

the P&Z Commission at its Jan. 27th meeting; plans submitted were dated 12/9/09 and revised to 2/1/10.

Mr. Schultz stated that Staff has marked up the latest, revised plan that he would like to show the Commission members. On a site plan, Mr. Schultz showed the fill area that projects out approx. 65 feet from the fence that is already on the property. For all the members that were there, he reminded them that where the fence ended is where it dropped off very quickly.

Mr. Schultz stated that the slope is very steep; in some areas it is 1:1. The regulations require at least a 2:1 slope. They have addressed that in the revised grading plans. However, Staff has heard from different Commissioners at the hearing, that perhaps all of the fill should be removed. Staff is of the opinion that every property owner has the right to submit an application to improve their property, and as everyone knows, Shelton is not a level community; it is very hilly. They have applications submitted to the P&Z department all the time. This, however, is very controversial and emotional because it is after the fact, and it is not 500 cubic yards or 1000 cubic yards – it is several thousand. It is most unfortunate that it has gotten to that level. Staff has prepared a recommendation to this Commission. Hopefully, tonight the Commission can reach a consensus on the direction they would like to see the Applicant go.

Mr. Schultz indicated that he shows a revised profile plan that shortens the length of the rear yard to 33 feet – that is approx. half of the fill area. He red-lined where the slope would be and noted that it is much gentler, probably in the range of 3:1 or 4:1 slope. As he heard from Commission members, they wanted to achieve a very subtle slope so that when they do the replanting plan, it will look more natural and will not be as disturbing to some of the other property owners who expressed so much disappointment at what they are currently looking at.

Mr. Schultz summarized that they have received the test report indicating that the hydrocarbon levels are satisfactory, and the report of where all the material came from on the local streets in Trumbull.

Mr. Schultz informed the Commission that they have several side issues. There are chunks of asphalt and concrete that most members would like to see removed, but the fundamental issue for the Commission will be if they want to accept the grading plan as modified or further revise it. Staff recommends starting at the 33 foot length. Mr. Schultz indicated that Staff has concerns regarding drainage issues because the fill on the south side encroaches onto the next property which must be dealt with because it is a violation of the zoning regulations. If the fill has to be removed to that point or whatever point, that side issue has to be addressed as well. Mr. Schultz reiterated that not only is this about shrinking from Point A to Point B, but from the side as well. There is a lot to digest tonight and he knows the Applicant is going to request that the Commission consider their profile.

Mr. Schultz indicated that he spoke to the Engineering Department and they feel comfortable with that. They held off writing another follow up because they want direction from this Commission. He believes that this Commission will continue this public hearing until February 24th meeting because there are still a lot of unanswered questions and he knows that the public wants to watch the progress of the grading plan. He thinks that is a good starting point and he hopes the Commission reaches a consensus.

Chair Parkins asked what he thought the slope is right now.

Mr. Schultz responded that it is something more desirable.

Chair Parkins asked if it would require additional plantings from what had been proposed.

Mr. Schultz responded that the neighbors have said that this was a heavily tree'd area. The Commission saw the aerial photograph. Unfortunately, a lot of the trees were just buried. They weren't even cut and that adds to the aesthetics. They have to start from somewhere and he thinks this is a good starting point but ultimately, the Commission will have to make the decision.

Comm. Harger asked about the test borings and if there was a standard in regard to how far apart they have to be or how deep they need to go.

Mr. Schultz responded that the Applicant is better able to address that and that is another side issue.

Comm. Harger commented that there are appropriate EPA standard methods.

Mr. Schultz responded that clearly they are satisfied that it is a non-issue, so unless they want to take it to another level, that would be the Commission's call. He is more concerned about the bigger picture which is about the amount of earth material that has been brought in. But clearly, this Commission wanted to see some testing. Now they know what streets the material came from; the Applicant indicated that, overall, it is virgin material, it is clean. It is just that there are the large chunks of concrete and asphalt which are another issue to deal with. He indicated that he would leave this plan out on the table for the discussion.

Chair Parkins addressed the Commissioners to indicate that it was important that they come to a consensus. They need to remove the emotional element. They'll hear from the public and the Applicant again but they need to remove the emotional element from this and treat it as they would if an applicant were coming before them through the proper process and this did not happen in this manner. Staff has indicated their recommendations. She recalled her comments from the last meeting in which she requested a 2:1 and the other Commissioners indicated that they wanted to see much more than that. She recalled that some of the Commissioners had said that they wanted the fill pulled out all together. She indicated to the Commissioners that they need to come to a consensus and they need assure the public that this will be done right. Chair Parkins opened up the discussion for the Applicant.

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission. Atty. Thomas indicated that he represents the property owners who are, of course, part of the Applicant, as they own the property and gave permission to Mark IV Construction to file their application for grading plans. Atty. Thomas stated that at the last public hearing he was in attendance representing the Hotel Sierra and he was listening, at that time, with only one ear until he heard the name Paul Gaetano. He indicated that Paul Gaetano is a prosecutor that he has known for a long time. Atty. Thomas recalls that at the last meeting, one of the Commissioners asked who the owners spoke to at City Hall.

Atty. Thomas stated that he would like to begin by telling the Commission that Mr. and Mrs. Gaetano were having a problem with their fence and their foundation; they went out and sought bids from people on how to shore up their backyard. They received some bids, and Mrs. Gaetano went to City Hall in April of 2009. Atty. Thomas indicated that he believes from an anatomical reference provided to him, that Mrs. Gaetano spoke to Mr. Dingle. Mrs. Gaetano

described that they were going to put some fill in to shore up their backyard. There had been no contact with Mark IV at this point.

Mrs. Gaetano was told by Mr. Dingle that she didn't need a permit; she only needed a permit if she was going to build something, but he would check the wetlands map for her, which he did. Atty. Thomas indicated that Mr. Dingle directed Mrs. Gaetano to the Engineering Office. She received something that she could get nowhere other than the Engineering Department. He showed the topography map that Mrs. Gaetano had been given. Subsequent to that time, they were introduced to Mark IV Construction and the issue came up of what they can do with fill, and then it began.

Atty. Thomas stated that they could sit there – and by the way Mrs. Gaetano was told... in regard to the comment that “because Mr. Gaetano is a lawyer he should know the law...” Mr. Gaetano could really give a lecture about the penal code. He's an expert on that but not an expert on that but not zoning law or permit law. Atty. Thomas stated that his experience with Temporary Special Exceptions (TSE), or matters of right, if you comply with the Standards, is the big things – like Brennan – and most of his Temporary Special Exceptions that he deals with are part of large site plans so he opened their book and looked at their regulations. Atty. Thomas indicated that the Regulation in Title 32 provides that if the people at, let's say, 7 Ladyslipper, wanted to fill a wheelbarrow with dirt from their property and take it over and dump it at 11 Ladyslipper – both of them need a Temporary Special Exception, because they don't have any limitations. They have what amounts to, archaic, at best, language, in there. Strangely enough, Atty. Thomas indicated that he was familiar with the Town of Oxford which has a 600 yard limit. Most towns have a limit – under this you can do it; over this you can't, so, in fact, when you read the regulation that you have, everybody... Atty. Thomas stated that he was told by the P&Z Administrator that discretion is used, but the bottom line is that when they read 32.1 and then the exception to 32.2 – everybody who puts a shovel in the ground, who moves dirt around or who slashes a tree (he commented that he had no idea what slashes a trees meant) - they have to come and get a Temporary Special Exception. The exemptions to that have to do with site plans or other matters. Now, once they file the TSE, 32.5 delineates the Standards and goes from 5.1 to 5.13 – none of them have to do with what it looks like from outside the property line.

Atty. Thomas asked them to remember that in acting as a Zoning Board, an administrative agency, none of these have to do it. They can sit here and cast aspersions back and forth as to whom, at some point should have said “wait a minute” with the amount of fill that was going in to the property. Atty. Thomas asked if it should have been Mark IV saying “are you sure you don't have a permit?” or should it have been his client or should it have been the neighbors. The bottom line is, when looking at the Standards, they will see that the proposal made by engineer, Jeffrey Gordon, meets those standards and once they reach those standards, they have complied with the regulations.

Atty. Thomas stated that one of the interesting things does relate to the issue of trees and, in fact, while they have this regulation, it is basically unenforceable because if someone wants to clear-cut their lot, in this case up to the 50 foot wetland setback area, they have the right to do that. Atty. Thomas stated that he was not saying that is what they wanted; all they have here is a couple who intended on putting some fill in their backyard to shore up their fence, shore up their property and give them a little bit of a flatter backyard. Atty. Thomas indicated that yes, it did get out of hand. That is why they are here before you. There is no limit; there is no number. There is not one item in here that relates to how it looks. It relates to drainage, soil erosion, sediment control, silting of streams, and damage to public property and two or three items relating to excavating, which is the main concern in the first 50 feet along the road.

Atty. Thomas stated that with respect to the issue of the fill, as Mr. Schultz identified appropriately, the fill is -- appropriate. It is hard to believe when thinking of concrete and asphalt. As long as it is inert and the testing results show that it is relatively inert, that is, it doesn't exceed the standards. 22A-209-1 of your regulations of the State of Connecticut issued by the DEP define clean fill as natural soil, rock, brick, ceramics, concrete, asphalt paving fragments, which are virtually inert and must not pose a fire hazard or threat to ground water. As a result of the test borings that they have, that has been complied with.

