsecured soil just waiting for a major rainstorm to create a massive runoff or mudslide. It looks like the aftermath of a flood.

Mrs. Sporko stated that later on she found out she had been given misinformation by the Gaetano's worker. The owners of 11 Ladyslipper did not have a permit for this site or a site plan for this immense and unwieldy project that they had undertaken. Mrs. Sporko indicated that it took her until January 12th of this year – they started bringing in fill from the beginning of October - until January 12th to get a copy of their site plan.

She commented that it's safe to assume that the owners of this property were working without a clear plan as to what they were doing. They were just bulldozing a bunch of fill in. Mrs. Sporko indicated that her hopes are that the owners of 11 Ladyslipper would be forced to return their property to its original state and start over – with a permit this time. As far as getting this stuff through the neighborhood and being disruptive – she doesn't even care – just disrupt her. She would like them to take out every square inch of that fill.

Mrs. Sporko added that she is especially concerned now that she knows there is asbestos in it. She knows that she can't even have a garden with asbestos.

Chair Parkins responded to Mrs. Sporko that asbestos has not been determined - it's asphalt, not asbestos.

Mrs. Sporko commented that she doesn't know if they will be forced to take this out but she hopes that the Commission does not allow them to keep more than 1/3 of what they have there. Mrs. Sporko expressed that she thinks that what they did – this is an unconscionable amount of fill to bring into a residential neighborhood and she wants to see all or most of it taken out.

Mrs. Sporko commented that her house is noticeably not referenced on the site plan. She asked if she could show the location of her home.

Chair Parkins responded that actually, it is noted on this site plan - #7 Ladyslipper.

Mr. Schultz added that he marked it in.

Mrs. Sporko showed the Commissioners the location on the site map and informed them that they had a house, a shed and a built in pool. She stated that even with their site plan, they show Norway Spruce everywhere but as soon as it gets to the side border, where her house is - everything ends. All they get is a pile of rubble with a big gray silt filter with the word FERGESON in capital letters printed over and over down the side. She indicated that is what they have been looking at; they used to look at a pristine deer path coming through the woods that went down about 40 feet. Mrs. Sporko asked if that Ferguson sign would be left there forever because they said it was going to be temporary. She asked what would happen if they take it away and they haven't done anything, would the fill just spill into her yard.

Chair Parkins responded that it was a silt fence for erosion.

Mrs. Sporko indicated that she hopes the Gaetano's or whoever is going to be designing this realizes that a good design looks good from all sides – not just the Gaetano's side. This looks absolutely horrible from her side – and obviously from several other sides too.

Mrs. Sporko commented about the dropping property values. When they first saw this pile, they saw their property value dropping. Without their knowledge they were facing 15,000 yards of rubble and 24 foot tall wall of that rubble. Looking out of the side of their home makes them feel claustrophobic. The wall looks much closer to the property line than its 20 or so feet. She invited the Commissioners to come to her house and look out from her window.

Chair Parkins commented that they have all been to the site and all of the Commissioners are well aware of what is out there.

Mrs. Sporko indicated that she feels like they live next door to a quarry and no longer have any privacy. The Gaetano's new yard is 24 feet above their yard. The previously had a extremely private yard and it was one of the reasons that they bought their house. Now when they lay out by their built in pool to sunbathe or swim – anyone at 11 Ladyslipper Drive can walk to the edge of their new, flat slab backyard and look down at us. She added that she thinks this is positively creepy. She asked why anyone would even design a yard that gave anyone that kind of unfair and invasive perspective of another family's home and yard.

Mrs. Sporko stated that she invited a couple of real estate agents to look at their property and tell them what they thought. They said it was definitely an invasion of privacy and would definitely affect the resale of their home. Also they were abhorred when they saw the wall of fill with the boulders sticking out of it from their dining room window. When the realtor came unto their property, he said that their down driveway would be the biggest negative for resale. After looking out the dining room window he told her that the view would stop any potential

buyer in their tracks. The realtor told them it looked like a dumpsite – just what you want to hear from a real estate agent. Mrs. Sporko indicated that she could provide the real estate opinions on paper to the Commission if they would like them.

Chair Parkins informed Mrs. Sporko that they were going to address all of this and she didn't think the real estate values are something that she has to worry about right now. She requested her to summarize any of her remaining comments because many of her remarks are repetitive of what has already been stated.

Mrs. Sporko commented about the fill because she had been told initially that the owners had been given this fill as a free gift from someone. She asked if this was possible that something like that could be done – do they have to have certified fill brought it.

Chair Parkins responded that the Commission would be addressing that issue as well.

Mrs. Sporko indicated that she had major health and asthma concerns from the particulate matter due to the unsecured fill along the water easement on Ladyslipper Drive that is affecting her health. It is 10-25 feet from her yard and on dry weather days she can't go outside and work in the yard. She can't even hang clothes outside because of this fill. She submitted some photos to the Commission.

Chair Parkins informed Mrs. Sporko that she could also submit her comments in writing if she would like to.

Mrs. Sporko indicated that she had two letters from neighbors that are within 200 feet that could not attend this meeting tonight. They had asked if she could read them to the Commission.

Mrs. Sporko read two letters from neighbors, Carolyn Spangle and Joseph Spangle residing at 11 Rolling Ridge Road who commented about the negative impact to the appearance of the neighborhood because of the fill that has been brought into 11 Ladyslipper Drive as well as concerns about the content of the fill.

Chair Parkins thanked Mrs. Sporko for her comments and asked if there was anyone else from the public wishing to speak for or against this application. She asked the Applicant if he had a response to any of these comments.

For the benefit of the Commissioners, Mr. Schultz indicated that he wanted to read ten Standards that they will need to consider for this type of application.

