

with specific standards that would be set forth within Section 49. The required referrals to the applicable planning regions within the State of Connecticut were made and a public hearing was convened May 26, 2010 and recessed. Said hearing is still open and will be continued on Tuesday, June 29, 2010.

Staff has reviewed the application material submitted, the exhibits presented at the 5/26/10 hearing, the responses received from regional planning agencies and the State as well as the testimony offered at the public hearing and notes the following comments and concerns.

1. The technology regarding distributed wind energy systems is new to Connecticut and the Northeast in general. There is insufficient on-the-ground experience with these types of wind energy facilities and systems; experience that would give the Commission a sense of confidence that a proposal can be safely accommodated without negative impacts on the quality of life of nearby residents.
2. The proposal appears to be inconsistent with the policies, goals and objectives of the adopted 2006 Shelton Plan of Conservation and Development. Said plan stresses the preservation and protection of residential areas from the intrusion of non-residential activities. It should be noted that all of Shelton's LIP districts have been carved out of primarily R-1 residential areas and; therefore, are adjacent to or in close proximity to established single family neighborhoods. The creation of these out of residential area precipitated the establishment of very restricted use and development standards that would be applicable in the LIP zone. If adopted, the regulations may lead to such facilities, not only in the Rolling Hills Industrial Park on Forest Parkway but also Shelton Heights, Shelton Research Park and other LIP areas. The POCD urges extreme care with respect to permitted, principle and accessory uses and activities that might occur in said LIP areas.
3. The responses to the regional referrals all indicate a level of concern regarding specifics of the proposed regulations. Areas of concern, all of which may impose potential for regional impacts include potential for waivers of setbacks and other standards; the need for more defined limitations of structural height and location; the potential for negative inter-municipal impacts resulting from inadequate setbacks from public ways and overhead utility lines; the absence of any provisions for independent professional review of the technical aspects of the proposal at no cost to the City; the need for specific noise standards appropriate to the proposed use and inadequacy of site restoration provisions in the event of abandonment or decommissioning of a facility.
4. Despite the 204 height limitation to avoid Federal Aeronautics and Aviations Regulations and Oversights, the Commission cannot lose sight of the fact that Shelton is a neighbor to Sikorsky Aircraft and helicopter flights regularly occur over Shelton.
5. The Applicant's proposal would allow distributed wind energy facilities as a permitted use in any LIP district subject to the approval of a Special Exception. In accordance with the standards as specified in the proposal, such a procedure demands that an application be approved if such standards and conditions are satisfied. The Commission will have no discretionary ability to deny any application that complies with the specified standards. Accordingly, in some instances, the Commission may not be able to adequately protect the public health, safety and welfare of its residents.

If the Commission is desirous of establishing a process for accommodating distributed wind energy facilities in the Shelton Zoning Regulations, it is recommended that a procedure involving a zone change be explored as an alternative to the Special Exception process. As a zone change, the Commission would retain full and complete control and be able to exercise total discretion in deciding on the merits of a proposal with all facts at hand and for a specific location.

Chair Parkins opened the discussion up for the Commissioners and indicated that copies of this Staff Report would be made available for the Applicant and the public to review.

Mr. Panico added that he didn't attempt to go through the proposed regulation and pick it apart line by line but rather draw half a dozen general conclusions that he felt, or at least led him to the conclusion, that if they want to pursue it, this is not the way he would do it.

Comm. Harger commented that she thought the report provided a good historical perspective as to how the LIP zone came about and their proximity to residential neighborhoods, because that has to always be kept in mind.

Mr. Panico responded that when the LIP zone was created, it was created with much higher development standards than would be found in any other industrial zone, and it was done deliberately because it was going to be neighbors with residential areas. So to think now about going in and establishing a kind of use that might impact those zones and not having complete control over it is disturbing to him.

Comm. Harger noted that on Page 3 of the Staff Report there was an important comment pertaining to the Commission having to adequately protect the public health, safety and welfare of the residents. She agreed that it was very important point.

Mr. Panico responded that he did not think the Commission could lose sight of the fact that by zoning law, a special exception or a special permit use needs to be reviewed in the context of standards that are set forth in the regulations. And if it can be demonstrated that a proposal meets those standards, than they have no alternative than to approve it.

Chair Parkins commented that one of her concerns was the specific noise, and she thinks that he hit it right on the head, that there needs to be specific noise standards. Most towns do have an ordinance, whether it be 40 to 60 db but that might not be noise that is covered under the noise that this generates. This may be a low frequency tone.

Mr. Panico added that they are dealing with a unique type of use. There may be some unique aspects relative to noise that have to be dealt with specifically. The other thing that he is concerned about is that is a very general set of amendments and distributed wind energy facility can take on a lot of different shapes and forms. It could be the type of facility that the applicant has in mind as a next step sort of a structure with the series of fans on the side or it could be one of a half a dozen or more other designs – the traditional windmill and a few others in between. They need standards that provide enough confidence to know that they can deal with any of those.

Chair Parkins added – or ones that haven't been developed yet either.

Comm. Sedlock asked if this was covered under the regulations right now in Section 6 and if anyone wanting to attempt to put windmills up can do that through Special Exception.

Chair Parkins responded no, there are no regulations right now governing wind energy in the City of Shelton; that's why these regulations were proposed to allow it with a special exception that they proposed in their draft regulations. Tony is concerned that there are no regulation standards and if the regulations don't apply to that, then their hands would be tied.

Comm. Sedlock commented that there aren't any regulations right now concerning wind energy – correct?

Chair Parkins responded that's correct.

Comm. Sedlock asked if someone wanted to put one in, there would be no vehicle for them to do it right now?

Mr. Panico responded not something of the nature that the applicant is considering – a 200 foot high tower with mechanical equipment on the top of it – no, it would not fit in any zones. If they could do something by way of a structure that was within the height limitations of the LIP zone, conceivably, something could get processed as a normal structure, but they couldn't possibly meet those standards. They would still have concerns about noise and dangers that could occur. About a year ago, they had given some serious consideration to a proposal for another industry in town that wanted to put up a very small one that was within the height limitations that they were working within and he was proposing it in a location that was not visible and was not of any potential impact beyond the property lines. That never went any further because the applicant chose not to pursue it. He was doing it within the regulations because he was not exceeding the height limits.