Chair Parkins asked for clarification if Atty. Thomas said the fill was inappropriate or appropriate.

Atty. Thomas responded that it was clean fill – what he said is that Mr. Schultz identified it as appropriate fill. He was just citing the regulations that identified it. Obviously, the Gaetano's do not want chunks of concrete. One of the requirements that they have in the regulations is that any filling or grading property under a TSE – at the end of that, when it is completed, they must have a restoration plan. In other words they have to put top soil on top of it and stabilize it in some fashion. The regulation provides that the minimum is, and this is reflected in the January 26th letter from the Engineering Department, shall not exceed a 2:1 slope. Atty. Thomas cited that their regulation 32.5.10E provides for a top layer of aerated top soil to a depth of six inches. So, they have regulations that specify what has to be done, but there is nothing in the TSE requirement that calls for an aesthetic look from the outside. It is geared toward things like soil erosion, drainage, stabilization – all of which he will turn over to Mr. Gordon to address. He stated that he was not there to cast blame on anybody in Zoning, anybody at Mark IV - that is not the point of this. The point is that they have a regulation which, when read, and you only act in accordance with regulations, requires everybody that is going to disturb the topography of their property in some way. He added that he thinks they interpret the slashing of trees to be cutting of trees... so if someone wanted to cut a few trees to provide more sun for their pool, they'd actually have to come to you. Atty. Thomas commented that in the future, beyond this year, he thinks that they are going to have to put some standards in there for when they tell someone when they have to come. They could very easily plagiarize other towns and use 400 yards, they could use 600 yards, and some require it even at ? (inaudible) yards. In this case, it wasn't. When Mrs. Gaetano went down there and explained what she was doing, she was told that as long as she wasn't building, she didn't need a permit. Now, what was done, was well beyond what even she anticipated at that time. She had anticipated the filling - and Atty. Thomas indicated actually provided the proposals given to them by three other construction companies, not Mark IV – but rather than look retrospectively, they need to look prospectively. And in order to do that, they need to look at their own regulations. And whether or not what they are providing or what the City Engineer has recommended in his January letter, is sufficient. There is no obligation on the part of the homeowner, under your regulations, to return it to what it looked like or close to what it looked like. It is unfortunate that it is an after the fact application but, the fact that it is unfortunate – there is no punitive purpose in the Commission's actions. He turned over the discussion to Jeffrey Gordon to explain how he will address the issues and answer any questions.

Jeffrey Gordon, President of Codespoti & Associates, 504 Boston Post Road, Orange, CT addressed the Commission. Mr. Gordon indicated that he was a landscape architect and a member of the International Erosion Control Association. He indicated that they have continued educational requirements for stabilization of soils in the various locations and this one falls right under some of the training that they've received in times past. Mr. Gordon indicated that he

wanted to respond to the information that they submitted regarding the testing at the site. Mr. Gordon explained that the resubmitted plans show the locations of the test holes and if they take a look at the lab report, they will see the numbers on each matrix line (19, 16, 1, 2, 3, 4, 5, etc.) - those are the corresponding numbers to soil tests that took place. (inaudible, noise...) DEP Guidelines for hydrocarbons were taken and the minimum detectable limits were shown in the extreme right hand column. The comparative results are shown in the column under results and the limits where action would be required. Mr. Gordon stated some numbers as a 22.9 as a low to 86.8 as the highest number(inaudible)...he summarized that they were somewhere between a twentieth and a fifth of what would even require any kind of remedial action. So they are well within the limits that the State has set for any kind of hydrocarbons and any kind of contaminants that one might be looking for.

Mr. Gordon continued that the revised plans that were submitted did get the best fit of the Town topography and the topography was digitized into the plans as opposed to the original topo where basically they were trying to do a guess-estimate of the edge of fill on either end as to what was taking place underneath. They were also able to locate the home at 7 Ladyslipper with the pool because that was an area that was brought up during the discussions.

Mr. Gordon used a site map to explain the existing conditions and the slight difference from the earlier plans showing the contours that went before the fill was placed and now where the existing fill and tree limits as such are located. He pointed out the pool to the extreme north of the site. He showed some of the fill that was taking place that went over onto Lot #11 or #15 Ladyslipper as well.

Mr. Gordon referenced Sheet SP2M, and indicated that they've followed the Town Engineer's comments to hold the tow of the slope as was existing – their original proposal had been to set a base material outside the tow of the slope to anchor it but the City Engineer said to hold the tow of the slope and rake the material back on the 2:1. They removed all the material that was off site and created a swail on site to form a drainage pattern back and down into the natural occurring swail which occurs through and along the property line into the wetlands system. On the north part of the site, the Town drainage comes through and a drainage easement about 2/5 of the way through the easement. And just adjacent to the shed on the adjoining Ladyslipper property, it discharges into a swail across the Gaetano's property overland into the wetland system so that drainage flow remains untouched.

Mr. Gordon stated that they have also demonstrated an extensive planting plan which is a mix of native material, as opposed to the original plan where they just showed some Norway Spruce. He has found in the industry that people are getting away from White Pines and Hemlocks because of some problems with disease born on these types of trees. The Norway Spruce is a good alternative but they also have a mixture of Red Maples, Pin Oaks, Dogwood, and (inaudible). As well as putting in the topsoil, they'll have a fiber mat that goes on top of the topsoil and the hydro-seed mix.

Mr. Gordon stated that they will have the removal of the large chunks of material that were exposed, a top dressing with topsoil, a mixture of evergreens, deciduous trees, shrubs, flowering trees and then a stabilizing topo mat layer on top of a layer of hydro seed grass mix to give some stabilization. Originally, right on the fence line there was about a 15 – 18 foot sheer drop and they had vegetation that came up to that. Effectively, they will essentially have that but pulled farther away from the house with the yard.

Mr. Gordon stated that he tried to do more research on the existing septic system. There was one thought that perhaps leeching fields were put at the base of that precipice. He spoke to a registered sanitarian who thought that was unlikely to happen because they would have had to install the entire septic by hand and wheel-barrowed all the material in for that. He thought that back in the 60's, when this house was built, the logical thing was probably a septic tank and probably two dry well, igloo-type of units. When they consider the fact such a septic system might experience some break out with the fill material there, so they provide some protection for that as well.

Mr. Gordon reviewed the soil erosion and control methods; they will have the plantings, the fabric, and silt fence backed up by hay bales which would double-protection. He indicated that these were the items that were outlined in the letter and made in some of the comments. They think that it follows the regulations and addresses the comments from the Town Engineer. They will pull back the top area (he pointed to the area on the site plan) 40:30 contour to where the 40:40 is presently to give them the 2:1 slope. They'll remove all of the materials there and have it re-graded and seeded. Mr. Gordon concluded that was what they were proposing and he thinks that it was in harmony with the comments from most of the Commissioners and the Town Engineer.

Atty. Thomas indicated that Mr. Gordon will answer any questions and feels that Mr. Gordon's makes a good explanation – they need to realize that this is a post-action application and that the provisions in 32.5.1, 2 and 3 were all addressed. And now that it has actually been done, they are talking about removal. He is sure that the Commission will want to have a pre-removal meeting because there will be removal of some stuff from the site.

Atty. Thomas continued that since this is a TSE, the Commission has a set of standards and they are planning on carrying it out in accordance with the maps and plans that they have provided. In 32.5.2 the excavation, grading and removal shall not result in sharp pits, depressions, soil erosion, drainage or sewage problems or conditions which would impair the reasonable reuse and development of the lot. Atty. Thomas commented that obviously, this lot is being used for a single family home – it is done. It had a slope, it had a steep slope – and as Mr. Gordon explained, behind the property that steep slope is now 65 – 70 feet but it is still the same relative steep slope. The slope that was behind the property existing naturally – was not a 2:1 slope – it was a very steep slope (inaudible...)

Proper drainage is being provided to prevent stagnant water soil erosion problems, excessive run-off, silting of streams and damage to public property streets or drainage. Even though this talks about truck access to minimize traffic hazards they are sure that since they are removing property from the site, the Commission will want some sort of a plan presented with that. They agree that would be appropriate.

Atty. Thomas continued to say that .5 deals with fencing; he doesn't think that is really an issue here. He mentioned that as a result of this whole condition that took place, a map was drawn up when Mr. & Mrs. Gaetano and the neighbors brought up that there was an encroachment. They were not aware of that. Actually, in looking at the map, their driveway that was built goes right along the property line and probably about 6 inches inside and they weren't aware of that.

Atty. Thomas indicated that in October they were in communication with the neighbors to their left who were actually speaking to them about having some of the fill put in their backyard to level a certain area (obviously, they would need a permit to do that...). They will engage in some conversations with those neighbors to address the issue of the encroachments.

Atty. Thomas stated that no excavation exists within 50 feet of the street line and no processing machinery will be on site. For the work that needs to be done, certainly they would want, as part of the pre-construction, limited hours and days of the week for the removal of the material as well as proper measures to be taken to minimize noise, dust, or vibration.