Mr. Gordon commented about the comments from the neighbors and added that there wasn't much that they have not agreed to replace there. However, he did want to make one comment on the water easement. Mr. Gordon indicated that it is a drainage easement that is shown along the northern property line. There is an outfall from two catch basins on Ladyslipper Drive that discharge half way through the easement and then come across the Gaetano property. The fill area, as demonstrated here, is approximately 30 or 40 feet away from the northern property line so he just wanted to clarify that.

Mr. Gordon also clarified that while there may be some difficulty ascertaining precisely the amount of fill that has been placed in there, their calculations based on old, existing drawings would be 7,000 cubic yards. They could be off by 10%

or 15% but they could not be off by 100% and he wanted to make sure that everyone is aware of that.

In response to whether or not it was a denuded site and is it a bare exposed file slope at this time – yes, it is – and the whole idea is that they need to remediate and how do they mitigate that at this point and come up with the best solution without all the emotions of about everyone’s pedestrian cut-throughs and backyards. They would all like to have use of things the way that they were – but whatever the case and whatever the improper methodology, the homeowner would have been entitled to come and request do something with their yard to improve it. When he spoke with the Gaetano’s and asked them what they did and if they had a permit, Mrs. Gaetano said that she came to the Town Hall. She said that she told someone that she had an opportunity to bring fill in there, asked if could she do it, and basically, she was told that she could. He believes that was just her very Pollyannaish viewpoint – “yes, of course, you can” – but you do have to go through the procedures to do it...maybe she heard what she wanted to hear and took it no further...Unfortunately, she asked a question and took the simplest answer and ran with it.

Mr. Gordon summarized that what they were now asking for is direction on what would be the most prudent and sensible way to fix this.

Chair Parkins asked Mr. Gordon if he was saying that Mrs. Gaetano had a verbal exchange with someone regarding this.

Mr. Gordon responded that Mrs. Gaetano said she talked to somebody at Town Hall and asked if this was something that she could do.

Chair Parkins asked if that meant she had no name, no department – no nothing – just she spoke with someone.

Mr. Gordon indicated yes. He continued to say that when he was asked to go out there – his first question to them was “why would you do this --without a permit?” And Mrs. Gaetano told him that she thought it was OK to do it. Mr. Gordon added that in most towns, 400 cubic yards is something that can readily be done without a temporary special permit. He thinks that Shelton, as well as many towns, had their regulations written by Bryan & Panico and they came from the same formula. The first 400 cubic yards a homeowner is able to do, but if you go beyond that...well, as both he and Mr. Schultz know –there is a procedure.

Chair Parkins asked Mr. Gordon where Mark IV was in all of this.

Mr. Gordon responded that they were the ones who were asked to bring in the material. So they brought in the material in, so in the chain of command, they are responsible for the material that they brought in. That is why they made the application and they want to do what it takes to make things right.

Chair Parkins asked if that meant submitting a certified letter that the fill there is clean.

Mr. Gordon responded that there is a gentleman here from Mark IV who could address this.

Chair Parkins asked Mr. Delabitta if he was led to believe that there was a permit pulled for this.

Tom Delabitta from Mark IV Construction, Bridgeport, CT addressed the Commission. Mr. Delabitta responded yes, that as Jeff Gordon stated, they

were led to believe and they were told that they had a permit. He added that was the information that he got.

Comm. Harger asked if it hadn't been one of their typical procedures to make sure they had a copy of that for their files, for documentation.

Mr. Delabitta responded yes, she was correct. Typically, they do that but in this situation, since it was a State Attorney, you know – it is just one of those things that happened. Mr. Delabitta added that it was not just from his perspective, it's from the engineer that he sent to the site (inaudible – low volume...) It is what they were led to believe.

Mr. Delabitta indicated that he wanted to say something further, that he could certify that it was clean fill; there is no asbestos. The trucks that brought the fill are owned by Mark IV Construction. They were not unmarked. There was no illegal intent. It was quite obvious what was going on, it was quite an operation; it wasn't like it was being done in the darkness of the evening. They were doing it during working hours and they have presence on site of small excavating equipment and still have the bulldozer on site to go in and do remediation work. So this is not something in which they just tried to pull the wool over someone's eyes.

Chair Parkins asked if that meant he had a record of where all of this fill came from.

Mr. Delabitta responded yes, definitely.

Chair Parkins asked if there were any other comments not already mentioned or any other questions.

Thomas Hanko, 6 Greenfield Drive, Shelton, CT addressed the Commission. Mr. Hanko asked if it would be allowable to request a soil sample of the fill before this application is considered. He added that he knows this was not a night time operation and he doesn't really think that comment was necessary because there had been no such accusations made. But there is a lot of asphalt in it, and asphalt is oil based. He commented that he did not think asphalt was an allowable material for fill. He doesn't doubt the Mark IV gentleman's claim that it is clean fill but he thinks it would be important to mandate Mark IV to have a soil sample taken before the application is considered. He thanked the Commission.

Mary Peck, 10 Greenfield Drive, Shelton, CT addressed the Commission. Mrs. Peck indicated that she just wanted to make a comment in regard to what the man from Mark IV said. She understands that it is all clean fill but she does not understand how they could, with a conscience, be dumping big chunks of boulders down the hill and dumping asphalt. Is that allowed in a residential area? These are huge chunks of stuff.

Chair Parkins responded that the issue of the type of fill will be addressed and Mr. Schultz, the P&Z Administrator, will read the regulations as to what is allowed as fill.

Mr. Schultz stated that for the benefit of the Commissioners and the members of the audience, there are 10 Standards and Conditions that must be met before the Commission can act favorably on this. Mr. Schultz read the following:

1. The excavation, grading and removal shall be carried out with the maps and plans, as approved. If the Commission finds that these plans are unacceptable, revised plans will have to be submitted.