Mr. Panico stated that if the Commission wants to consider it seriously, he thinks that they need to start trying to explore how they can develop a zoning technique that could accommodate it in the creation of the zone. They have done some sophisticated zoning things in Shelton with planned development districts because of that same concern with people coming to them with very unique proposals. They created the PDD approach which allowed them to create that unique zone to accommodate that unique proposal. As such, as a zone change, they are allowed to exercise whatever discretion they wish to exercise in reviewing a specific proposal. This is not so with a special permit or a special exception.

Comm. Flannery asked what the next step would be.

Chair Parkins indicated that they were going to allow the Applicant to speak and let the public make comments.

Matthew Speck, Project Development and Permitting Manager, OPTIWIND, 59 Field Street, Torrington, CT addressed the Commission on behalf of MBI, Inc., 15 Forest Parkway, Shelton, CT. Mr. Speck indicated that they had not had an opportunity to review the comments so it has caught them somewhat by surprise and they haven't been able to fully digest all these and prepare a response.

Mr. Speck indicated that he brought some supplemental information that he wanted to go through that in part gets to some of the concerns and conversation that has just occurred here. He wanted to first distribute a letter dated June 29, 2010 called Noise Pollution Control Review Analysis. He distributed copies to the Commission.

Mr. Speck stated that regarding the issue of noise, Shelton has a noise ordinance, #787 which he has included as the first attachment to his letter. Noise is something that the Commission spoke about last time and he wanted to talk a little more in depth about concerns of noise.

Mr. Speck stated that he has submitted a letter explaining what he submitted, copy of the ordinance, and a copy of the Connecticut General Statutes Chapter 442 Noise Pollution Control which is about 8 or 9 pages of statute text. He read a couple of passages from Judge Fuller's book in the case law of Boden Batting Cages vs. Planning & Zoning Commission Town of Berlin. In taking this out of order on the attachments, the state statutes regarding noise specify that the Commissioner of the DEP is authorized to enact noise regulations within a municipality. A municipality would do that through an ordinance, as Shelton has; he referenced a copy of that Noise Ordinance #787 in his first attachment.

Mr. Speck noted that they can see that in their municipal ordinance, the different types of uses that are allowed in those zones and the levels and classes of noise have been spelled out quite specifically. This is something that is in their Town Hall and is enforced by the police and the designated City employees that the ordinance spells out. So, they had in their proposal, language that says that a distributive wind energy facility shall conform to any applicable noise regulation or statute. His comment at the time was that he was not sure if Shelton had a noise ordinance in place or not – but Shelton does and that ordinance is obviously a higher level in the municipal ladder than the Planning & Zoning Commission. Most municipal ordinances give power to the Planning & Zoning Commission so it is a slightly different entity.

Mr. Speck posed the question if the Commission could put additional noise regulations in place and add further text beyond what they have put in the regulations suggesting to go see the ordinances of the Town – and he believes the answer is “no” He referenced the last attachment, the Boden Batting Cages vs. P&Z Commission, Town of Berlin. He explained that this is a 3-part appeal with the first two parts not being germane to the conversation, but the third part of the appeal (page 213) being more specific. It raises the question if a Planning & Zoning Commission can put in further noise regulations. He referenced the portion where the court addresses that question. He summarized that the Town of Berlin enacted a noise regulation without going through the DEP; they just put something in place themselves. That was not disputed at any point in time in this appeal. The Appellate Court took a look at that (page 218 and 219 of this case) he read that “As a comprehensive scheme for state and local efforts aimed at controlling noise pollution. Section 8-2 which grants local zoning commissions the authority to promulgate regulations does not govern noise pollution laws. In fact, 8-2, which sets forth the types of regulations that local zoning commissions would promulgate does not even mention noise or noise pollution. Although 8-2 does provide that regulations shall be designed to promote the health and general welfare, they do not read that language in the enabling statute to necessarily confer authority of the zoning commission to promulgate regulations concerning noise pollution and moreover, to contradict the legislations specific enactment of 22A-67. He mentioned a few more comments in that paragraph of page 219 that he highlighted in his attachment ...”it is clear that the regulation at issue imposes a type of noise pollution control that statutory scheme was enacted to effectuate. The regulation specifically refers to the Commissioner's regulations promulgated under the authority conferred by the statutes. They reveal the result the commission could do that which the legislative body of the municipality could not do and that is circumvent the provisions of 22A-67. 22a-67 essentially states that to put noise regulations in place, it needs to be done with the commission (inaudible...) of the DEP and the Town had done that through a different set of documents. He is submitting this in response to the Commission's concern about noise.

Mr. Speck wanted to add a few items to the record concerning the Plan of Conservation & Development (POCD) because he heard questions about whether a proposal like this fits into the POCD. The Shelton POCD, Section 5-4, which he referenced in a letter to the Commission dated 5/26/10, entitled Zoning Regulation Amendment Distributive Wind Energy Systems, said in two paragraphs, "Electricity transmission is a growing issue in Fairfield County and southwest Connecticut accounts for 25% of the State's population, but half of its energy consumption, placing pressure on the region's power grid."
"While there is little that Shelton can do to advance capacity and reliability enhancing projects by the utility companies, the City can still do its part by supporting their efforts and by encouraging green development strategies and conservation practices designed to lower power consumption and reduce pressure on the region's strained electrical grid."

Mr. Speck commented that he thinks that language is where this conservation starts in considering alternative energy and distributive energy technologies. He gave the Commission a copy of a letter dated June 29, 2010 entitled United Illuminating 10 Year Forecast of Connecticut Electrical Loads and Resources.

Mr. Speck commented that UI is the electric company in Shelton and they provide electricity on a commercial level to 17 municipalities in the State. The two electrical companies in the State – Northeast Utilities and UI – have to provide a report every year to the Citing Council on Loads and Transmission Resources. This is a yearly document used by the Citing Council for budgeting and resource planning services, but there are also about 16 or 18 other entities in Connecticut with their own fuel cells.