Atty. Thomas addressed #10 and added that Mr. Gordon has proposed that the slopes will not exceed 2:1 slopes, adequate drainage, no excavation, no removal and all debris and loose boulders shall be buried or removed from the lot. Atty. Thomas indicated that will happen – it will either be buried, covered by the top soil or taken out. Atty. Thomas concluded that they believe that they have complied with all the standards with respect to their plans and it complies with the January 26th report from the City Engineer. He thanked the Commission.

Chair Parkins commented that she feels his explanation to his client's approach to this project really amounts to nothing more than a "he said-she said" situation. She thinks that if his client had gone to anyone within City Hall and said that they were going to bring in over 300 truckloads of fill and dump them in the backyard and asked "do we need a permit" - she is 99% sure that someone would have said "absolutely" or "I don't know but you really need to talk to someone in Planning & Zoning." Chair Parkins concluded that she was going to discount that entire conversation that he presented.

Atty. Thomas responded that in April, they had no contact with Mark IV, in April the proposal had several hundred yards of fill in their backyard. They did not have any contact with Mark IV until late in December, well after this happened.

Chair Parkins asked Atty. Thomas if his clients were living in the house when all this fill started coming in.

Atty. Thomas responded yes, and they did admit to me – "hey, wait a minute, how much stuff is coming in to our backyard..." It was more their reaction rather than the issue of the permit. But they can go back and see – if anybody walks into your Zoning Office and says that they are going to put a wheelbarrow full in their backyard, then they should be handed a Temporary Special Exception Application. When they allow discretion, and tell someone who is not familiar with it...

Chair Parkins reiterated that again this is "he said, she said..."

Atty. Thomas responded that is why they are here to comply with the TSE application which has a set of standards which they will comply with.

Chair Parkins commented that it was a natural slope – whether it was 1:1 or 2:1 before, it was a natural slope before they came in and dumped asphalt and chunks of concrete in there. She indicated that she questions the stability of that fill as it is right now. While they do have to adhere to the regulations, and she did state that at the beginning of the meeting, but they are also charged with protecting the safety, welfare, and property values of the neighbors around them.

Atty. Thomas responded that Mr. Gordon can address the stability of it. There is no danger to the neighbors. It was not a natural slope; it was a slope that was created from the construction of that house. These were very sloped lots. In looking at the property adjacent – 7 Ladyslipper Drive – they have a house, a slope, a pool and then a slope. Obviously, in 1970 when they built the pool, they excavated or filled – they had to have done something because the whole area was sloping. So when 11 Ladyslipper was constructed, the same thing was

done. It was filled to build a house and there was a cliff. These houses were built in the 1960's. They were not natural slopes – and what concerned his clients and what made them go out and get this was a concern of the possibility of erosion occurring. The fence was beginning to erode. The fence was only 10 feet from their foundation, and they wanted to stabilize that slope. The plan they had did not include 7000 square feet at that time. When Mark IV offered to do it and bring in fill – fine, start passing out blame and access it but...their concern now that the fence is covered and they have applied for the TSE, is that they comply with the standards laid out in the regulations.

Comm. McGorty asked about the post and rail fence that he is speaking of – he disagrees, he doesn't think they took the land away. The roadside is higher than the backside. It naturally slopes down.

Atty. Thomas responded that the steep slope is probably filled to create where they built the house – and creating a steeper slope – it was sloping anyway.

Comm. McGorty stated that they don't put too much fill in to build a house on top of fill.

Mr. Gordon responded that they would have done a cut and fill, much like the swimming pool, they would have cut one side, filled the table with some fill and let it drop off.

Comm. McGorty responded – but not 30 feet high.

Mr. Gordon agreed that no – not 30 feet high.

Comm. McGorty commented that it would be several feet but he thinks the natural topography of that land is sloping way in the back. He added that he thinks the original slope was probably just as steep, if not steeper, which they probably had to build up just to put a foundation in there.

Mr. Gordon showed the location of the fill behind the house, the cut on the front because the natural slope, and that if they continued to go down, they would not have had a table and drop off like that. It would have been a more gradual slope. He explained that before they built the houses in the 60's, they bring a road in, they knock off the top of the road, they cut in a bit on the inside, leave the table and then it meets the grade. All those lots in there were done that way. So, there was a lot of grading to fill that subdivision at the time that they built it.

Comm. Pogoda asked Mr. Gordon to go over the discourse of the septic system again.

Mr. Gordon responded by showing the location of the walk-out basement on the photograph and explained that they dimensioned 18 feet from the base of that house to where the escarpment is. He then showed the approx. location of the septic tank.

On another drawing Mr. Gordon commented that the question would be when they have a septic tank – was it a cess pool? Was it a cess pit? Was it a tank that led off into infiltration, leeching galleries? Or something else? He explained that obviously in a situation such as this - the septic tank is very close the basement and very close to the cliff. Nowadays, according to the Standards, it has to be 25 feet from a footing drain, 25 or 50 feet away from an uphill or downhill slopes, watercourses or things of that nature. So obviously, today, they could never go that close to a house or that close to a cliff. So the question is what is underneath there? They went to the Valley Health District and they have

no records because it predates them. Mr. Gordon stated that short of digging everything up, which no one wants to do, he contacted a registered sanitarian from the Town of Orange that they do a lot of work with.

Mr. Gordon indicated that he consulted with him to find out if he thought they might have put a field down at the base of that cliff - because then they would have had a pipe come out at a very steep angle - and the pipe really needs to be a certain pitch – not too flat and not too steep.

Mr. Gordon continued to say that the opinion he received, and he agreed with it, was that back at that time, they probably put a tank in with a couple little legs off of it with a dry well or another pit filled with stones for the liquid to infiltrate while the waste stayed in the main tank. He stated that is what they think may be the case here, but if they did have a pit or dry wells over there and a vertical drop off, as the liquid waste would come through and spread out, it would break out of the side of that cliff. Mr. Gordon added that is why they don't let you do that any more, obviously – they want a certain distance and certain slopes so it will hit the ground water table and penetrate through there instead of hitting daylight.

Comm. Pogoda asked if there was any way to determine whether any of that was damaged with the concrete and everything else that was placed on top of it. He asked if, at this point now, is it going to be leeching into the underground and just going - because with that rock, there is a lot of porous soil. He added that nobody knows how many holes are underneath that, with the concrete and all the slabs that are there. How do they know that isn't leeching out into the wet lands?

Mr. Gordon responded that the thing is that there is all this material for it to leech out through- as opposed to just hitting daylight and a surface flow in which case it would be rawer. He indicated that as much as people don't want to believe it, after 15 to 20 feet of infiltration, the liquid waste is almost potable. But basically, the more places it has to penetrate through, the cleaner it is, and even going through a bony fill material is preferable to hitting the daylight and just doing a surface runoff.

End of Tape 1A 7:55 p.m.

Comm. Flannery indicated that she had a few questions and comments. She addressed Atty. Thomas first, and informed him that she took a Business Law course at UCONN and her professor emphasized that the law can be interpreted any way that you want it to be interpreted. She brought up his comments of how to interpret "slashing" trees – her interpretation of that law means "killing" trees. She referenced a photo shown on display of the fill on top of the trees – and explained that was killing and slashing trees. She added that they did more than that one tree in that photo. Comm. Flannery commented that she did not think that dumping rocks on an entire mountainside of trees is legal – that is her interpretation of the law.

Comm. Flannery continued that she had not been convinced that those rocks are stabilized. She thinks that one day they are going to come down and hit the neighbor's yards, then the City is going to be sued – if they approve this. She indicated that she didn't want the City to have a lawsuit because of something the Commission did here tonight.

Comm. Flannery commented about needing a permit only to build something – in her opinion, they built a mountain. It's not with wood, brick ... but with those stones – they built a mountain. She responded to comments made about Mr. Dingle being unfair without Mr. Dingle being present to defend himself. She

concluded by saying that when these laws were put on the books, no one in their wildest dreams would ever expect anyone to create a monster in their backyard like this one – it is an atrocity.

Comm. Flannery indicated that she wanted Mr. Gordon to tell them how deep the test holes were and how deep it was from the top of the surface to the bottom where the original land was. She commented that if the test holes were taken at 10 or 20 feet, she really wants to know how deep it is from the top to the bottom.

Comm. Flannery recalled that a few years ago she attended a meeting in regard to Old Stratford Road and the clear cutting of trees for Wells Hollow Estates. It was all done illegally and they promised the area residents that they would plant new trees. She indicated that they took down 50 foot trees and planted little shrubs that eventually died. She asked how those Dogwoods and those Red Maples are going to live and if they are going to come back to make sure they are growing really big and healthy. She concluded that those were her questions.

Atty. Thomas responded that the reference to slashing of trees probably does mean the cutting of trees or the killing of trees, or whatever, and it isn't prohibited – because it can't be prohibited. Atty. Thomas indicated that what they do is require through a TSE, if someone wants to do it, somebody wants to cut – which is the equivalent to killing a tree – they have to come to P&Z for a TSE. There is no exemption –nothing - that relates to anyone who wants to do it so they have to do that. And, the fact of the matter is, that's why they are back here – when people fill -but they don't prohibit it – it says that someone has to come in and as long as the action fits within the standards of 32.5 – then it is OK.