Mr. Schultz added that the Chair will speak after the conclusion of his remarks.

2. The excavation, grading and removal shall not result in sharp pits, depressions, soil erosion, draining or sewage problems or conditions which would appear to prevent reasonable reuse and development of the lot dependent upon these regulations.
3. At all stages of work, proper drainage shall be provided to prevent stagnant water, soil erosion, excessive runoff, silting of streams and damage to public property, streets or drainage facilities.
4. Truck access to the lot and work area shall be so arranged as to minimize traffic hazards on streets and to avoid nuisance to residents of the neighborhood.
5. If required by the Commission, the area to be excavated or a portion thereof shall be enclosed with a fence or such type, height and location as the Commission may specify for security purposes.
6. No excavation, grading or removal which is below the elevation of any abutting street or property line shall occur within 50 feet of such line except for excavation, grading or removal below the elevation of abutting property may be permitted with written permission from the abutting owner.

Mr. Schultz added that this is all fill, so it is not below.

7. No processing machinery shall be erected or maintained on the lot at any time.
8. The work shall be limited to the hours and days of the week that may be specified by the Commission.
9. Proper measures shall be taken to minimize nuisance from dust, noise, vibration and flying debris.
10. Upon completion of the work authorized, the area of excavation or otherwise disturbed area shall be repaired or restored as follows:
 - a. The slopes will not exceed a 2:1 slope (he commented that this had been addressed by Commission members) or to such lesser slope necessary for soil stability, safety, reasonable reuse and development of the lot.
 - b. In addition, the area shall be evenly graded for sufficient slopes to assure adequate drainage so that there are stagnant pools of water.

Mr. Schultz added that there is also a provision that states that the Commission can require any additional information that is deemed necessary to properly make a decision on this application pertaining to environmental safety and welfare.

Mr. Schultz concluded that having read that, these are all the issues that the Commission has to take into consideration. There is a lot on the table right now and he knows that the Chair would like to remark on some issues to the Applicant.

Chair Parkins stated that her opinion is that they keep this public hearing open because this is a project that is much too big. It is a very unfortunate that a resident would do something like this. She is a little surprised that it went unnoticed for so long, unfortunately. In regard to some of the suggestions, she thinks the Applicant has heard – she will resound this message over and over again – this is totally unacceptable and there is a lot of work that needs to be done on it.

Chair Parkins indicated that they would like to see revised grading plans pulling this back. The grade is just not acceptable, at a minimum, 2:1. That is a minimum. They will need to get creative on this project.

Chair Parkins continued that the Commission will need Mark IV Construction to submit documentation confirming the origin of this fill and an affidavit confirming that it is clean, not polluted and will not harm the environment. Additionally, as has been requested, they would like to have soil samples analyzed and submitted.

Chair Parkins commented that there needs to be adherence to the recommendations of the City Engineer's letter dated January 26, 2010. They need to maintain sediment and erosion control at all times.

In regard to the landscape plans, which have been mentioned, it should look appropriate from all directions and it should look natural, not like a tree farm. She indicated that Comm. Harger would like to make some additional comments.

Comm. Harger indicated that she would not want to be in the shoes of the neighbors. She feels it is very unfair for them to have to look at this and have to live with this. She strongly believes that the owner must rectify this situation. He went and did this without permits and he destroyed the appearance of the neighborhood. As much as it has been done in the past, Comm. Harger added that she doesn't like keeping this public hearing open. She originally thought that might be the best thing to do but it only prolongs the situation for these neighbors.

Comm. Harger stated that she thinks the owner has to rectify this in some manner, shape or form because it is a mess out there.

Chair Parkins added that these plans are not acceptable. Comm. Harger agreed and commented that she does not see how they are even going to be able to rectify this to the extent that it should be without removing this fill.

Comm. McGorty commented that it is going to have to involve the removal.

Comm. Harger stated that she wouldn't want to have this next door and she doesn't think anyone would. It is a horrendous situation here and they should not let him get away with this.

Chair Parkins suggested that they keep this open for two weeks until the next meeting on the 9th.

Comm. Sedlock commented that they also have the issue here, as someone mentioned, about the flying dust. And at this particular time, it may not be that great problem but as soon as the weather changes and, if they have a dry spring the dust is going to be exacerbated. He asked if there was a recommendation on how to keep that dust down for the homeowners.

Mr. Schultz responded that Staff can work with the homeowner, absolutely. It is part of the sediment and erosion which they are constantly monitoring.

Chair Parkins commented that personally, she would like to see that stuff taken out of there. A lot of it is concrete and asphalt.

Comm. Harger indicated that the concrete and asphalt is only the exterior – who knows what is buried in there or how far back they will have to go. She thinks they have to go way, way back. She thinks it is a lot to do something, let the chips fall where they may and then go back and ask for forgiveness. In this situation, she does not think it should be allowed. Pull it all out.

Comm. Flanagan agreed.

Comm. Pogoda commented that he would like to see a slope that is greater than 2:1. It should be a 3:1 or 4:1 slope at the minimum. And not fill in anymore but take it back – push it back as the City Engineer also requested but at a 3:1 or 4:1 slope.

Chair Parkins indicated that she wanted to see a reasonable, revised grading plan.

Mr. Gordon asked if the Commission was giving them direction as part of the Stop Work Order that the things they want done should be expedited before they come to any resolution or (inaudible).

Chair Parkins responded that in the next two weeks, they need to come in with a more acceptable site plan.

Mr. Gordon asked if they wanted them to start taking the large chunks out.

Chair Parkins responded no – no work.

Comm. McGorty asked if they were going to request the soil testing in parallel with the site plan.

Mr. Gordon commented but it was inaudible.

Chair Parkins responded yes, all the things that were listed should be done by the February 9th date.

