

SHELTON PLANNING AND ZONING COMMISSION

April 27, 2011

The Shelton Planning and Zoning Commission held a special meeting on April 27, 2011 at 7:00 p.m. Shelton City Hall, Room, Auditorium, 54 Hill Street, Shelton, CT. The Chairman reserved the right to take items out of sequence.

Commissioners Present:

Chairperson Ruth Parkins
Commissioner Joan Flannery
Commissioner Virginia Harger
Commissioner Thomas McGorty
Commissioner Anthony Pogoda
Commissioner Joe Sedlock

Staff Present:

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

Tapes (2) and correspondence and attachments on file in the City/Town Clerk's Office and the Planning and Zoning Office and on the City of Shelton Website www.cityofshelton.org

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairperson Parkins called the meeting to order at 7:00 with the Pledge of Allegiance and a roll call. She reviewed the procedures of the public hearing for all those in attendance.

PUBLIC HEARING

APPLICATION #11-09 BISHOP MANAGEMENT OF SHELTON FOR INITIAL DEVELOPMENT CONCEPT APPROVAL AND PLANNED DEVELOPMENT DISTRICT ZONE CHANGE (MIX USE FACILITY), COASTAL AREA MANAGEMENT SITE PLAN APPROVAL AND AMENDMENT OF FUTURE LAND USE PLAN OF THE PLAN OF CONSERVATION AND DEVELOPMENT (POCD), 762 RIVER ROAD (MAP 12, LOT 35), IA-2 DISTRICT

P&Z Secretary, Comm. Harger read the Call of the Hearing and three pieces of correspondence.

***See attached correspondence to Richard Schultz, P&Z Administrator from James M. Tortora, Fire Marshal, dated February 22, 2011.**

***See attached correspondence to Richard Schultz, P&Z Administrator from Robert Kulacz, City dated Feb 17, 2011.**

***See attached correspondence dated March 31, 2011 to Richard Schultz from Kristal Kallenberg-Dorismond, Environmental Analyst, DEP Office of Long Island Sound Programs.**

James Swift, P.E. and Landscape Architect addressed the Commission.

Mr. Swift submitted the certificates of mailing for the record. He indicated that this site is located on River Road. He showed an aerial photograph including the Housatonic River, River Road and the location of the proposed area. He stated that this application is for a Planned Development District and a Coastal Area Management application. He'll be talking about two applications – the CAM and the IA-2 zone to a PDD.

Mr. Swift showed the location of the existing building mentioned in the call of the hearing that is in the front by River Road; it is the former Pro-Tube building. The proposal is to renovate that particular building. He showed the location of surrounding area including the existing Centrix building, a light industrial area north of the parcel, an undeveloped area next to the parcel, and the Crescent Village Condominiums across the street. Mr. Swift showed another drawing depicting the nature of the parcel which is long, narrow and extending back into the property.

Mr. Swift indicated that the existing building is approx. 11,800 square feet and would be renovated to a retail use. They have pushed a proposed building toward the back of the site. It is a five-story building proposed as a medical and general office use. It has a basement area, so in going toward the rear, there is parking available underneath the building. The two uses will have shared parking between them. The Commission has seen that the shared parking works well for the mixed use developments and they expect it to do the same here. There are approximately 262 spaces located between the two buildings.

Mr. Swift stated that they took a conservative route at the rear of the site without disturbing anything within 100 feet of the Housatonic River. It is the upland review area for the local Inland Wetland Commission so they have chosen not to disturb that in any way. They are very sensitive to the Housatonic River. They are prepared to accept requirements from this Commission, if they want to make some improvements that would make public access to this area doable. Those could include access easements across the property as it passes along the river. There had been some discussion about handicapped access, trail and seeding improvements that could extend from their site to that location. So, even though they haven't shown those improvements, they are offering them, and willing to proceed, if the Commission finds it desirable.

Mr. Swift indicated that the grading for this site is fairly level until the midpoint toward the medical building. He pointed out that the City of Shelton has a new Storm Water Ordinance requiring them to do certain things. He thinks that they've gone above and beyond that. All of the storm water run-off that they are generating from the existing building, the proposed parking lot, and the proposed medical building is completely discharged or infiltrated back into the ground. There is no run-off, no pipe, no discharge – to the Housatonic River. All of the water stays on site and is infiltrated back into the ground. That is as progressive and low-impact as is possible. He thinks that the DEP may have made an incorrect assumption on that. Mr. Swift indicated that this has been made possible by a big pocket of sandy, gravel bank found in that location allowing them to do that. All their water goes back into the ground water system. They have been granted discharge too by the Shelton W.P.C.A. and all of the utilities are available in Route 110. There is no necessity to extend any utilities to this site.