Atty. Thomas responded that in regard to the stabilization of the rocks, he thinks Mr. Gordon can probably answer that question because most of those rocks on the edge will be removed but obviously the regulations also require appropriate grading, appropriate plans and appropriate topsoil and stabilization that have to be done. And those are all requirements which they have within their regulations. And since the rocks are going to be covered, he doesn't think they will be coming down; a lot of them are going to come out.

Atty. Thomas responded that he was not in any way attempting to cast aspersions on Mr. Dingle. The bottom line is that, from what he understands, because they have no standards under which a person can do the things that are contained in 32.1 – the Planning & Zoning Office uses its discretion. The presentation that was made, or the understanding that was made, probably was a situation that, if it was done, he thinks that 300 or 600 of fill would not have required it. But this would have required it – clearly someone – Tom Dingle – or anybody would have said – “yes, 7000 yards would require it – yes.” Atty. Thomas commented that the question was made at the last meeting – “how did they do it?” And he is answering how this happened. It did not happen in October, it didn't happen in September, it didn't happen after Mark IV came – it happened in April and they can administer 40 verbal lashes or whatever they want to do. But the fact of the matter is that they are back here trying to comply with the regulations. They aren't trying to cast aspersions on Mr. Dingle and he thinks Jeff Gordon can answer the rest of Comm. Flannery's questions.

Mr. Gordon responded that in regard to the rocks and just general slopes, as a matter of normal engineering practice, if he has a 1:1 slope, which is effectively a 45° angle, he can put a stone or a riff-raff slope on that to stabilize it and that is considered to be acceptable. Mr. Gordon indicated that he studied bio-engineering, and sometimes, what they try to do is use better means by getting

plant materials and whatnot where they can get a root system that gets into the soil, knits there and creates a good stabilizing source – and that is more or less would they would like to do here.

Mr. Gordon continued that a 2:1 is a good planted slope; it's an angle with repose that they aren't going to getting any erosion on that per se once it is planted. A 3:1 slope is where people will have a lawn area where they can use a lawn mower – it's not the greatest. A 4:1 slope is fine for a lawn mower under any circumstances. The normal standard for fill would be a 2:1 standard.

Mr. Gordon explained that the depth of the fill as it is originally placed at its highest point is probably about 22 feet deep. He showed the revised profiles based on the new information. They are cutting back the materials; he showed the 2:1 and then the maximum depth at any given point is barely 20 feet but it will actually be less than that more often by pulling the angle back.

Mr. Gordon responded that the test hole depth was approximately 3 feet deep. Basically, they grab a bucket-load out of there. Being that this fill came from a number of streets, it is a homogenous mix of soil, so what samples they have here are indicative. They can see from the range, that if something was closer than other material, they may get a little bit of a spike. But it is basically the same material. It came from a series of streets where a sewer project was going on; it's excavated material and that's what was used.

Mr. Gordon stated that he assumes that it is the practice of this Commission, usually the Wetland Commissions as well, when there is landscaping that is proposed and required, that they would put up a bond for a year or two to make sure that everything is alive and in vigorous condition at the end of the guaranteed period. What can also be done is a deed restriction put on that, after it is approved and planted, they cannot go in and cut again without coming back to the Commission for permission. He stated that he has seen cases where double rows of trees are put up in a subdivision, and then a homeowner comes in and cuts them down, eliminating what the purpose was. Some sort of restriction can be put on that once vegetation is accepted, alive and vigorous; it cannot be removed without coming back before this Commission for any reason. Mr. Gordon indicated that would be his recommendation.

Comm. Harger asked if he could state again what his estimate was as to the depth of the fill overall.

Mr. Gordon responded that the existing fill as it placed now is about 22 to 23 feet at its deepest point. And what will happen is, at its deepest point, when they would rake back, it would be about 20 feet but that is only at one interface, but because of the new grade, it catches grade much quicker. Right now they have the grade come out of the batch line. He showed where they have a much higher profile there; he explained that they would be cutting that profile back and taking back about 20 feet of the yard – where it is flat – they are going to be taking about 20 feet of that flat area back to begin the 2:1 slope.

Chair Parkins indicated that she had another comment brought out by Atty. Thomas. Last week during the testimony of his client, it was indicated that besides the conversation with somebody at City Hall, Mark IV claimed that the client claimed to have the permit. So – there are some inconsistencies right there that this client says she was told she didn't need them, but Mark IV was told that she had them. So, she just wanted to point that out because it is on the record and he is the one that brought it up the conversation.

Atty. Thomas responded that his client is here and (inaudible...).

Chair Parkins indicated that if there are no further comments or questions from the Commission, she will open this up to the Public. She commented that they know that this is a very emotional issue but she asked public members to restrict their comments to the facts that have been presented here tonight. She requested that they not repeat what was said last week or repeat what is said by previous speakers.

Mary Peck, 10 Greenfield Drive, Shelton, CT addressed the Commission.

Mrs. Peck stated that she wanted to address the Commission again because she went outside to take a good look at her property – she doesn't really ever do that very much during the winter time. She commented that this is an uncomfortable situation because she is friendly with Atty. Gaetano's brother who lives on her street. Mrs. Peck responded to Atty. Gaetano's defense that he is trying to shore up his house because - in looking at it from her house, it is obvious that he tried to get as much flat land as he could and that is why the pitch is so steep. She reiterated that they were trying to get as much land as they could. So, it's not just about shoring up a house – especially if you look at it from her side.

Mrs. Peck continued to say that the Gaetano's that she is friendly with, living on Greenfield (Atty. Gaetano's brother and his wife) have a beautiful flower garden in their front yard and a nice house. She finds it hard to believe that any of the Gaetano's – Atty. Gaetano's or her friends the Gaetanos on her street, could honestly stand in her backyard and say that an injustice had not been done. She knows that she isn't supposed to repeat herself but it is such an abomination. Mrs. Peck indicated that she thinks that 2:1 ratio is still not going to look right because it was a natural thing. And in fairness, because it wasn't done correctly, and a lot of fill was brought in – she knows that they are saying that they didn't know that they needed a permit, but when truckload after truckload of stuff is brought to your property – you'd have to ask "can I really do this – without a permit?" It just does not set well with her.

Mrs. Peck reiterated that she is in favor of bringing it back to looking more natural. She isn't really crazy about a 2:1 ratio. She has an above the ground pool in her backyard and when the weather starts to get warm – she has all this dirt in her backyard. She is very close to the cliff of this construction job so her property is really affected by this. She would appreciate any help that the Zoning Board could do to make it look right. She asked again how they are going to get those large cement rocks at the bottom of the cliff out of there without coming onto her property to remove them. She asked that someone address the subject of how large the equipment to remove these boulders is going to have to be. She concluded that she thinks the Gaetano's just wanted a flat yard – and she doesn't believe that shoring up thing. From her backyard, it is obvious that they tried to get a lovely yard for themselves without considering anybody else. She thanked the Commission.

Laureen Sporko, 7 Ladyslipper Drive, Shelton, CT addressed the Commission.

Mrs. Sporko commented that she lives next door to 11 Ladyslipper and she saw the testing being done. Mr. Delabitta (Mark IV Construction) said that they would take material from a half a dozen areas and they did that around the top. They had a crew with 3 men that chipped, because it was icy out, around the whole top but she didn't think she saw them do anything else. She is concerned about what is down 20 or 25 feet. (inaudible ...low volume)

Mrs. Sporko indicated that she lives at 7 Ladyslipper Drive and they have a pool; they are concerned about the height overlooking her pool. She asked if the height of that would be coming down – not just being graded back – she wants to know if it is coming down.

Richard Sporko, 7 Slipper Drive, Shelton, CT addressed the Commission. Mr. Sporko indicated that he also lives next door and he has been there for 32 years. They were there when that fence, which they now say is falling apart, had been built – and, it was not professionally installed at that time. It was just put up by the homeowner over a weekend – it was just slapped together, and he wanted to clarify that.

Mr. Sporko commented about the 32.5.10 Shelton Zoning Regulation that Atty. Thomas mentioned about slopes. Atty. Thomas correctly stated the part that said “Such area shall be evenly graded to slopes not exceeding one (1) foot of rise for two (2) feet of horizontal distance or to such lesser slope but he didn’t mention the rest of it that states “necessary for soil stability, safety and reasonable reuse and development of the lot.” Mr. Sporko commented that he thought maybe that should be included too. Mr. Sporko submitted photos to the Commission of what the area looked like from his house.

Thomas Hanko, 6 Greenfield Drive, Shelton, CT addressed the Commission. Mr. Hanko stated that he wanted to reiterate some of the comments concerning the Conn. State Agency Regulations 22A209D-1 as far as the use of asphalt and bituminous concrete for fill. What he was able to find online was that recycled or reclaimed asphalt is only allowed to be used directly in the construction of roads, bridges, and incidental construction of parking areas. It goes on to say that such material that is used, reused or recycled, must be used within two years of its excavation and may only be used as an ingredient in further asphalt fills.

Mr. Hanko commented that he may be mistaken because it is contrary to the testimony of Atty. Thomas, but he doesn’t think asphalt is an allowable component of the fill. He still has concerns with the environmental hazard now or later because asphalt is made with petroleum by-products and that composition does break down. In addition, again contrary to Atty. Thomas’s comments, as far as the P&Z Regs for the City of Shelton, he believes that there is a responsibility, whether it is written or not, to concern yourself with the welfare of neighboring properties – whether it’s for aesthetics or health issues.