Mr. Gordon asked if they were going to provide any direction as to where they wanted samples taken and what they would be looking for. He asked if they wanted chemical samples, mechanical samples or both.

Comm. Pogoda responded that it should be a full spectrum.

Chair Parkins asked if there was any record of how much asphalt is in there. Can it be quantified. If they know where the fill came from, are they able to quantify how much of it is asphalt and what else is in there.

Comm. McGorty asked if they got it from multiple sites or just one site – is there a record of where all the fill came from.

Mr. Delbitta, Mark IV Construction responded that they have a record of the duration of time that the fill was brought to this residence. He can have the engineers and surveyors backtrack through and see exactly where the crews were working and they can actually designate a street where the materials came from.

Chair Parkins asked if they would also provide an estimation of how much fill is there because they can't see underneath how much is really there.

Mr. Delbitta asked if they wanted an estimation of the amount of yardage in place.

Mr. Schultz responded yes, the yardage and the variety of materials, an estimate - asphalt, concrete - just an estimate.

Chair Parkins asked if they could estimate how much asphalt, how much concrete was in there.

Mr. Delbitta responded that would be very difficult to do. He indicated that they could look at the duration of time, the amount of yardage that is in place and the streets that they worked on. The engineers and surveyors probably could come up with that is pretty good estimate. The asphalt that is there came from the trench work done during the installation of a pipe.

Mr. Schultz asked if they used tri-axels, 20 yards.

Mr. Delabitta responded that the trucks they used were tri-axels that carry approx. 15 yards due to weight and stress restrictions.

Chair Parkins asked about his comment regarding the installation of pipe. She asked if that had been from digging up the streets.

Mr. Delabitta responded that the fill material came from the Town of Trumbull, a sanitary sewer project where they excavated roads where(inaudible) there were no utilities and that is why he is very confident that the fill was clean (inaudible due to multiple discussions). That is why he attests to it.

Mr. Delabitta also indicated that they have worked in the Town of Trumbull for years and they have taken thousands of yards of fill for various projects in which it has been tested in the past. He indicated that was why he's confident in telling them that is clean fill (inaudible due to multiple discussions).

Chair Parkins indicated that it sounds like there are different projects and areas and asked that they take samples from various areas there to make the determination.

Mr. Delabitta responded that it is a homogeneous mix of material and what they will do is have the soil scientist go out and pick material from half a dozen areas, extract that material and test it.

Chair Parkins stated that these residents just have a right to be comfortable that their property hasn't been environmentally compromised.

Mr. Delabitta responded that he has no problem with that.

Chair Parkins asked for a motion to extend this public hearing until Feb. 9th.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously approved to extend the public hearing for Application #09-38 until February 9, 2010.

NEW BUSINESS

APPLICATION #10-01, DOMINICK THOMAS ON BEHALF OF 714, LLC FOR INITIAL DEVELOPMENT CONCEPT PLAN APPROVAL AND PLANNED

**DEVELOPMENT DISTRICT ZONE CHANGE (RETAIL SHOPPING CENTER),
405-407 BRIDGEPORT AVENUE AND PORTION OF ACCESS ROAD (MAP
77, LOTS 26, 27, 28, 29 AND 30) – ACCEPT AND SCHEDULE A PUBLIC
HEARING**

Atty. Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission. Atty. Thomas stated that the Commission would not need to accept and schedule a public hearing for Application #10-01 because the City has requested to review some of the easement and drainage issues with respect to the Access Road area.

Atty. Thomas indicated that the Access Road issue has been resolved with the State back in October 2009. The City looked at the map just today so he is requesting that the Commission delay this until its next meeting on February 9th.

OTHER BUSINESS

**CERTIFICATE OF ZONING COMPLIANCE #5130: WALL SIGN FOR
SIERRA SUITES HOTEL AT 830 BPT AVE (TABLED AT 1/12/10
MEETING)**

Atty. Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission.

Atty. Thomas indicated that he was representing Shelton Hotel Associates, the owner of the property. He indicated that this Certificate of Zoning Compliance should be withdrawn because it has already been approved. While there is discretion within a PDD, there is no discretion to go back revisit another approval.

He distributed Pages 8, 9 and 10 from the Shelton P&Z Commission minutes from the February 2008 meeting indicating the prior approval. He referenced the highlighted areas for applications that he brought to the Commission for approval. The wall sign that had been approved back then, is the same sign. He showed the Commission a drawing that was brought in by the individuals contracted to do the signs when they were told they had to file another permit.

Atty. Thomas showed that the date on the drawing is 12/9/09 and he showed the drawing from 2/15/08 west elevation sign which were the same. The signs are the same thing, same measurements and everything.

However, Atty. Thomas stated that they have no problem presenting an informational session since there is a concern about this sign. He explained that he doesn't often get an opportunity to do electrical engineering very much but he did some research on lux vs. lumen. He got an email that these signs emit 650 lux. He indicated that here is actually a mathematic formula to determine lux which he cited from Wikipedia ($1 \text{ lx} = 1 \text{ lm} \cdot \text{m}^{-2} = 1 \text{ cd} \cdot \text{sr} \cdot \text{m}^{-2}$). He explained that a lumen is a large fluorescent light and producing 12,000 lumen might light a residential kitchen with an illuminant of 500 lux.

Atty. Thomas stated that lighting a larger area to the same illuminants requires a proportionately greater number of lumens. Basically, this sign which is at 650 lux would probably cast light which can be seen if you were reading something. The light from the sign came be seen from a ½ mile away but it cannot light the area. These area very dim signs. With that being said, he introduced Judd Thomas and Larry Borque who brought the Hotel Sierra's big "H" light up letter so that the Commission could see how much light is cast. They will explain that these signs, which have already been approved, are relatively dim in how they operate. He added that they are reflective of the pictures provided that show what the signs look light at night and during the day.