Mr. Speck submitted a short report for the record, dated March 1, 2010 DocketF-2010 Connecticut Citing Council Review of the 10-Year Forecast of the Connecticut Electrical Resources because it furthers his point about how strained the electrical grids are and it gets back to the Shelton POCD that is talking about how this Commission should be doing its part to support the grid. It discusses the years ahead, the town of Shelton is going to be getting another substation and UI is going to be filing that with the Citing Council in about 2012. In Derby there is the Indian Point system as well and the shortcomings (inaudible...) with transmissions.

Mr. Speck indicated that there is a report from United Illuminating to the State that talks about (on page 18) that UI has other transmission infrastructure upgrades under their internal review such as the Shelton Substation Project, a new 11513.8kv substation needed to address district usage reliability and capacity issues related to substation thermal overloads and voltage collapse concerns in the greater Shelton area. They are going to be making this filing in 2013 which is projected to be in service in 2016. Also, on page 18, it discusses the Naugatuck Valley area consisting of Ansonia, Derby and Shelton – part of the UI service territory having 3 additional substations, Ansonia, Indian Well and Trap Fall substations and the grid connecting to these substations is to a point where they note it as follows: Presently these lines no longer provide an adequate 150kv voltage supply to the area around. They are at risk of low voltage collapse following contingency conditions. UI is also considering outage exposure due to single contingency to nearly 30,000 customers, approximately 9% of the U.S customer base supplied from Indian Well and Ansonia substations.

He addressed the Commission's concerns of what wind turbines and alternative energy could mean to the community and asked the Commission to weigh that against what the utility companies are doing to provide service to the need that is here now and the need that will be here in the future. When a substation like this comes in, they are also introducing all of the same concerns as the wind turbines but also PCD's, PCD from materials (inaudible).electric fluid,

electromagnetic issues, (inaudible) and the changes to the community that go with that.

Mr. Speck discussed the marketplace itself because Shelton is going to embody what Section 5-4 within the POCD says in regard to utility companies, it is not just what is happening with UI. They are the providers to Shelton. They are buying energy from the ISO New England which is the wholesale provider and he submitted some of those reports for the record. He added that the decisions made locally effect what is going on locally and regionally with UI, and what is going on regionally with UI in Fairfield County is also going back to ISO New England and how they are scheduling their resources.

Mr. Speck provided copies for the record of the current 2007 Plan of Energy Plan for Connecticut and the 2008-2009 ISO New England Market Reports that discuss the state of energy distribution right now and the need for distributive resources as well as the carve out for a growing integration of alternative energy technologies as well.

Mr. Speck discussed the adoption of alternative energy technologies and the integration of it, the age of technology and maturity of the industry and submitted a copy of the State POCD to add to the Regional and Town Plans of Conservation & Development. It is dated 2005 to 2010, however, there has been a change to the Statutes that now makes this plan effective until 2013. He noted that at the next Legislative session, they will set the date for when the next plan is due; however, this plan continues to stand.

Mr. Speck indicated that he had a few final points in response to comments regarding planning and the regulation itself. The Greater Bridgeport Regional Planning Agency and the South Central Regional Planning Agency and the Valley Council of Governments, as well as Mr. Panico all had questions regarding setbacks, setback numbers and parts of the regulations that need to be revised. In response to those concerns, he was hoping at this point that they would be a little farther in the conversation as to what the Commission was looking for – such as more setback, less setback, where the regulations need to be improved and not just the concept of the regulations. In response to some of the broad comments that they've seen from some of the planning agencies, they continue to keep working with the Commission to help resolve anything. He took exception to some of the information that was provided from the Valley Council of Governments Regional Planning Commission in regard to information that they had disclosed with the map he provided.

Mr. Speck distributed a letter dated 6/29/10 entitled Valley Council of Governments Memorandum Response Comments. He referenced a map of the State of Connecticut wind map and indicated that it was the same data set that he used. The only difference is the magnification.

He commented that he wasn't sure if a dispute remained with the Commission about the wind resources itself but he wanted to counter the comments that rest in the record from the Valley Council of Governments about there not being an adequate wind resource. He distributed a package that has three 3 maps and the three maps are the three resolutions of the program at the course of scale– at the New England level, the State level and the town level.

Mr. Speck referenced the New England level map and indicated that there is not much discernable difference of the wind areas and wind quality just because they don't have enough magnification on the area of inquiry. It only provides a general overview of what may exist in the most broad sense. He referenced the second page map of Connecticut itself as being the identical map that the Valley

Regional Planning Agency has provided with their indication that there is a negligible amount of wind or no meaningful wind in Shelton.

Mr. Speck showed a colored map on scale showing the Class 2 winds which are sufficient winds but the facts that came in from the Regional Planning Agency in black & white offer no way to see the detail. However, using the same data set and the town map that they have already seen, there are large areas in town that do have Class 2 wind. He wanted to put to rest that there is not a question with the quality of data that they are using but with the scale of the data and since they have not taken that data and magnified it at a local level and provided a color copy, it's a misrepresentation of what already exists.

Mr. Speck commented that without having a chance to review the information given to him tonight, it is difficult to address the Commission's questions without a high degree of detail and he was uncertain as to the most prudent direction to go at this point. He stated that he was aware that the clock is running and they are in the second meeting and he believes he is handicapped as an applicant in responding in a timely manner to fulfill some of these requests unless they are able to reach a resolution on what specific concerns they have and how they go about resolving that. He disagrees that if a regulation is put in place, as a special exception, that the Commission has no discretion in reviewing the application. That is the basis for a special exception. If the Commission had no discretion it would be site plan or a zoning permit and they aren't asking for that. This is the first he's heard from a municipality that the special exception is not going to give them discretion. That is usually why they want a special exception, not a site plan or zoning permit so he disagrees with that comment.