Chair Parkins asked Mr. Hanko what regulations he was citing from.

Mr. Hanko responded that it is referred to as the Regulations of Connecticut State Agencies.

Chair Parkins asked if there was anyone else wishing to speak against or in favor of this project.

Mary Peck, 10 Greenfield Drive, Shelton, CT asked the Commission who did the testing. She also wanted to know if it was an independent person or a testing lab that would not have been biased.

Tom Delabitta, Mark IV Construction responded to the Commission by indicating that the laboratory name is on the bottom of the report, Connecticut Materials Testing, and they are a certified testing agency.

Chair Parkins confirmed that yes, it was an independent lab. With no further comments from the public, she asked for a consensus from the Commission members.

Comm. Pogoda responded that he thinks that when Staff presented the plan, and in listening to the comments from Commission members last week as to what they would like to see and what they thought might be reasonable to

alleviate a bad situation - he agrees with what was brought out tonight by Mr. Schultz about bringing back about 33 feet and putting the slope at roughly 3:1 or 4:1. It sounds more reasonable especially if that slope is to be planted or hydro-seeded to where the homeowner can cut that grass, instead of leaving it at a 2:1. Last week, he recalled that it was mentioned that they would hydro-seed it at a 2:1 and there is no way that slope could be cut – so then there would be grass growing high and that looks more unsightly.

Comm. Pogoda indicated that he would like to see as much of the slabs and large material be removed. It is unsightly. Any trees still in the area after the slope is brought back, need to be removed. He thinks that it is a start, on the plan that Mr. Schultz presented. It concurs with the City Engineer's report. He thinks that is a fair compromise. They did their soil testing and presented an accurate report of that.

Chair Parkins asked for some clarification if asphalt is an allowable fill.

Atty. Thomas asked the Chair if she wanted an answer to that now.

Chair Parkins responded that he could certainly attempt to answer it, she isn't sure it will totally convince her that it is the right answer.

Atty. Thomas responded that he thinks that Mr. Hanko was citing from, and he can print out a copy, is the proposed regulations which were proposed and are still under consideration by the DEP. They are not the existing regulations. The DEP proposed new regulations and put them out for comment.

Atty. Thomas indicated that one of the reasons that he is very familiar with the existing regulations is that he was one of the attorneys on the Laurelton Hall landfill case where his client was the construction person who had put fill in that was excavated – and it was clean fill. And, in that case, it was from the City of Milford which has asphalt, some concrete, but then building debris came in and the real problem with that was some of the concrete and rebar and some of the asphalt had other materials that were in it.

Atty. Thomas stated that they are proposing the regulations, and there are a series of slides available to download from the website. They have not been passed and in the proposed regulations clean brick, concrete and ceramics would be OK but reclaimed asphalt – and they are trying to push the asphalt into the recycling plants and use those for road mix and take it out of the clean fill. That is a proposed regulation – it has not been passed and it is still under comment at the present time.

The existing regulation that he read to them is off of the current existing regs off of westlaw.com or (inaudible...)

Comm. Flannery asked when that would be voted on.

Atty. Thomas responded that there is a comment period and he isn't sure what that comment period is and even after the comment period, it goes from the DEP, back to the legislature for comment, and once it cleared there they can propose the regs. He said he honestly did not know the time frame for it.

Comm. Pogoda asked Atty. Thomas if he said that at this time, rebar is allowed.

Atty. Thomas responded no, he said he was familiar with it because he was involved in a case where one of the issues was that fill was used that had rebar in it - it was a building demolition and they were using it for fill at a Laurelton Hall site to build a field. That kind of fill went in there and it created a legal

action; once it gets into building construction material (that is, taking it out of buildings) that is clearly not part of clean fill.

Comm. Pogoda asked if he was saying that there was no rebar in this fill.

Atty. Thomas responded not that he's aware of, no. If there is, it would have to be taken out. In the question that was asked about how it was going to be taken out – it is obviously is going to be taken out with an excavator. The area along the edge where there is older concrete that has small black rocks in it – all of that on the very edge is going to be taken out.

Chair Parkins asked how they know that it isn't also inside the middle of it.

Atty. Thomas responded that it was OK – it doesn't have rebar in it. He is just talking about the pieces along the side.

Comm. Pogoda asked what if the rebar is in the portion of land that is not going to be disturbed. He asked how he could guarantee them and the homeowners that there is no rebar in that portion of land – unless it is all picked up.

Mr. Gordon responded that quite frankly, he wasn't there. And all he could tell them is that, customarily, what they do is, put the large material on the edges to stabilize it and that is what he saw. He couldn't tell what is underneath there other than what they found from the soil testing and the source of where the material came from – that is all he can go by. The items that are along the edges are going to be removed, it is called out on the plan that they are going to be removed. It is underlined that anything with rebar is going to be removed – that is on the plan – it has been on the plan since the beginning.

Comm. Pogoda indicated that he understands what he is saying but he asked again how they could be assured that there is no rebar left in the portion that isn't going to be touched. He realizes that there is no...

Mr. Gordon responded that generally speaking about where the material came from – it came from a road base and chances are there would not be concrete with rebar in a road base but they might have picked up some curbs which could have it, explaining the big chunks seen on the end. Of course, it is possible that there is some mixed in someplace, but he can't answer that.

Mr. Gordon indicated that generally speaking, from what he saw and from what they saw, there are huge chunks of concrete on the fringes and that is often used to stabilize a steep slope. The existing slope there now is at least a 1:1. The slope that preceded it was about ½:1 and they are talking about 2:1 which according to best management practices, is a good stable filled slope. Planting it makes it better. Mr. Gordon indicated that his hydro-seed mix is a wildflower seed mix – he can't have grass growing among shrubs and other stuff – it would be unsightly – it's a wildflower seed mix to pretty it up a little bit and make it look as natural as possible.

Comm. McGorty commented that he thinks the proposed plan by the Administrator is a good plan. He thinks a 3:1 works much better for growth and maintenance. A bigger concern he has, and one that probably can't get answered, unless there is some sort of test, is whether there is concrete/rebar underneath the center of that pile. He didn't know, but there maybe some sort testing or sonar to detect that – but he realizes that there isn't any definitive way that they can say it is just around the edges. Comm. McGorty added that he'd like to see the asphalt removed. Because if the State is going in that direction, it is for a good reason, so that would be another stipulation he'd have.

Mr. Gordon responded that as the slopes get raked back, the material gets drawn out and they'll have opportunities to see if anything starts to present itself and it could be reassessed at that time.

Chair Parkins commented that is all the more reason to pull it back then.

Comm. Harger commented that Mr. Gordon's mention of a bond and some deed restrictions is something that she thinks should be included to protect everyone.

Comm. Sedlock commented that when the unlimited of gravel loads came in – he finds it hard to believe that they didn't know how many truckloads were coming in because you pay for it by the truckload; so he assumes that they would know how many truckloads were coming in. Comm. Sedlock indicated that his biggest problem with this whole thing is that there are several neighbors around the Gaetanos who are concerned about their health, safety and how hideous it looks. Maybe the Gaetanos and their neighbors could sit down together and figure out what the best solution would be for everyone. They might be able to come to some agreement together as a neighborhood.

Chair Parkins responded that she thinks that it is really up to this Commission because the Applicant is within their right to fill in their yard, so as a Commission, they need to take everything that they've heard into consideration and come to a consensus, and then let the Applicant respond to that.

Comm. Sedlock commented OK – that answers the question in his head but not necessarily in his heart.

Chair Parkins indicated that they've heard from the public and they wish this never happened to begin with. They would like things to stay the way that they were, but change happens. People have a right to alter their property.

Comm. Sedlock commented that the fact remains that they have an existing problem and he'd like to find a way where everyone is comfortable, not necessarily happy, but at least comfortable in the end.

Chair Parkins responded that she thinks that is what they are trying to accomplish here.

Mr. Gordon stated that he wanted to respond to Mrs. Sporko's question about the pool next door. He used the site drawing to show that the elevation of her pool is approximately, according to the Town data, it would be an elevation of 437- 438 and the height of the backyard is at 442 – so it's really just 4 feet in elevation. Her pool is 140 feet from top of the slope so that is the technical thing.

Mr. Gordon continued to show on the plan, page SP2M, shows an extensive planting plan. He commented that this is the Gaetano's property and yard too – they don't want it to be an eyesore either. They want something that looks nice too. They'll be planting it and maintaining it too – it's their home so they have a vested interest too.

Atty. Thomas responded to the issue of the bond. He indicated that the Commission has the authority to impose a soil erosion sediment control bond and obviously they have a right to keep that bond on until the appropriate stabilization. Technically, it's not a bond that ensures that a specific shrub is going to live but that's the way it's been interpreted. They don't have any problem with that to cover the growing period. He realizes that they would want it to cover two into three growing periods.

Chair Parkins asked about the question regarding the removal of the rocks at the base of the slope. She thinks that Mr. Gordon touched upon the use of an excavator, but she asked how they would get it down there from the Gaetano's property.

Mr. Gordon responded that the excavator can actually reach from the top down to the bottom – it is big, it has a large grabber that pulls it up.