Larry Borque, ABC Sign Corporation, addressed the Commission. Mr. Borque indicated that he was happy to share this information with the Commission because at the last meeting there had been some concern that these signs would be too bright and too high.

Mr. Borque stated that these signs are not like fluorescent fixtures, flood lights or spot lights. They are not made to project and he showed his sample that he would light up for them. He explained how the channel letters for this sign were made. They are channel letters, but not typical channel letters. A typical channel letter has some light inside, whether it is fluorescent, neon or LED and that light comes out through the front of the sign through a piece of plastic or translucent vinyl. Both the plastic and the vinyl will cut down the amount of light.

Mr. Borque indicated that for the Hotel Sierra, the channel letters are a little bit different. Not only do they have the light coming out the front, but since they are about 2" off the wall and the back of the letter is clear plastic, so some of the light in that fixture will reflect out the back and create a halo effect on the building. He believed that the concerns for the residents next door would not be a problem because there wasn't a lot of light coming out of there. He added that any resident there who can see the sign during the daytime, will also be able to see the sign at night too because of the halo effect. There is a small amount of light but it makes a halo around the letter to see that it is lit.

Mr. Schultz turned off the lights in the Auditorium to demonstrate the halo effect of light coming from the Hotel Sierra's big "H." Mr. Borque recalled that when the lights had been on, the "H" appeared to be black with a white stripe in the middle. He explained that the white strip in the middle is opaque and no light comes out of it. The light only comes out on the sides of the letter. He indicated that a special type of vinyl is used; it looks black during the day but when there is a light source placed behind it, it looks white and as though the light were coming through it. He pointed out the halo effect of light against the wall. Mr. Borque concluded that yes, there is a little bit of light there but it is not projecting very far from the wall or building. People will be able to see that it is lit and know it is there.

So since it is not very bright, Mr. Borque thought it may negate the Commission's other concern about the sign being so high because it isn't going to be projecting any light over to these residents. Mr. Borque recommended that it should stay at that height. It is what the Commission originally approved and they need that because the Hotel Sierra is partially blocked by the TD Bank in front anyway, so they have some limited visibility. The top of the façade is the best place to put it. If the sign is brought down at all, the TD Bank will block it even more. Mr. Borque concluded that he was glad, as Atty. Thomas stated, that they would be able to put it up as previously approved. He indicated that he would answer any questions that they had.

Comm. Pogoda asked if that "H" was the actual size of the letters.

Mr. Borque responded that yes, it is the actual size of the letter on the south elevation. The west elevation letters are larger.

Comm. Pogoda asked if the west elevation was facing the restaurants.

Mr. Borque yes, the west elevation, behind the bank, faces Bridgeport Avenue.

Comm. Flannery asked how much larger the west elevation letters would be.

Mr. Borque responded that they were about 2'6" and the south elevation is 22 3/4".

Atty. Thomas indicated that he provided the Commissioners with two drawings of the west elevation signage. Mr. Borque added that at the last meeting they also provided drawings of the south elevation

Mr. Borque commented that signs were not just a way-finding thing, they provide advertising for a business too. They want people to see that it is the Hotel Sierra as they are traversing Bridgeport Avenue.

Comm. Harger asked for the location of the signs in the photos that were provided.

Mr. Borque responded that he asked the Hotel Sierra representatives to send him photos so that the Commission would be able to see how the sign at one of their hotels looks during the day and at night.

Comm. Flannery asked if there was any way that they could put the sign up and if they don't like it, they could change it.

Chair Parkins responded no, they've already approved them. They can't approve something and then tell them to take it down.

Mr. Borque responded that he hopes the info that he's given them tonight and the demonstration provided with the letter would assuage any fears that there is going to be any detriment to the residents next door; they face Bridgeport Avenue and anyone seeing them peripherally is not going to see any light coming through their windows. If they can see the sign during the day; they'll see the sign at night too but it is not like they are going to have any light pollution or anything. It is just a soft halo effect.

Chair Parkins agreed and indicated that she went down and looked at it.

Comm. McGorty commented that it is a diffused light, it's not projecting.

Atty. Thomas thanked the Commission for the opportunity to present this and if they have any further concerns, he will put them in contact with the correct person to address their concerns.

Chair Parkins thanked them for the demonstration and education on signage, lux and lumens.

Atty. Thomas commented for the record that he would like to withdraw the previous applications for Certificate of Zoning Compliance.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept the withdrawal of Certificate of Zoning Compliance Separate #5130 in lieu of the acceptance of the signage under Certificate of Zoning Compliance Separate #6825 approved by the P&Z Commission at their February 2008 meeting.

CERTIFICATE OF ZONING COMPLIANCE #5092: PERMIT ISSUED FOR WALL SIGN LOCATED AT 99 BPT AVE (SHELTON AUTO PARTS) – DISCUSSION AND POSSIBLE ACTION FOR VIOLATION OF PERMIT

Mr. Schultz stated that he would read a report; the Zoning Department recently informed the Zoning Subcommittee of a new wall sign installed for Shelton Auto Parts located at 99 Bridgeport Avenue. This sign was approved by the P&Z

Commission on 12/8/09. At this meeting, some members suggested reducing the 18" size channel lettering which would shrink the overall length of the sign. Ultimately, however, the Commission approved the sign as submitted and the sign was subsequently installed. Upon review of the new sign, Staff advised the Zoning Subcommittee members that the sign was installed and recommended that it be inspected to determine if it met their expectations.

Mr. Schultz continued to read that additionally Staff advised the Zoning Subcommittee that the sign was affixed to a raised raceway which was not depicted on the sign detail plan. Eventually, the Zoning Subcommittee recommended that Staff present these issues before the entire P&Z Commission at its 1/27/10 meeting for discussion and for further action as needed.