Mr. Speck indicated that he wanted to return to the dialogue that they had at the end of the last meeting and that is that they have a regulation before them now. He asked if the Commission could go back through that and make recommendations as to will they or will they not. There are some broad things here and he's looking for some guidance as an applicant. He can keep bringing in regulations until the end of the public hearings but until it gets to the more specific feedback that the Commission is looking for, he is concerned that he will keep burying them in paperwork and standards without direction.

Mr. Panico responded that it is customary for the petitioner to put forth the complete argument that he can in support of his proposal. It then remains for the Commission, with its Staff, to evaluate it and determine whether it meets a need and ought to be incorporated into the zoning regulations. It has not been customary in the past for the Commission to work hand in hand with the applicant to create a regulation that they have not yet concluded that they do or do not want on their books. So it is counterproductive. It might be misconstrued by you as the petitioner as being supportive of a proposal where the Commission has not yet expressed any such support. Mr. Panico stated that he'll just have to give the Commission whatever material they need to make an intelligent and informed decision.

Chair Parkins added that as elected commissioners, they are going to devise regulations that are for the benefit of the town and not for the benefit of any particular company that is proposing to put up these structures.

Mr. Speck commented that as he said in the first meeting and maintains now, these are regulations that can be used by anyone in the LIP zone. The Commission can use them at their discretion to other zones or if the Commission is looking to carve out new zones, they could limit it to those further new zones, whatever they may be. There was some comment about the regulations meeting the standards of the current technologies and any technologies that may be devised in the future. He isn't sure that a regulation can be written to

contemplate additional technologies or wind turbines that haven't been invented yet.

Mr. Panico responded that he didn't disagree with him.

Mr. Speck indicated that he isn't expecting to have the Commission hand held but they have a set of regulations that they have proposed. The three planning agencies that have had comments have said that there is a potential for impact but setbacks may be too small, they may need to be larger. Is 100 feet enough, is 200 feet enough, is 1.5 times enough, etc.? He doesn't think that getting that type of information from Staff review is part of the process. He can bring in other...

Mr. Panico responded that he would have to disagree with him. There are advisory bodies to this Commission and they are entitled to express their concern or reservations. The Commission needs to factor in that he is proposing a set of regulations which may not only accommodate his proposal but any one of a variety of other wind energy facility solutions. One for example, might be the traditional windmill with the revolving blades, many of which run at high speeds and which, if there is a failure, can end up throwing pieces long distances. There are vivid pictures on the Internet of one of these windmills running away and eventually disintegrating and throwing material around. This regulation doesn't say that you can't have that type of an installation and yet it doesn't address the potential outcome of it. There are concerns above and beyond his particular thought of an installation that this Commission needs to take into account in considering a broad regulation.

Mr. Speck responded that into that point, having a regulation that by special exception would look at the type of turbine, the height of turbine, the size of the blade, and whether it is shrouded or not and they'll be able to get at the answers.

Mr. Panico asked if it his representation that these regulations would allow this Commission to say "no" to that type of a facility.

Mr. Speck responded yes, absolutely.

Mr. Panico asked on what basis – what is in his regulation that would allow them to say no.

Mr. Speck responded that they would have to submit photo simulations, a site plan of where this would be sited. He gave an example of a building in an office park with minimum setbacks right now – such as 50 feet. If they were to say that on some given piece of property that they were going to site that building 55 feet from the property line, but maybe because of some engineering review, the Commission arrives at the decision that it's not the best location. They are still conforming with the regulations and it can be reworked with the applicant to put it to the back or the side.

Mr. Panico responded that they can certainly make suggestions but the applicant isn't bound to do it. There would need to be a reason for this Commission to tell that applicant that his building at 55 feet is unacceptable and does not work.

Mr. Speck responded at which point in time, they will have arrived at some sort of empirical data decision that leads them to say (inaudible)

Mr. Panico commented that the only data that they have at their disposal is his 1.1 times the height – that's the setback, that is the minimum setback unless it is waived.

Mr. Speck asked if it needed to be more or be less.

Mr. Panico responded that he did not know and 1.1 may work perfectly fine for his proposed type of installation but it may not work fine for a windmill or another type of installation. The fact of the matter is that once they adopt a regulation and it put forth those standards, than those are the standards by which they have to review the proposal.

End of Tape 1A 8:03 p.m.

Mr. Speck responded that he was at a loss to understand because these regulations are very close and overlap to so many other regulations that are in place that have the same types of standards and content and so many other communities that it is sufficient there for a commission to evaluate and approve or disapprove wind turbines, but in this context it is not acceptable in any form. He doesn't understand how they have arrived at that point.

Mr. Panico responded that is not really what they said, but that's OK.

Mr. Speck addressed an item regarding the 200 foot height limitation set forth by the FAA regulations and oversight and that the Commission cannot lose sight of the fact that Shelton is a neighbor to Sikorsky Aircraft and helicopter flights regularly fly over Shelton.

Mr. Speck indicated that in looking at this specific paragraph, he could easily amend the regulation to say all applicants in Shelton would provide notice to the FAA. He asked if that was suitable or not.

Mr. Panico responded that he simply pointed out for the Commissions enlightenment, in case they hadn't thought about it, that they are next door to Sikorsky.

Chair Parkins commented that Comm. Flannery brought it up at the last meeting.

Mr. Panico noted that Mr. Speck saw fit to impose a 200 foot limit so that he wouldn't be subject to the FAA.

Chair Parkins indicated that it was actually 199 and 10 inches.

Mr. Speck responded that if that is a concern of this Commission, and he recalled that it was Comm. Flannery's concern, than they could amend the regulation to say the FAA does receive notice as part of the application process. He noted that in regard to the comment that it is his burden as the applicant to determine that the need exists within this town and that their comprehensive plan allows for something like this, he has given them information tonight and at the last meeting that outlines...

Mr. Panico asked to clarify one point – his reading of his references to the POCD is that the POCD is supportive of alternative energy sources. It doesn't say wind energy. There are a lot of alternative energy sources so he doesn't think that he can point to the POCD and say that the Plan is in support of this proposal.