Chair Parkins commented that she saw some huge equipment out there as well. She asked if he would need to access anyone else's property.

Mr. Gordon responded no.

Comm. Harger asked how, once this is resolved, how is it going to be monitored will it be by Staff – the excavation, the stabilization, or what might be uncovered. She commented that she thinks somebody has to be on site the whole time.

Chair Parkins responded to the question but it was inaudible. She echoed what she heard from a few of the Commissioners. She agrees that the 3:1 slope is a much more reasonable one in this situation. It will allow the Gaetanos to have a reasonable backyard, much more than they have now and still allow a more gentle slope with plantings and a grassy area that can be mowed for the residents that live around there – but more so that it will allow anything that is under there to be detected – any further rebar or other materials. She commented that there seems to be an agreement among the Commission for 3:1.

Comm. Flannery responded that she doesn't agree with 3:1; she wants the whole thing removed.

Chair Parkins asked Comm. Pogoda his thoughts on the slope.

Comm. Pogoda agreed that whatever had been discussed by Staff – Rick had mentioned it was somewhere around a 3:1 slope – Rick mentioned pulling it back around 32 feet which would come to what would be a reasonable slope.

Comm. Harger added that it has to be with the understanding that, if when they get to the interior, and something is exposed – that it gets pulled out

Comm. Pogoda agreed with that - yes, if they find something, expose something as they pull it back – it has to come out.

Chair Parkins commented that she really didn't think that having all of this fill pulled out and all new stuff put in – would be an expeditious process for the people that live around it.

Comm. Flannery responded that she does not feel comfortable with the asphalt and the oil. She's a science teacher and environmentally, she's just not comfortable about it, and she cannot condone this.

Chair Parkins indicated that she understands that and she asked Comm. Sedlock for his comments.

Comm. Sedlock responded that he was going to go along with Staff on this also.

Atty. Thomas asked if Mr. Schultz could make a copy of the map so that they could properly respond.

Mr. Schultz responded yes, absolutely.

Chair Parkins indicated that they can keep this public hearing open until their next meeting date which is February 24th, Wednesday.

Atty. Thomas responded that he thinks that they need an extension because it needs to be completed within 35 days of the beginning...

Mr. Schultz commented that it is fine, he doesn't need the extension – the first public hearing was January 27th.

Mr. Gordon asked if the purpose of this would be for him to take Mr. Schultz's plans and rework them for the next meeting.

Chair Parkins responded yes, that's what the Commission would like to see – a revised plan.

Comm. Harger asked Mr. Gordon if he could provide some photos or pictures of the plants listed on his planting legend because she isn't familiar with all the species of these plants.

Mr. Gordon responded that would be no problem – they are very similar to what can be seen along the highways and (inaudible).

End of Tape 1B 8:42 p.m.

Comm. Harger asked about something she read in the Engineering Report about the Norway Spruce, and the replacement trees were not needed along the barrier destroyed and what the reasoning was for picking that particular species.

Mr. Gordon responded that he's a landscape architect and basically, the other species he looked at were White Pine which is the subject to pine tree flora; it is a tree that as it matures, it shades out it's lower branches and they get top-heavy – all trunk with just stuff on the top. He mentioned the Hemlock, but it is a very slow growing tree that is subject to a fungus infection and needs to be sprayed 3 times a year, just at the right time – and it never happens. So, in the industry, this is getting to be what they are using.

Comm. Harger asked about Mountain laurel and Rhododendron.

Mr. Gordon responded that the Rhododendron are usually planted along a fringe area with partially shaded areas requiring (inaudible).

Comm. Harger commented that one of the neighbors had mentioned how nice it used to look during the flowering season so she just wanted to make sure it looks attractive.

Chair Parkins concluded the discussion and commented that they'll look forward to seeing revised plans on February 24th.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was voted (5-1) to close the discussion and continue the public hearing for Application #09-38 on February 24th, 2010. Comm. Flannery voted in opposition for the continuation of the public hearing.

Chair Parkins called for a 5 minutes recess at 8:55 and resumed the meeting at 9:00.

OLD BUSINESS

APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE

SEPARATE #5211 RON MITCHELL, JR., 5 FAIRVIEW AVENUE, IN-LAW

Mr. Schultz showed a location map to the Commissioners with the property highlighted in yellow. He explained that this is a basement use, 674 square feet. He showed a copy of the floor plan. He indicated that this would be for a family member. It is a conversion of an existing basement area and Staff recommends approval.

Comm. Harger asked where the access was located.

Mr. Schultz showed the door going down from the main floor area.

Comm. Harger asked if there was any walk out.

Mr. Schultz responded no, this one has a window that is large enough to remove – a slider on the bottom and another window. There are a couple of codes that come into place for the basement. He showed the location of the lot off of River Road. There are no external modifications to the home.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #5211.

SEPARATE #5219, DAN PUCKEY, 23 WINTHROP DRIVE, IN-LAW

Mr. Schultz presented a copy of the location map and floor plan. He explained that this was a raised ranch with the in-law apartment in the lower level, 772 square feet, no exterior modifications. This is also for a family member. He indicated that they have approval from Valley Health because this is on-site septic. He indicated that they have an affidavit in order and Staff recommends approval.

On a motion made by Thomas McGorty, seconded by Joan Flannery, it was unanimously voted to approve Separate #5219.

SEPARATE #5224, KELLY CALANDRO, 100 CENTER STREET, LIQUOR STREET.

Mr. Schultz indicated that on the subject property, they would be on the first floor, previously occupied by Center Stage. This is a multi-story building, 8900 square feet. The first floor area will be 3200 square feet. Hours of operation 8-9, 3 employees and 20 parking spaces – this is one of the few places Downtown where there is sufficient on-site parking. The Applicant is present to answer any questions.

Comm. Flannery asked if they didn't just approve a liquor store Downtown.

Mr. Schultz responded yes, but on Howe Avenue.

Comm. Flannery commented that is right there - she asked how many liquor stores they were going to have Downtown.

Mr. Schultz responded that the State of Connecticut allows "X" number of liquor stores based on the population. The number is 15 total for the City of Shelton – one for every 2500 residents. This will be the 14th and there is still the ability for one more within the community.

Comm. Flannery responded that she thinks that they are saturated Downtown right now, and she doesn't think that is attracting any night life – having a liquor store. She would rather see something else down there.

Comm. Harger commented that this is a permitted use.

Mr. Schultz agreed and said that their hands are tied – this is a permitted use.

Comm. Flannery commented that she would rather see another theater or something cultural.

Chair Parkins responded that they can't solicit businesses to come in. People that are making applications have a right to have that type of business there – and, as Rick just said, their hands are tied. Chair Parkins commented that she did want to address the issue of the delivery trucks and how they would get in and out without blocking traffic because that is a very tight road area.

Comm. Sedlock responded that hopefully, they would just use the parking lots in back.

Comm. McGorty commented that it is tight - when there are cars parked back there, a truck just can't just spin around in there. Kleto's has the issue too, where a lot of them will just double park right on Howe Avenue because it is such a pain to get into that parking lot.

Comm. Pogoda added that they aren't going to have that possibility on Center Street, especially where the corner comes into a three way there.

Comm. McGorty responded that it shouldn't be happening on Howe Avenue either, it is a major impediment in the traffic lane.

Comm. Harger commented that the building used to be a bank, they should have the ability to pull the truck around the back.

Comm. Pogoda agreed that they have a parking lot, they aren't talking about 40 foot trailers – they are just talking about beer trucks or whatever.

Chair Parkins commented that right now there is a dumpster back there so a garbage truck is getting in there.

Comm. McGorty responded that the lot is empty right now though. He asked what else was in there.

Comm. Harger responded that there are apartments upstairs – five apartments.

Comm. McGorty asked Rick if that meant there is parking in excess of what is required based on the use upstairs.

Mr. Schultz responded yes.

Comm. McGorty asked if there was a possibility of that use changing down the line – to some professional use- and it becoming a more active parking lot.

Mr. Schultz responded that is why they regulate each occupant. The applicant is present to respond about the deliveries.

The Applicant, Kelly Calandro, (name not provided?), responded that there are 35 parking spots and five of them are dedicated to apartments upstairs so they will have the remaining 30. As far as delivery is concerned, they have two

entrances and the natural course is to come in through the first entrance coming down Bridgeport Avenue, park behind the store, pick up/deliver in the back and go out the main entrance in the front.

Comm. Sedlock commented that one of those entrances is blocked up at the moment though – would it be opened when they store opens up.

The Applicant responded yes it would be.

Comm. McGorty asked if that meant they would come in from the side that has a chain across it right now and go out the other way.

The Applicant responded yes.

Comm. McGorty commented that was OK – he'd be really opposed if it was going to be on the street because it is a major problem down there – with Caliente's, Danny O's, on Howe Avenue with Kleto's...it is a major problem.

Comm. Sedlock asked why they can't just put that in the approval.

Chair Parkins addressed the Applicant to tell him that he would be responsible that no delivery trucks are parked on the street, blocking traffic. He will have to notify his distributors and deliveries.

The Applicant agreed to that and added that just from a security and safety standpoint they would want to do that because the front is where the customers are going to be coming in. They want all their deliveries in the back; they have their coolers in the back so everything will make sense to go into the back.