Mr. Schultz read that at this time Staff would like to offer the following recommendations:

1. To avoid future problems Staff will have all applicants submit detailed plans complete with location, material, and installation specifics. If needed by the P&Z Commission, samples will be provided to Staff.
2. For more involved sign installation projects, as seen tonight, Staff will arrange a site visit with sample lettering and location details to help in making final decisions.

Mr. Schultz referenced the previous sign that had been approved two years ago; however, the building was not up yet. So that is why Staff directed them to bring in a new application – but the Commission did approve it so it's perfectly valid – unless, of course, it had changed, then it would have required a modification.

The draft Zoning Regulations should consider a maximum size of 12" lettering for conventional sign applications. The previous one had been 18" however, the buildings Downtown are much closer to the road so he thinks that 12" should be the maximum, but it is something that the Commission needs to consider. There are other variables as well and with PDD's anything can be considered.

Mr. Schultz indicated that the owner of the building and the owner of the business are present tonight to answer questions.

Chair Parkins recalled that when they approved this, there had been discussion about them trying to make this business look larger than it was, and she thinks that they over-accomplished that. She commented that the sign doesn't do the building any justice. They did a nice job on the building and now there is just this enormous signage up there.

Comm. Harger agreed that it was a little out of proportion.

Comm. Flannery asked if this sign was bothering any neighbors, and if there was any light from the sign.

Mr. Schultz responded that no, this was an internal thing. No complaints, just the people who watch this stuff and advised their office. He indicated that was why he went to the Zoning Subcommittee because that's the proper level of review before bringing it to this Commission to see what they want to do, if anything.

Comm. McGorty commented that it is about the aesthetics. It is overkill, the building façade is 20 or 30 feet from the road, so it appears huge. Being so close to the road, it is very large. He doesn't know the effect of it being lit up. He added that the building came out beautifully and the sign does it a disservice.

Comm. Pogoda indicated that he thinks the raceway actually promotes it larger than what it really should be. He noted that the letters are too large. He thinks the placement of the raceway just sticks it out in your face – as Tom mentioned, it's only 30 feet from the road more or less. The size of the lettering is too big. Comm. Pogoda commented that he thinks they did a beautiful job on the building and it is 100% better than what it was before. He understands that he wants to promote his business but those letters and that raceway are overkill. Maybe if they were placed differently...

Chair Parkins stated that the drawings made it appear to be flush on the wall and they aren't flush on the wall. There is a metal strip that comes out (inaudible, multiple conversations...)

Mr. Schultz added that is why the details have to be shown to the Commission.

Chair Parkins stated that even though it is indicated on the drawing that the letters are going to be 18" tall, in looking at the width as compared to what the drawing is and what the actual signage is... AUTO and PARTS take up the entire width of that area, as compared to the drawing that shows it scaled differently.

Comm. Sedlock asked if they approved this yet. This conversation is about (inaudible...)

Comm. Pogoda commented that the raceway was not presented on the initial application.

Comm. Sedlock indicated that the Commission has to make it more specific.

Comm. Pogoda responded yes, definitely.

Chair Parkins commented that this should have been tabled.

Comm. Pogoda stated that the Zoning Regs in the future will have this in it and if not, it is going to be torn down.

Comm. Sedlock commented that as it is right now, the owner didn't violate anything.

Comm. Pogoda responded that the raceway wasn't presented on the drawing.

Comm. McGorty added that the scaling, the height, the alignment aren't in proportion.

Chair Parkins pointed out on the drawing that there are bands of space on the top and the bottom but on the actual sign there is no space on the top or the bottom. The letters occupy the entire space, the entire height and the width on these two parts. She added that if they indicated one part as 18" then they should have indicated the other part as 18."

Comm. McGorty indicated that the spacing should be noted because it doesn't appear to be 1:1 to what the drawing is. The characters fill up the whole space.

Comm. Sedlock indicated that this was a question of them (the Commission) needing to be more specific when the applications are put in. This man didn't do anything - he didn't violate anything.

Chair Parkins responded that she does not think he truly represented what he was going to put up there.

Comm. McGorty added that what they saw was not exactly what it turned out to be. There are some differences.

Comm. Harger commented that they were comfortable with what they were presented, and that is what they acted on.

Chair Parkins added that they had been on the fence about it as it was. There had been discussion about it being overkill.

Comm. Pogoda indicated that this was their (the Commission's) mistake and it is something that they will be more diligent on.

Chair Parkins stated that she had concerns about any other future signage that they might be coming back for on this property considering what is there already.

Bruce Butler, property owner, 99 Bridgeport Avenue, Shelton, CT addressed the Commission. Mr. Butler apologized because his involvement with the signs was to inform the business owner that if Planning & Zoning was OK with it, then he would be OK with it. In seeing what has happened over this, he wanted to assure them that he has a good track record with the Board. So, in going forward he pledges to them that he'll be more involved in this, foster better relations and make it clear so that everyone knows what is going on. He doesn't know what happened because he wasn't involved in it, but going forward, it will be different.

Chair Parkins concluded that it's a lesson learned for all. There is no motion, this was just for discussion.

8-24 REFERRAL: SHELTON COMMUNITY GARDEN ON KALPIK FARM PROPERTY LOCATED ON LONG HILL AVENUE

Mr. Schultz read a letter from the Mayor's Office dated January 19th requesting an 8-24 Referral for the Kalpick Farm Property.

He read a recommendation from the City Engineer dated January 22nd endorsing this proposal.