Mr. Speck responded that he is saying that his proposal is consistent with what the plan is saying. He is saying that the plan is saying that there is certainly room for an application like this to be made for any number of reasons. **One of** the letters he gave them last month had the investment banking data from Lazard and he asked if the Commissioners considered any customer distributed generation that there are economies of scale and different costs associated with

those and that there could be many multiples in price. He thinks that the Commission is sensitive to the economic realities of running a business and that in considering any of these technologies there is a wide spectrum of the types that are out there. There is no getting by the fact that wind can be the most efficient. Their client has looked at some of the other options. Yes, there are ways to get at some of the things in the POCD regarding additional energy but there are costs with that too. Those costs are prohibitive which would lead them to wind which is why they are making the application.

Chair Parkins responded that there are costs but there are also quality of life that they have to worry about for the residents that live within the area where these structures would be proposed. She referenced that just this past week there was a tornado that touched down in Bridgeport – and these things happen. She commented that she had not heard one commissioner say that they were against clean energy. She indicated that the Commission is saying that they are not going to jump into regulations that are being proposed by someone who wants to put one (a windmill) up next month. They need time to digest, they need time to review and research and come up with their own regulations that encompass everything.

Chair Parkins disagreed with Mr. Speck's interpretation of noise; she does not think that the noise generated from a batting cage, that is not constant, can be compared to a potential, constant, low frequency noise that can't be measured within the 55 db scale. She added that he had no information on that. This is brand new technology and he's admitted that he doesn't have a unit operating yet. She asked what they would be basing this on; these are the concerns that this Commission has. They don't want to just put regulations in place that are not going to cover this and then they have got a situation on their hands.

Mr. Speck responded by going back to the batting cage example and stating that the ordinance that they have in that they have in place now to control noise and abate noise is divided into different zones – they are planning zones with different thresholds for sound.

Chair Parkins stated that it is all a mid range frequency not a low frequency.

Mr. Speck responded that it is what it is.

Chair Parkins responded that maybe that isn't the right way to be and maybe the DEP needs to revisit their regulations on how they set noise standards. This wind technology is new and it is not something that the DEP has experience on.

Mr. Speck responded that the regulations with respect to noise are their regulations with respect to noise – for better or worse. It is what was put into place by ordinance. It's what stands.

Chair Parkins responded that she understands that.

Mr. Speck continued that if they were to have an application come in here it would be within their right to request a noise profile, and show empirical data because they have to meet the municipal ordinance.

Chair Parkins responded yes, and more than likely it would but the low frequency would be a constant source of irritation to everybody that lives nearby.

Mr. Speck responded that they would comply with the noise ordinance that is in place.

Chair Parkins responded that she couldn't argue with that.

Mr. Panico added that when the noise ordinance was put in place, there were no wind energy facilities that existed in the City of Shelton.

Chair Parkins agreed that was also her point.

Mr. Panico commented that if he is going to create an opportunity for a new activity then maybe he does have to go back in and re-examine not only the noise ordinance but also some other ordinances that may very well come into play – he doesn't know that.

Mr. Speck asked if he was saying that an applicant to the P&Z Commission has to overhaul the ordinance structure of the Town of Shelton.

Mr. Panico responded that he was not suggesting that; he was suggesting that if there is a potential concern over noise that perhaps the applicant has a responsibility to demonstrate how the proposed facility is not going to be in conflict with the noise ordinance and the noise ordinance is more than adequate to cover it in a satisfactory manner – but you're not saying that.

Mr. Speck responded that it would be a basis of review in a special exception application which is why that section says that they would have to comply with any or all applicable noise regulations. Those being what exists at that time.

Mr. Panico indicated that he doesn't really understand the zoning ramifications of a Special Exception procedure. It cannot be subjective. The standards have to be spelled out in the regulations. The standards that are going to be used to review an application under that provision need to be spelled out in the regulations. They cannot fabricate them as you go. The courts will throw you out on your ear.

Mr. Speck responded that with specific respect to noise, they don't need to fabricate them because they already exist and they exist through the ordinance that they already have a copy of.

Comm. Sedlock asked if he was saying that there was an opportunity within their existing regulations Section 6 to put one of those wind turbines in with a special exception.

Mr. Speck responded no, if there was a mechanism in place to make an application, they would have done so and they would not be proposing regulations.

Comm. Sedlock commented OK, he had misinterpreted that when he was speaking about Section 6.

Mr. Speck indicated that he did not have more to provide to the Commission tonight but he was willing to provide an extension of time until the next meeting in an effort to digest some of these comments and come back with more meaningful answers than he's been able to provide tonight. He submitted a letter to Staff to that effect.

Mr. Schultz asked Mr. Speck to give consent until Wednesday in the event that there is some problem.

Mr. Speck responded that he wrote it for 15 days until July 14, 2010. He submitted it to Staff.

Chair Parkins asked if there was any member of the public wishing to speak for or against this proposal.

Ingrid Waters, 261 Long Hill Crossroad addressed the Commission.

Mrs. Waters indicated that she was speaking on behalf of neighbors on Long Hill Crossroads. She read a letter addressed to the Shelton P&Z Commission in reference to Section 49 Distributed Wind Energy Facility ordinance 49.6.6.3 Setback Options.

After reviewing the Shelton wind energy guidelines and after attending all previous Planning & Zoning meetings pertaining to this topic she came to the conclusion that it is unwise for the City of Shelton to consider adopting these guidelines with minor changes that have been proposed by a company that wishes to sell one of their products in our town. Such guidelines should be written by a qualified, licensed wind energy consultant with inputs from Shelton's P&Z and BOA committees because these guidelines will affect their entire city going forward. Consequently, it should be written with the goal and mindset to protect all existing homeowners, occupied rental facilities, businesses and offices in the vicinity of such a structure.