Chair Parkins responded that she appreciates that but sometimes the Budweiser trucks and the Coca-Cola trucks tend to like to pull up and drop off and get out.

Comm. McGorty added that if there is one truck out in the back, another delivery guy may just decide to park and run in with a hand truck.

Comm. Flannery asked why they are having a liquor store when there are already two down there – she asked what the reasoning was for it.

The Applicant, responded that he was laid off from GE two months ago and has spent a lot of time researching different types of businesses, and given the fact that this is a regulated industry, he thinks he has a shot here at supporting his family. There are a lot of different issues, they have two young kids, so it is difficult to own a restaurant. He looked into other things like night life, or something with kids but he needs to support a family. He feels comfortable that given this location, and the parking, that they can start this business here and be successful. He continued to say that they weren't happy with the fact that someone else was coming in down the road but he has been a Shelton resident for almost 34 years, and he does not think that having more business Downtown is a bad thing.

Comm. Flannery responded that they don't need more of the same thing though.

Comm. Harger commented to Comm. Flannery that they do not have the right to discourage a business venture if it is allowable - a permitted use.

Chair Parkins agreed and said, yes, it is free enterprise.

The Applicant responded that he plans to have a smaller local establishment with wines and other things. They like the protection it offers as a regulated industry.

Comm. Flannery added that she wants to see more night life downtown. This is not going to attract people who live in apartments to come downtown.

Comm. Harger responded to Comm. Flannery that it was not their judgment call. It's a permitted use and if he wants to do a business venture like this, and it is permitted - then it is up to him.

Comm. McGorty agreed that he is making a business decision and he has the right to do it. And the strong will survive – that is the way it goes.

Chair Parkins added that they cannot control competition.

Comm. Flannery commented that she would rather see another theater come in there or something like that.

Comm. McGorty indicated that he thinks most of them are in tune with that. Something cultural would be great but...

Mr. Schultz added that this applicant is not submitting a sign request tonight just the occupancy.

Chair Parkins asked if they would have any control over those metal gates that they put up on liquor stores because she thinks they are hideous looking. She asked the Applicant if he was planning that.

The Applicant responded that they've discussed that, they don't want to do that, but their biggest concern is about those four 4x8 foot large windows. They want to come up with some kind of a plan for that because they don't want to put those gates there either but at the same time, someone can literally just drive a van through the front of their store (inaudible, multiple discussions)

Chair Parkins indicated that she would be really adverse to the metal gates because it is almost a sign that the Downtown area is not safe, and it is not going to do anything to attract people down there.

The Applicant asked if the Commission would be adverse to anything in front of those windows to minimize the risk. They'll have a security system but they do have concerns about someone just driving a truck through their front windows. He suggested large planters or cement bollards.

Chair Parkins responded that they can take up the architectural issues with the Downtown Subcommittee, but she just really wants to make sure that it is on the record that they would be opposed to those metal window gates.

Comm. Harger commented that in order to speed the process up, she'll have to convene a meeting of the DSC. She asked the Applicant to think about this and come to the meeting with an artist's rendering of what he is proposing.

Chair Parkins added that there is some sort of protection with a design that is on the jewelry store Downtown to prevent break-ins.

The Applicant responded that he has seen some things done from the inside out that are more attractive looking.

Chair Parkins asked for a motion with the condition that there be no delivery trucks in front of the store.

On a motion made by Joe Sedlock seconded by Virginia Harger, it was voted (5-1) to approve Separate #5224 with the condition of no delivery vehicles in the front of the store. Comm. Flannery voted in opposition to this occupancy.

Upon request of the applicant, Mr. Schultz signed their liquor permit.

SEPARATE #5213, GATHERING HARVESTS, 281 CANAL STREET, WINE DISTRIBUTION/WHOLESALE

Mr. Schultz indicated that this would be at Mr. Watt's warehouse building on Canal Street. Even though all the buildings down there were rezoned to a PDD for a mixed use, the Commission recognized the pre-existing, non-conforming uses which include warehousing. The State is holding up the renovation work until the City does the road work and the utility work. However, there are still many buildings that can be occupied. This is one of them, and it is proposed for a wine distribution/wholesaler at 281 Canal. It only requires one part time employee, one parking space for a personal vehicle and the area is only 300 square feet. Mr. Schultz added that this is consistent with what the Commission anticipated until these older factory buildings are renovated for a mixed use.

Comm. Flannery asked if this counts as liquor store #14.

Mr. Schultz responded no, this is a wine distribution wholesaler.

Chair Parkins asked if this was just any office then – not for storage.

Comm. Pogoda asked what they would store in 300 square feet – it's not a warehouse then.

Mr. Schultz commented that he doesn't know if they put the wrong number down on the application. He asked if the applicant was present.

Pat Tisi, P&Z, responded that the Applicant came into the office, and this application is strictly warehousing. By law, she has to have the wine stored for a period of 24 hours under Order of the Liquor Commission before it can be sent in. It is an in-between stop...a staging area.

Chair Parkins asked if this business would just be temporary there until the Canal Street construction comes.

Mr. Schultz responded yes, until that day comes.

Comm. Flannery asked what they would want there in the future.

Mr. Schultz responded residential.

Chair Parkins added that these landlords, the owners of these buildings, are just looking for anything to get some income there. They are better off having something in those buildings than nothing.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Separate #5213.

SEPARATE #5216 ABC SIGN CORP, 875 BRIDGEPORT AVENUE, SIGN

Larry Borque, ABC Sign Corp, addressed the Commission to gain approval for the signs for the new Shop-Rite Store that is moving into Bridgeport Avenue. As a Shelton resident and taxpayer, he is happy to see them coming to the

community. Personally, he is pleased because he doesn't have to drive to Derby to his shopping.

Mr. Schultz presented the detailed plans – the Commission had been informed informally for the reuse of the building.

Mr. Borque explained that it is basically just re-branding. The signs are very similar to what was there in the past. They are changing the front sign from Shaw's to Shop Rite and also the side sign and the ground sign. Mr. Borque indicated that Rocky Cingary, the owner of Shop Rite was present with him tonight.

Comm. Sedlock asked Mr. Cingary when he planned to open the store.

Mr. Cingary responded that they've been working 7 days a week, 2 shifts but this week, they had to postpone things again because of the snow. They hope to open up in a month or a month and half. They are ahead of schedule.

On a motion made by Joe Sedlock seconded by Joan Flannery, it was unanimously voted to approve Separate #5142.

SEPARATE #5142 SHOP RITE PHARMACY OF SHELTON, 875 BRIDGEPORT AVE, PHARMACY BUSINESS

Mr. Schultz indicated that they have the application now for the pharmacy within the Shop-Rite. It will consist of 900 square feet of lease area, four employees, hours of operation M-F 8-8, Saturday 9-5 and Sunday 9-3. This is consistent with the PDD.

Mr. Schultz asked Mr. Cingary if he had any news about the bank.

Mr. Cingary responded that they have not been too successful getting a bank, but it could be a possibility down the road.

Comm. Pogoda asked Mr. Cingary if he would be coming in for a pharmacy sign.

Mr. Cingary responded that when they come in for the façade, they will come in with it.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Separate #5142.

SEPARATE #5225, KAELIN'S, 495 RIVER ROAD, SIGN

Mr. Schultz asked if the applicant was present and he was not. He informed the Commission that he was advised today that the sign may have been installed already and it does not reflect the color that was submitted. He indicated that he wants to find out what is going on with it and requested that it be tabled.

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously voted to table Separate #5225.

SEPARATE #5200, JENNIFER CYZJKOWSKI, 505 HOWE AVENUE, BARBER SHOP BUSINESS

Mr. Schultz stated that this would be occupying the same barbershop that is on Howe Avenue. He showed the proposed signage. The usage is a continuation, 800 square feet, 2 employees, closed Sunday and Monday. It will be called J Cuts Barber Shop. Staff recommends approval.

Comm. Harger asked about the phone number in the window because she thought they did not permit that.

Mr. Schultz responded that they don't allow it on the signs but inside it's OK. Comm. Pogoda asked if there was one there previously. Mr. Schultz responded that he doesn't go there, so he isn't certain. He asked if the applicant was present but they were not. He indicated that he would clarify that there is no phone number.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #5200.

SEPARATE #5208, JOE NESTERIAK, 469 HOWE AVENUE, PHOTO STUDIO BUSINESS.

Mr. Schultz indicated that this is on the second floor – the building to the right of Mayflower Florist. The previous tenant had been Spirit of Angels, a retail store. It is 1600 square feet, residential and commercial management so it has an office. There are two employees, hours of operation 8-8, M-F. Zoning permits it and Staff recommends approval.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Separate #5208.

Joe Nesteriak, 469 Howe Avenue addressed the Commission. Mr. Nestorian indicated that he brought in a rendering of the sign for the window. He presented the stencil rendering to the Commission and told them it would be in one of the two windows. He described it as a clear vinyl plastic that is put on the inside of the window.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve the signage for Separate #5208.

SEPARATE #5215, CHARLES WALKER, 350 CORAM AVENUE, REAL ESTATE/GRAPHIC DESIGN BUSINESS

Mr. Schultz stated that this was two buildings up from the pharmacy on the corner of Center Street; it is next to Anna's Café. The area is 832 square feet and it is for real estate graphic design. It is curbside parking but the use does not generate a lot of traffic.