***See attached 8-24 Request from Mayor Mark Lauretti dated 1/19/10.**

***See attached report from Robert Kulacz, City Engineer dated 1/22/10.**

Mr. Schultz showed a map showing the location of the property being requested for agriculture use. He commented that everyone is probably aware of the concept of a community garden. It's consistent with the long range planning to use agriculture (inaudible - cross conversations).

Chair Parkins asked if it would be the whole area or just the center piece.

Mr. Schultz responded that they would be phasing it but ultimately, as the need grows, more area will be used.

Comm. Harger asked if he knew how much property would be used initially.

Mr. Schultz responded that he didn't have anything exact yet, he thinks that they are still working on that.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to report favorably on the 8-24 Referral for the Shelton Community Garden on Kalpick Farm located on Long Hill Avenue.

8-24 REFERRAL: DERBY/SHELTON ROTARY RIVERWALK PAVILION AT VETERANS RIVERWALK PARK

Mr. Schultz indicated that this is also from the Office of the Mayor, a request for an 8-24 Referral dated January 20th. Staff provided a design and report to Commission members that was prepared Tate & Associates. He read a favorable recommendation from the City Engineer.

***See attached 8-24 Request from Mayor Lauretti, dated 1/20/10.**

***See attached letter from Robert Kulacz, City Engineer dated 1/22/10.**

Mr. Schultz added that this has been reviewed by the members of the Downtown Subcommittee at their last meeting and they conveyed their full support to this Commission.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to report favorably on the 8-24 Referral for the Derby/Shelton Rotary Riverwalk Pavilion at Veteran's Riverwalk Park.

WHITE STREET: DISCUSSION OF PROPOSAL TO ACQUIRE PROPERTY ADJACENT TO WHITE STREET FOR AN OUTDOOR PATIO AREA FOR A PUB ESTABLISHMENT LOCATED AT 475-479 HOW AVENUE.

Atty. Dominic Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission. Atty. Thomas stated that he was representing the property owner, Schiabel Realty, on this matter. He explained that after the Applicant had submitted and received an approval for a proposal in the building on Howe Avenue, he approached his office to investigate the possibility of this unique-shaped piece of property that abuts his property.

Atty. Thomas explained that upon a survey, this piece of property turned out to be a portion of the White Street right of way, even though it wasn't used. Basically, it is a paved area – he showed the orientation of it on a street map. He obtained old photographs of this area and investigated historical records going back to the 1800's. He conducted a title search, however, since it goes back to the 1800's, there is no way to know who owns it.

Atty. Thomas referenced an area on the map showing West Canal Street, the location of the former Shelton Train Station, and White Street, as it was at the time, coming at a right angle down to this area. Eventually, White Street would bend a different way leaving an extra area of parking. There is a small retaining wall and this small area where people dump stuff – like tires, garbage, etc. It is a collection area for debris because of where it is located.

Atty. Thomas showed the location of the former infamous Recovery Room Café and explained that the SEDC bought the property from the landowners and eventually gave it to the City of Shelton. He indicated that is why there is a parking lot there.

Atty. Thomas indicated that he asked Corporation Counsel if they could purchase this property and improve it – mainly to use it as a patio. The purpose is to use it as a patio attached to the restaurant that is intended for this building. After the title search, they discovered that there was no way to determine who owned this property so that means that the City eventually had what is typically called a public right of way over this property.

The City Engineer reported that they usually keep 50 feet. He commented that as it can be seen on the map, there is 28 feet of roadway so even if they took 22

feet and went into this – it has no functionality as a road (inaudible – cross conversations).

Atty. Thomas indicated that there was a discussion of leasing it but that doesn't work out because the City doesn't own it. So this informational session was scheduled for the City to get information and feedback from Planning & Zoning. They are also going to the Street Committee Meeting on Feb. 2nd and Alderman McPherson. It has no functionality. There is never going to be a road going in the direction of the parking lot because there is a giant stone wall there that is the abutment of Bridge Street. The point is then, they are asking the City to discontinue, which is the correct term when action is taken, that portion of the White Street right of way reserving for itself, as already shown on the map, a snow shelf.

Atty. Thomas indicated that at that point, if they discontinue it, he and Corporation Counsel would be responsible for discussing how they would effect title of the property.

Atty. Thomas commented that from a Planning purpose, the proposal before them right now is to have a restaurant down there. This is going to have the main and only entrance to the restaurant and the situation they would have, contrary to the sidewalk situation, is a client who can't do anything with it. He wouldn't be able to put tables out there and he'd have to keep it clean because it is a debris collector. The best way for him to have use of it, is to have him to own it. So that is basically the story.

Comm. Pogoda commented that he doesn't have a problem with a patio out there but as they do have with any restaurant requesting a patio, wind and flying debris is an issue.

Atty. Thomas responded that those are significant issues – if they resolve the issue with the Town, they will be back before this Commission with that application and they can put restrictions on it. The point he wanted to make right now is that it is presently a debris collector and a dump because it's just a piece of unused, black pavement. Even walking down White Street, you don't even go there.

Chair Parkins asked if the Applicant was looking for a consensus from this Commission as to whether they would be amenable to having the city...

Atty. Thomas responded that they were directed to come to the Commission so Rick may be able to answer that.

Mr. Schultz commented that he wanted to read the City Engineer's Report dated 1/26/10.

***See attached report from Robert Kulacz, City Engineer dated January 26, 2010.**

Mr. Schultz added that this is going to the Street Committee. The Street Committee wants to hear from this Commission if this makes sense or is it problematic – short term, long term. Ultimately, the Commission will give him a consensus tonight. If the consensus is favorable, he will advise the Street Committee to take it to the BOA for an 8-24 Referral. It will come back because it is a public situation here. But because of this nature, they want the input early on from this Commission because it is a planning issue. It is next to a road and there is a parking lot there.

Mr. Schultz indicated that the DSC did not have an issue with it because the area had been defined. They discussed the sidewalks, they will be making improvements – these are important things.