Special attention needs to be paid to setback. The Ordinance 49.6.6.3 Setback Options of 1.1 times its height which should apply to all wind turbines in conjunction to inhabited structures, property lines, public roads, communication and electrical lines should be revisited prior to arriving at a decision of adopting it into Shelton's Section 49 Distributive Wind Energy Facilities. These setbacks requirements are insufficient at best due to the fact that Shelton is a densely populated city. In order to give an educated opinion, she researched wind turbines nationwide and globally. It became obvious that European countries, Australia, New Zealand and their Canadian neighbors adopted very stringent guidelines in order to protect residents from environmental and other impacts of wind turbines. In the United States very little attention is given to the aforementioned as long as a profit can be achieved because it appears to be irrelevant what negative impact these structures have on inhabitants in the immediate area. The globally acceptable standard is 1.5 miles from the wind turbine to the nearest occupied dwelling which is a far cry from the proposed setback of 1.1 times the height of the wind turbines. Shelton's proposed wind turbine setback regulations greatly concern them because of the following impacts that a structure would have on existing neighborhood due to its closeness to the nearest dwellings: emitted noise, effect on quality of life, devaluation of property, falling over in storms. A recent tornado in Bridgeport speaks volumes. She can just imagine what would happen to such a wind turbine if a tornado hit it front on.

Mrs. Waters continued reading in regard to fires, lightning and power surges. Considering these hazards, the setbacks should be no less than 1.5 miles from any road or dwelling. It should ensure safety and quality of life for all individuals living in the vicinity of such a structure.

The following mistakes, which are only two examples, have already been made the United States in regard to setback. After living for 2 years with wind turbines in Lincoln Township of Wisconsin, 73% of people said that they would not consider buying or building a house within a mile of wind turbines and 23% wished to be at least 2 miles away. Residents of Falmouth, Mass. had similar comments. She implored the Commission to please not make the same mistake in Shelton which is indeed a densely populated city today.

Once the guidelines are implemented for a setback of 1.1 times the height from the structure to the nearest dwelling, they open up a Pandora's Box with immense ramifications. She pointed out that wind turbine presently in

Torrington, Connecticut is sitting on a 167 acre dairy farm which is by all means far away from residential housing. Shelton's Light Industrial Park in Ward 3 does not have such a wide open space to accommodate a 200 foot wind turbine. If they doubt that fact, please walk around and observe the area.

Mrs. Waters indicated that she had 3 drawings showing the tremendous environmental impact that a 200 foot wind turbine would have on their neighborhood. She submitted her letter and drawings to the Commission. She indicated that the drawings are made to scale and one of them is in comparison to the Renaissance high rise building and a view from Long Hill Crossroads in back of the farm.

Mrs. Waters commented that in closing she wanted to urge the Commission to revisit their proposed setback of 1.1 times the height of the wind turbine. It is a self-serving decision that only profits the property owner and the company selling wind turbines because existing residents lose out 100%. She asked if these are the living conditions that they propose for Shelton. She asked them to think about the tremendous effect that the envisioned setback would have on the quality of life in their town before finalizing this distance which in reality is no distance at all especially when considering a tower that is 200 feet tall. Thank you for allowing me to speak on this topic. Sincerely Ingrid waters.

Donald Sacenko, 248 Long Hill Crossroad addressed the Commission.

Mr. Sacenko agreed with the comments made by the previous speaker.

Chair Parkins asked if there was anyone else wishing to speak for or against this proposal. There was no one else from the public so she turned it back to the Commissioners to get their consensus. Chair Parkins commented that there had been a lot of information again presented by the applicant tonight. She added that the applicant has shared that he was not provided the information in a timely manner to respond. She indicated that he had actually responded with a lot of the information provided. They have the option of closing the public hearing tonight or accepting his offer to continue the public hearing to allow him to respond to Staff comments and come back with additional information.

Comm. Sedlock responded that he thought they should close the public hearing.

Comm. Flannery agreed that she thinks that they have heard everything.

Comm. Harger commented that this is such a new area. Just to make sure that we have all the facts, she wanted to keep it open for two weeks but she will go along with the majority.

Mr. Panico commented that the least that they could do is close the public hearing but keep the record open and allow the applicant to submit written responses to whatever he wishes to address from the Staff Report.

Comm. Flannery indicated that she didn't feel comfortable accepting anything until she gets a chance to go up to northern Connecticut and gets to see the finished product and listen to it and get a good idea of what this is all about.

Chair Parkins commented that if they close the public hearing then they have 65 days to make a decision.

Mr. Panico suggested keeping the hearing open until 7/13 or they can keep the hearing open solely for the specific responses by the applicant to the information that he wasn't privy to and limit it to that with no further discussion from the public, no further embellishment by the applicant, simply his responses to the

Staff memo. He added that they could also close the public hearing, keep the record open and receive written responses by the applicant to the staff memo.

Comm. McGorty commented that he wanted to close the public hearing and submit written responses.

Mr. Speck asked if they close the public hearing and the Commission has a question to his written response would he be unable to answer a question regarding that written response.

Mr. Panico responded no, the record would be kept open solely to receive whatever written response he wishes to prepare in response to that Staff Report.

After a brief discussion amongst the commissioners, Chair Parkins recommended that since the applicant submitted a letter, they just need a motion to keep the public hearing open until July 13th.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to keep the public hearing for Application #10-08 open until the next scheduled meeting on July 13, 2010 for the purpose of allowing the Applicant to respond to the Staff report only.

APPLICATION #10-13, DOMINICK THOMAS ON BEHALF OF SHELTON HOTEL ASSOCIATION, LP FOR MODIFICATION OF STATEMENT OF USES AND STANDARDS (REAR YARD SETBACK), FOR PDD #64 (HOTEL SIERRA), 820-830 BRIDGEPORT AVENUE.

Comm. Harger read the call of the hearing.

Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT representing the applicant addressed the Commission. Atty. Thomas turned in notices that were sent out and added that all except two were received back. He submitted photos 1 & 2 showing the Notice of Public Hearing posting and 6 photos of the area and the area in the back. He indicated that the Commissioners should have an 11 x 17 map that was presented as part of the application.