Comm. McGorty asked if it was for real estate and graphic design.

Charles Walker, applicant addressed the Commission. He explained that it would be real estate and/or graphic design. Real estate would be the primary business; graphic design would simply be another desk in the office there for a part timer doing freelance work.

Chair Parkins asked if it would be owner occupied real estate or agents as well.

Mr. Schultz responded that it would be 2 employees, M-S, 9-6. This is for occupancy without signage.

On a motion made by Thomas McGorty seconded by Joe Sedlock, it was unanimously voted to approve #5215.

APPLICATION #09-37 AOEL PROPERTIES, LLC FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (CONVERSION OF SINGLE FAMILY

TO TWO FAMILY DWELLING), 3 ORCHARD STREET (Map 117D, Lot 64), R-5 district (public hearing closed on 1/27/10).

Mr. Schultz indicated that Staff has prepared a draft resolution that he would read. All Commissioners were provided copies of the draft report.

***See attached Draft Report/Resolution for Application #09-37 dated 2/9/10.**

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously roll call voted (6-0) to approve report/resolution for Application #09-37.

PUBLIC PORTION

Mr. Richard Wodonski addressed the Commission. He indicated that he sent in a letter in regard to a previously approved sign on the agenda last month for the Hotel Sierra. He referenced Certificates for Application of Zoning Compliance #6825 and #6826 from February 2008 and P&Z Minutes from the same timeframe. He indicated that he had some information about the sign but had not had an opportunity to speak at the time. He expressed his frustrations about not having been able to speak about the application at the time of the meeting and difficulty obtaining information and communicating from employees at City Hall.

End of Tape 2A 9:32 p.m.

NEW BUSINESS /AGENDA ADD-ONS

Chair Parkins indicated that she would need a motion to add some new items to the agenda.

APPLICATION #10-01 DOMINICK THOMAS ON BEHALF OF 714, LLC FOR INITIAL DEVELOPMENT CONCEPT PLAN APPROVAL AND PDD ZONE CHANGE (RETAIL SHOPPING CENTER) AT 405-407 BRIDGEPORT AVENUE AND A PORTION OF ACCESS ROAD (MAP 77, LOTS 26, 27, 28, 29 AND 30) ACCEPT AND SCHEDULE A PUBLIC HEARING.

On a motion made by Thomas McGorty seconded by Anthony Pogoda, it was unanimously voted to add Application #10-01 to the 2/9/10 agenda.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept Application #10-01 and schedule a public hearing for February 24, 2010.

APPLICATION 10-02 COASTAL AREA MANAGEMENT SITE PLAN FOR THE SUNNYSIDE BOAT RAMP REVETMENT RELOCATION PLAN (MAP 66, LOT 135).

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted a add Application #10-02 to the 2/9/10 agenda.

Mr. Schultz read a report from the City Engineer dated February 9, 2010 regarding City of Shelton's request for approval from the DEP to relocate the existing stone revetment for the riff-raff that was inadvertently installed below high tide along the Housatonic River.

***See attached report addressed to Richard Schultz, from Robert Kulacz, City Engineer dated 2/9/10.**

Mr. Schultz added that the DEP advised that City of Shelton that they need to move this. He explained that ten years ago they installed coconut trees to stop the erosion and it did not hold up so the City then put in riff-raff.

Chair Parkins asked if this meant the Commission was supposed to approve the Coastal Area Management Site Plan.

Mr. Schultz explained that it would be the relocation of the riff-raff which is below the high tide and the Housatonic River. They want it out and brought up before March 30th.

Comm. Flannery asked how much this would cost the City.

Mr. Schultz responded that he does not know the dollar amount but they had to deal with an erosion problem and they thought it was done correctly. The State intervened because they regulate that, as this Commission knows, from the River.

Chair Parkins commented that the State is basically telling them that they have to do this.

Comm. Pogoda added yes, it's not something they have any control over - it is just something that has to be done.

Mr. Schultz commented that it is to remediate a situation that should not have been done – but it was done for the right reasons, it was for sediment erosion control.

On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve Application #10-2 Coastal Area Management Site Plan for the Sunnyside Boat Ramp Revetment Relocation Plan.

OTHER BUSINESS

APPROVAL OF THE MINUTES: 1/12/10

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve the minutes of 1/12/10.

8-24 REFERRAL: PROPOSED DOG PARK AT 234 SHELTON AVENUE

Mr. Schultz indicated that they received a memo from the Mayor's Office dated January 22, 2010 requesting an 8-24 Referral for a proposed dog park to be located on City property at Nells Rock Road and Route 108 Shelton Avenue (the former BHC 2-story house). Additionally, he read the recommendation from the City Engineer dated 2/9/10. He indicated that this is being proposed by the Parks and Rec Commission; they feel it will provide a service to the City of Shelton. It is adjacent to the Shelton Lakes Greenway.

Comm. Pogoda asked if they had any intentions of removing that house.

Mr. Schultz responded no, they did not – it will be in the back.

Comm. Flannery asked if this was the property where they cut down all the trees. Mr. Schultz responded yes. Comm. Flannery asked if they were going to

put the trees back up. Mr. Schultz responded no, they were selectively cut to provide for the dog park.

Comm. Harger asked if this would be enclosed with a chain link fence.

Mr. Schultz responded that he did not have all the details.

Chair Parkins added that it is going to be for small dogs and big dogs. The entrance will be on Nells Rock Road, a drive way there is facing the house to the left.

Comm. Pogoda indicated they he had some concerns about the chain link fence. He asked if they could do something else that wouldn't be such an eyesore.

Mr. Schultz responded that they can convey that they'd like attractive fencing as they did for the two family dwelling.

Comm. Harger commented that they just want to be able to let the owners take the dogs off the leash so they can run around in an enclosed area.

Mr. Schultz agreed that they could convey that decorative fencing should be used.

Comm. Pogoda asked if they had any choice on it because he hates to see a chain-link fence, like at the dog pound, in a residential neighborhood.

Mr. Schultz indicated that he would relay that.

Chair Parkins asked what he meant by decorative – like wrought iron – because this is taxpayer's dollars.

Mr. Schultz responded no the black, vinyl coated chain-link because it has to be high.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to report favorably on an 8-24 Referral for a proposed Dog Park at 234 Shelton Avenue with recommendations for aesthetically pleasing fencing.

HICKORY ACRES SEC II: REQUEST FOR ONE (1) YEAR EXTENSION TO COMPLETE PUBLIC IMPROVEMENTS

Mr. Schultz indicated, for the new members, that this was off of Frank Drive, Mohegan Road, Wigwam – there is a 3-lot subdivision in the back and a small cul-de-sac is going to be built. They were obligated to finish it within a one year period; obviously, with the poor economy, this didn't happen. This will allow for another year into 2010. If they continue not to do it, they will have come back because this Commission only grants intervals of one year extensions.

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously voted to approve the request for a one year extension to complete public improvements at Hickory Acres Sec. II.

ZONING ENFORCEMENT

1. 31 HUNTER'S RIDGE ROAD:

Mr. Schultz indicated that Staff is recommending they initiate legal action. This involves a property where unregistered commercial vehicles are being stored – unregistered motor vehicles. They are getting nowhere with the property owner.

Comm. Pogoda asked if this was the same one from a year and half ago where people were complaining. Mr. Schultz responded yes, it goes back a while.

On a motion made by Anthony Pogoda seconded by Thomas McGorty it was unanimously voted to authorize legal action for zoning violations at property located at 31 Hunters Ridge Road.

MEMORANDUM OF DECISION: PZC VS. ZBA FOR PROPERTY LOCATED AT 7 PLUM TREE LANE

Mr. Schultz explained for the newer members, several years ago the Commission denied an 8th lot because the square within the lot fell within the power line easement and that is a violation. The applicant, subsequently, went to the ZBA, and got relief. The P&Z Commission felt strongly that this was a bonus lot with no hardship proven; however, the judge felt otherwise. Staff is recommending not to appeal it. There was no public opposition at the ZBA hearing.

PAYMENT OF BILLS

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

STAFF REPORT

***See attached Planning & Zoning Staff Report dated 2/9/09**

ZBA Application #210-1

Mr. Schultz explained that there are substantial variances requested for property located at 6 Fairmont Place. There really appears to be no hardship there. If the Commission would like him to send a letter to the ZBA, he thinks it would be appropriate for this situation – they are requesting a conversion from a 3-family to a 4-family.

Comm. Pogoda commented that he thinks that is overkill.

Mr. Schultz added that periodically this will be seen where multi-family houses are used as investment opportunities by converting attic areas and so forth, but if the lot is undersized or there is insufficient parking, then the only way to get relief is to go to the ZBA.

On a motion made by Anthony Pogoda seconded by Joan Flannery, it was unanimously voted to authorize Staff to send correspondence to the ZBA upholding Shelton Zoning Regulations regarding ZBA Agenda item #210-1.

ADJOURNMENT

On a motion made by Thomas McGorty seconded by Anthony Pogoda, it was unanimously voted to adjourn at 9:55 p.m.

Respectfully submitted,

Karin Tuke
Recording Secretary, Planning & Zoning Commission