Atty. Thomas clarified that they are acting as a planning board reporting to them not a zoning board so they aren't giving them permission to do anything. The Applicant still has to come back before the Commission with a modification of the site plan approval that has already been given which could specify whatever the Commission wants to specify. But they are showing on the plan, just for the purpose education, the fact that there is a sidewalk here, brick pavers and then bollards here that would obviously protect the area. The sidewalk serves them two purposes because at some point they may want to continue the sidewalk up the unused portion of the right of way where there is presently a parking lot. It could be continued to create a pedestrian walk way to get down to the railroad pedestrian crossing.

Mr. Schultz indicated that the Chair is going to authorize Staff, if the consensus is favorable, to advise the Street Committee to proceed with their discussion and advise the BOA to initiate an 8-24 Referral. They are looking to see that this Commission has not found any significant planning concerns.

Comm. McGorty commented that he has been there and it is always a mess. The wind comes down and everything ends up there so it would definitely be an improvement.

With a favorable consensus of the Commissioners that there are no significant planning issues, The P&Z Chair, Ruth Parkins, authorized Staff to advise the Street Committee to proceed with discussions and advise the BOA for an 8-24 Referral regarding the acquisition of property adjacent to White Street for an outdoor patio area for a pub establishment located at 475-479 Howe Avenue.

CONSTITUTION BOULEVARD: DISCUSSION OF PROPOSED PREPARATION AND FILING OF SURVEY MAP PURSUANT TO SECTION 8-29 OF THE CT GENERAL STATUTES FOR THE PLANNED EXTENSION OF CONSTITUTION BOULEVARD FROM BPT AVE AT EXIT 13 TO CITY PROPERTY (FORMER MAS PROPERTY).

Mr. Schultz commented that they are not going to process it under an 8-29. Both Corporation Counsel and Asst. Corporation Counsel believe that it is an inappropriate statute to continue with the planning phase of this very important roadway.

Mr. Schultz showed the Commission a map of the area and explained that the proposal is the planned extension of Constitution Boulevard. He showed the location of Exit 13 and indicated that most of the property has been acquired by the City of Shelton except for the Simonetti and the Churma pieces which are on both sides. He explained that this proposed right of way is within City-owned property. It then comes in to the former Mas property which is owned by the City of Shelton. He read the City Engineer's Report and provided a Historical Overview to show the amount of time that has been dedicated to this planning exercise because it goes all the way back to 1978. He added that they all know how important this arterial road is going to be because ultimately it is going to go up to Rt. 108 and then pick up where the Intermediate School is located, cross Soundview Avenue and then go up to Maple Avenue by the White Hills Shopping Center area. They will have a new arterial road that will pick up the traffic from upper White Hills coming all the way down, bypassing Downtown.

***See attached City Engineer's Report dated January 26, 2010 addressed to Richard Schultz.**

Mr. Schultz indicated that there is stimulus funding. The towns that are getting it are shovel ready but there is going to be additional funding because infrastructure is a big part of bringing this country back. He commented that this is a very important economic development area. There are really only two areas left in Shelton – the Wells Farm and this particular area. It should be noted that it is 70 acres, a lot of it is wetlands in one area, but it does abut two privately owned parcels.

He explained that there are two major economic opportunities on the corridor area and ultimately this Commission will be reviewing it. The purpose of them advising the BOA is to continue the planning that is necessary to do the mapping. As mentioned by the City Engineer, there was some preliminary mapping done by City Trust that needs to be upgraded and better defined and the Aldermen have to authorize that.

Chair Parkins asked what type of map needed to be done.

Mr. Schultz responded that it would be a preliminary grading and surveying map – taking it to the next level.

Chair Parkins asked if it would be filed as recommended by the Planning & Zoning Commission.

Mr. Schultz responded yes, by the P&Z Commission.

Comm. Flannery asked if they planned on getting this land by eminent domain or something like that.

Mr. Schultz responded that the two property owners involved are aware of this and it should not be an issue.

Comm. Flannery commented that she knows of an issue and that is why she is bringing it up. She stated that she doesn't think that they are going to get the land without disturbing the farmers. She's against that. The farmers were here first and she wants them to keep their land for farming. Their livelihood depends upon it.

Mr. Schultz responded that he understands that – and that is why planning can be a very emotional type of thing. He just wants to show them the history of it.

Chair Parkins responded that there aren't too many parcels left in the town for economic development. It is right on the Bridgeport Avenue corridor and that is where there economic development is.

Comm. Flannery commented that she is totally against eminent domain.

Comm. Harger asked Comm. Flannery how many acres she was talking about.

Comm. Flannery responded the whole thing.

Comm. Harger commented that they don't have farms that whole thing now – there are woods up there.

Comm. Flannery responded that yes they do, where the hay is growing. The farmer that cuts that hay supplies for her and that's why she is aware of it.

Mr. Schultz indicated that the farm she is referring to is north of this. This will be in two phases. The first phase would be to...

Comm. Flannery stated that they can't get to the second phase without the first...

Chair Parkins stated that they are looking to develop a plan for economic development.

Comm. Flannery commented that maybe the road should go around another way.

Mr. Schultz responded that it is really locked in because the yellow area that she is pointing to is residential and it is what it is... He just wanted to bring the current Commission up to speed. Staff is asking this Commission to authorize them to send a memo to the BOA asking them to take it to the next step. This is preliminary grading and surveying. There were further comments (inaudible due to multiple discussions).

Chair Parkins indicated that there was an overall consensus to direct Staff to authorize them to notify the Board of Alderman. She asked that the record reflect opposition from Comm. Flannery.

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

Respectfully submitted,

Karin Tuke
Recording Secretary, Planning & Zoning Commission