Mr. Swift indicated that a detailed preliminary soil erosion control plan has been developed. They have developed it to show how all these things can be kept on site and make sure that the Housatonic and River Road is completely protected from any erosion and things of that nature. He thinks that he has addressed the letter from the DEP Long Island Sound Office. He commented on the strength of their letter, as far as a water dependent use, they have not precluded any water dependent use there as of yet. They thought the town would be interested in keeping it natural with the exception of public access, but they do have the land down there. It doesn't preclude future water dependent uses down in that location. He thinks that they have addressed both of the DEP issues.

Mr. Swift addressed the City Engineer's letter and the issue of the aisle widths. They can certainly be improved at the next step of this process with the required

detailed development plans. They will comply with any of the City Engineer's requirements.

Joe Mingollelo, Mingollelo & Hayes Architects, 90 Huntington Street, Shelton addressed the Commission. Mr. Mingollelo commented that one of the nicer parts of this development is that all the parking is tucked in behind Building A and it is not very visible from River Road so they don't have a sea of asphalt and lots of vehicles in the front.

Mr. Mingollelo indicated that this is an existing 11,800 square foot industrial building that has been there for a number of years and needs a serious facelift. They have options on this building to make it a single user or multi-user. He showed the plan of the proposed store fronts for four different tenants.

Mr. Mingollelo showed the front elevation, which is the River Road elevation. He indicated that right now, it is what they call a pre-engineered building; it is a sloping building that has a ridge point and slopes when viewed from the street, left or right. They added some steps in the roof, creating different blocks that add some interest to the façade elevation. They incorporated some stone veneer and some stucco. They've added some canopies to provide some color and dimension. The signage would be consistent to the front elevation as well as the color scheme. He showed several elevations (from River Road, from the Centrix building, from the rear of bldg) to explain the use of glass and stone for articulation purposes on the corners. He explained that they would incorporate glazing and canopies to articulate the different stores for Building A.

Mr. Mingollelo showed the lower elevation of Building B, the office tower, and explained that the front part of the building is set up for mechanical equipment spaces, storage spaces and lower level parking. To access the upper floors, there are elevators, stairs on the end of the building, and a central lobby space. From the main parking level, there is a canopy, a lobby space, elevator, and a stair. It could be one tenant or could be multiple tenants with smaller suites. The 2nd, 3rd, 4th and 5th floors are basically the same layout. The plan copies itself all the way up. It is basically a stone clad and glass, so there is some stone banding down below. There is a canopy entrance and it is basically a glass curtain wall structure. The stair on the right-hand side pops up above the roof for access purposes because anything over four stories requires access.

Mr. Mingollelo showed the side elevation and indicated that the north and south elevations were identical. The canopy projects out front and the parking is down low underneath. He showed the rear elevation of the building. He explained that it was basically a glass curtain wall system and a granite masonry stone panel system. Mr. Mingollelo indicated that he submitted a drawing to Rick Schultz to show the comparison in the elevation of the proposed five story building and the Rinks.

Comm. Pogoda asked what the square footage of the building was.

Mr. Mingollelo responded that it was 55,000.

Chair Parkins asked Mr. Mingollelo to show the rendering of the building that faces River Road.

Mr. Mingollelo showed the elevation of the Building A that faces River Road.

Chair Parkins asked if there was parking in the front.

Mr. Mingollelo stated that there is one aisle of parking in the front but 95% of the parking is between the buildings.

Comm. Harger asked about the location of the trash receptacles.

Mr. Swift showed the location and explained that they thought it was important to get it away from the front of the buildings. He showed the location of the dumpsters in the back of Building A and in the back of Building B.

Chair Parkins asked if they still had the drive-through proposed for this.

Mr. Swift responded yes, there is one drive-through. It is very limited and not meant for particularly high usage, but according to the allowed uses it would be something along the lines of a coffee shop or something like that. He showed the location of the drive-through and how it travels around the side of the building.

Chair Parkins asked if the store utilizing that drive through would have to be the last store in that building.

Mr. Swift responded yes, the last store.

Comm. Harger asked if they would have their own driveway wrapping around the back of the building or would it blend in with that first driveway.