Atty. Thomas stated that the first thing that he wanted to make clear was that this was a my culpa on the part of the contractor. The first thing that he called attention to was the unusual shape of the lot. He noted that the rear boundary which is a boundary with the Armstrong Park Development Associates goes across at a relatively steep angle to where it meets the corner of the hotel which would basically be the southeast corner of the hotel then it curves along the driveway to Armstrong Park.

This area is the area where the sewer line comes in and where the entrance to the parking garage comes in and there were some serious construction issues that were involved when this was being built. Rose Tiso was the surveyor and they laid everything out, but the contractor and one of the subcontractors each used their own surveyors when they were doing certain items. They believe, as best as they can determine, that when they were doing the foundation and attempting to align it properly so that the sewer line could come in, which was a serious issue because they had such a narrow window for it to come down and enter into the building. That is when they believe the error was made by one of the surveyors going through it. As they can see, the mistakes were 9.5 feet and 8.8 feet from the double corner. There are photos that show the double corner.

Atty. Thomas pointed out that the parking line is actually below the retaining wall. There is a large stone retaining wall and they can see that the property line is below that. Photos were taken and he sent out notices to everybody and from the day that this was discovered he had a personal conversation with the

representatives from Armstrong Park which is managed by Fusco Corporation. And as recently as last week, they had a face to face meeting in which they felt that everything had been addressed. They had no objections and authorized him to present that to the Commission. They have no problem with it. Their main concern, and one or two of the photographs show this, is landscaping that was promised at the time of the appeal on the special exception which isn't really special and isn't an exception and doesn't really have a lot of discretion when you have the appropriate standards (inaudible) as they can do by reading the appeal that they won in that case. The fact is that they wanted to make sure that there was sufficient plantings and as a matter of fact there are double the number of plantings that were proposed even in the PDD. So they have no problem with it. The hotel is already constructed except it wasn't constructed according to the standards but it is his belief that the 2 feet standard is not going to address this issue, but as they can see from the photographs of the back area there are certainly not going to expand the building two feet which is all they would have to do. They have a nice yard back there that is buffered and fenced for residents of the hotel to utilize. There really are no other objections. He received a call from Mr. Scinto who had no objection and Mr. Botti who owns the front portion who had no objection.

Chair Parkins asked if any of the Commissioners had questions or comments.

Comm. Harger asked if there was any way that Armstrong Park could just convey that little strip.

Atty. Thomas responded that it is not over their strip, it's not on their property, it is just over the setback. Their property line is actually below the hill.

Atty. Thomas showed the Commission a photo of what it looks like standing in their parking lot right by the corner. He showed other photographs of fencing put in by Armstrong and the fence put up by the Hotel.

Comm. Flannery asked about the plantings being replaced if they die.

Atty. Thomas responded that this is a PDD. He added that a lot of the landscaping is beyond what was proposed. There is a maintenance provision in the PDD for landscaping.

With no further questions or comments from the Commission or from the public, Chair Parkins asked for a motion to close the public hearing for Application #10-13.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to close the public hearing for Application #10-13.

Comm. McGorty arrived at 7:55 p.m.

OLD BUSINESS

APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE

SEPARATE #5397 DAN BEARDSLEY, 278 LEAVENWORTH ROAD, INTERIOR EXPANSION OF CIDER MILL

Mr. Schultz indicated that Mr. Beardsley was present to answer any questions. He showed a floor plan. He stated that this is not an addition to the building but an expansion of the use within. He showed a rendering of the left side of the building where the silo is and explained that the applicant wants to convert this area which is not being used into an office area/retail area. The agricultural use is permitted as of right. They have a new regulation that allows agriculture related uses. The applicant will explain that this is Phase 1. Phase 1 is to get it ready for the upcoming floral season. Phase 2 is the parking lot expansion; it is going before the Wetlands Commission, so he will come back to P&Z. Mr.

Beardsley reports that there are times when he has peak periods of all the leaf peepers and it is an informal parking area. He sees the need and he has the land to accommodate it and he wants to expand the parking. That will be coming up at the July 13th meeting

Mr. Panico asked if there was any exterior expansion to the building floor area.

Mr. Beardsley responded that was right, basically all that they are doing is taking what used to be hay storage and make it into more retail space for the customers. It gets pretty crowded in the short season that they have during good weather weekends in October so they need to get more space in there. As Rick said, Phase 2, and after seeing what happened to Mr. Jones on the highway, so he'd like to keep his customers from parking on both sides of Route 110 and keep everyone safe.

Mr. Beardsley showed them a MapQuest rendering of the parking lot expansion that he would be talking about. It would actually connect with another existing parking lot that they have for their horse farm. It would end up being used for overflow parking.

Chair Parkins asked if they would be keeping the one entrance/exit.

Mr. Beardsley responded yes.

Mr. Schultz indicated that Staff recommends approval with the explanation being given by the applicant with the understanding that Phase 2 will be coming at the next meeting. He suggested that the Commissioners go up and take a look at the site and the proposed parking lot on the right.

On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously voted to approve Separate #5397.

OTHER BUSINESS

STAFF REPORT

Mr. Schultz reviewed the June 29th Staff Report that was tabled from the last meeting. (see attached P&Z Staff Report dated 6/29/10).

COMMISSION DISCUSSION: DRAFT RE-WRITE OF SIGN REGULATIONS: SECTION 44

Chair Parkins indicated that a lot of work has gone into the rewrite of the Sign Regulations with the Subcommittee and it's been reviewed many times; she'd like to see it go to a public hearing for acceptance.

Comm. Flannery asked if 44.4.10 also pertained to campaign signs. "...no sign shall be mounted on any tree or utility pole..." because during the campaign she sees that all the time.

Mr. Schultz indicated that had been an unwritten agreement by both town committees as long as it does it doesn't obstruct sight lines.

Chair Parkins added that if it becomes part of an ordinance, they will just make sure that the political parties in the town know.

Mr. Panico reviewed how the regulations are set up and reminded everyone that Connecticut State Enabling Legislation regarding zoning which is Chapter 124 Section 8-2 talks about zoning regulations and in that enabling statute it specifically says that the Commission is authorized to regulate "the height, size and location of advertising signs and billboards. Case law is confirmed in several instances "statute has not delegated to municipalities the power to regulate colors on the signs." They have to keep that in mind. Their past success has been mostly due to reasonable negotiations with the people that want to put the

signs up rather than specific regulations. It is also reinforced by their careful scrutiny of proposals for signage at the time someone comes through with a PDD proposal because sometimes, in the interest of them wanting to get a PDD approval, they are able to get some concessions made on signage that they can't mandate. They have to get it because they are willing to do it. The regulations themselves as far as their organization, the first section deals with Purposes is a general statement of the intent of what they are trying to do with these regulations.

The next section dealing with Definitions is obviously when there is a whole series of terms they have to define what they mean by those terms. Most of the terms are pretty straightforward except there is one term that is new to everyone because it is something that they created in the regulations. It is something that they call a Unified Shopping Center. They did that for purposes of in the regulation creating a greater degree of review and control. Basically a Unified Shopping Center is any retail or mixed retail and office shopping area that has four or more tenants. So it is relatively small and when that happens, as they will see in the regulations, the applicant is required to provide a signage plan and have some consistency in the signage. So they created that to separate that from the simple building that may just have one or two tenants in it.

The next section talks about the General Requirements which are applicable to all signs throughout the city. It has to do with permits, lighting, maintenance, how to deal with non-conforming signs, measuring sign area, etc.

Mr. Panico indicated that the next section deals with Sign Prohibitions and those are the various restrictions that are applicable in any zone, anywhere throughout the City.

The next section goes over the signs that are permitted in all districts in which no permit is required, as of right, as well as those that are permitted but require an administrative process to ensure that Staff can determine their conformity. Signs that are permitted in non-residential districts such as that are in commercial and industrial areas. It discusses free-standing signs, wall/window and hanging signs. Then there are signs allowed in the PDD's and the Unified Shopping Centers basically tell the applicant that for that kind of a facility the Commission will need to see a signage plan. The Commission wants to see all the signage that is intended to determine consistencies in lettering, size, etc. They offer some flexibility for developments of that nature to give concessions in one area, such as wall signage and apply some of that concession to enlarging the ground sign. Because sometimes with a major shopping center, the limitations that they have on ground signs is rather small. They can make a larger ground sign but cut back on some of the wall signage.

Mr. Panico concluded with signage for special events, temporary signs for limited periods of times throughout the year. He indicated that was the general framework for the sign regulations. He urged all the Commissioners to understand the regulations before the public hearing. He offered to answer any questions or provide clarification.

Comm. Flannery asked about 44.2.2 under definitions, for internally illuminated not being limited to neon –she asked if they were allowing neon signs.

Mr. Panico responded that it tells what an internally illuminated sign is and that the source of illumination could include, but is not limited to neon led lighting, LED lighting etc. They are permitted; they were originally not going to allow it but at the last minute they decided it would be too difficult to disallow.

They got tough in regard to it graphically outlining the ridges and eaves of a building in section 44.4.12. that includes small LED lights.

Comm. Flannery asked about 44.4.11 regarding no string lights because Wells Hollow has them right now for their ice cream sign. It's a lawn sign about 10 feet from the road with Christmas lights all around it. She asked if that was grandfathered in.

Mr. Panico responded that there are some restrictions to that because they can only have it for 60 days out of the year. It's a temporary free-standing portable sign. In 44.4.9 they can have them for special events, sales and they allow them 60 days of the calendar year. Originally they outlawed it completely but a lot of merchants use and rely on them so they figured one day a week. They just don't want to see those portable signs in place every day of the week and every week of the year. They are trying to discourage that and anyone doing that should invest in a permanent sign.

Comm. Flannery and Comm. McGorty responded that it was a permanent sign at Wells Hollow.

Mr. Schultz commented that most of the emphasis is going to be on the regulation of temporary signs. He added that 95% of the calls to his office that are aware of this are going to focus in on that.

Mr. Panico indicated that they are attempting to do some things that they haven't done in the past. In the past, signs that are on the inside of glass windows were not really covered. This regulation attempts to cover that – they say that they can have temporary signs but they can't occupy more than a certain percentage of the window glass.

Mr. Schultz stated that they are going to ask the BOA to formulate a sign ordinance that will compliment this so that they can enforce it.

Chair Parkins indicated that they can't fine anybody without an ordinance

Mr. Schultz added that as a side issue the Huntington Green is regulated historically by Parks & Rec and they only allow not-for-profit or community-g geared event signs.

Chair Parkins indicated that the next step would be to set a public hearing date for this but in the meantime Staff will send a copy of this to Corporation Council to review the legalities. Additionally, they will meet with groups such as the Valley Chamber of Commerce because it will affect a lot of businesses. They will distribute it to sign companies for inputs and also just get it out there for people to review it before the public hearing. Also, they will send out a referral for the Council of Governments. If everyone agrees that it is ready to go then they can expedite this and set a public hearing for some time in September.

Comm. Sedlock asked if they anticipated a large crowd to talk about these things.

Mr. Schultz responded that he doesn't know if it will be a large crowd but it will be a very energized crowd of business owners.

Comm. Sedlock asked if these regulations go into effect, are there a lot of signs out in the City that are going to have to be taken down and redone or would they be grandfathered in.

Mr. Panico responded that anything out there right now that doesn't conform would be a non-conforming sign. It won't get impacted until they want to make a significant change to the sign.

Chair Parkins indicated that the next regular meeting would be the second Tuesday, 9/14 and the special meeting would be the fourth Wednesday, 9/22 – so they will have back to back meetings in the month of September.

Comm. Flannery asked how the sign regulation differs from what they had in place.

Mr. Panico responded that it was a significant expansion that is more detailed. The one in place now is very small and very broadly written. He added that the sign regulations are not a popular subject.

Chair Parkins tentatively scheduled the sign regulation public hearing for September 14th.

ADJOURNMENT

On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously voted to adjourn at 9:17 p.m.

Respectfully submitted,

Karin Tuke
Recording Secretary, Planning & Zoning Commission