Mr. Swift showed the main access for the site and explained that every area could be accessed from there. He stated that it was a two-way pattern.

Comm. McGorty asked what the total width of the drive-through area was.

Mr. Swift responded that it is 16 feet – just enough for two cars. Generally, in a drive-through situation that is enough room for one car to bypass.

Chair Parkins asked if there was a need to stack, how many could there be.

Mr. Swift responded that they have stacking for about six cars.

Mr. Panico asked if it was six before encroaching on the property.

Mr. Swift responded yes, exactly.

Comm. Pogoda asked how much parking there was under the second building.

Mr. Swift responded 15.

Mr. Schultz indicated that he filed Mr. Mingolledo's elevation drawing with the Town Clerk's Office.

Mr. Mingolledo responded that he would provide another copy for him.

Comm. Flannery asked about the City sewers and City water that was mentioned and if it would be through Stratford or Shelton.

Mr. Swift responded that the city sewer would be through Stratford. There is a process whereby they apply to the Stratford W.P.C.A. and pay them a fee for accepting the flows from the site.

Comm. Flannery asked if they would be paying for it.

Mr. Swift responded yes.

Comm. Flannery asked if that included the water too.

Mr. Swift responded that it is not an issue who pays for it. The water is there; it is Aquarian Water.

Comm. Flannery asked if there would be any improvements to River Road because of the increased traffic and accidents because of the stores and the office building.

Mr. Swift responded that would be up to the State. This is a State road. They are utilizing the existing curb cut. It is possible that they may require or request a two lane exit.

Comm. Flannery asked who would take care of that.

Mr. Swift responded that they would take care of the construction but the State is going to tell them what they need.

Comm. Flannery asked if they were still going to go with the glass building. At the last hearing, she said she was concerned that the building was so close to the river, and that it would reflect off the building and the trees. There would be a lot of problems with birds flying into the building.

Mr. Swift responded that they did use glass very specifically for sort of the reason she mentioned. It is 6-story along that façade and there are some very mature, high trees there. They are looking for the glass to reflect those trees so that you're not ruining the view scape for anybody who is on the river. When they look up, they are going to see the trees reflected off of the glass, so it is done intentionally.

Comm. Flannery commented that it is an environmental hazard for wildlife. She just can't go with it and doesn't think it is a good idea. She asked if they ever thought of a green roof like the DEP suggested.

Mr. Swift responded that normally what the DEP has in mind when they do a green roof is the issue of run-off and clean water because a roof is absolute, 100% run-off. In this case, they are taking all the roof area and putting it back into that system that has no run-off whatsoever. So whether they did the green roof and absorbed water there or put it in an area where there is no discharge, there is no catch basin that flows to a stream, there is no discharge to the Housatonic River. They have addressed that issue by not letting any of that water runoff of the site.

Mr. Panico asked if they done ?(inaudible) testing in that area.

Mr. Swift responded yes, they did deep testing. They tested all three areas where they are proposing the underground system so they know that they work. They found one area that is absolutely a sponge, so they are really confident.

Mr. Panico asked if they looked at all levels of storm water events.

Mr. Swift responded yes, 2 through 100 year storms.

Chair Parkins commented that she wasn't sure that they would be able to answer, but she wanted to ask about the overall traffic on Route 110. She asked if the DOT, when looking at this development, would look at areas further down the road that would be affected by the increased traffic. One of her concerns is the increased traffic and how difficult it is becoming to get out of the Long Hill Avenue intersection safely.

Mike Gallante, Traffic Engineer, Frederick Clark Associates, Fairfield, CT addressed the Commission. Mr. Gallante indicated that he could answer her question but would like to take them through the process of the traffic study evaluating this site. He explained that they conducted a full traffic study dated February 2011 evaluating this site and the site across the street. It incorporates the continuing development of Crescent Village condominiums.

Mr. Gallante indicated that all the graphics that he will show are in the traffic report that was submitted. He showed a map of the study area for reference purposes which included the Merritt Parkway, Wilbur Cross, Sikorsky Aircraft, Warner Hill Road, Long Hill Avenue, the Sports Center driveway and the condo development driveway north of the site.

Mr. Gallante indicated that they did the manual traffic counts back in February 2011 and they looked at a Friday and Saturday condition because this is a commercial development. It is the DOT standard to look at a Friday afternoon and a Saturday conditions. They also incorporated the morning time periods because this is an office development too. So, there are three time periods that they analyzed.

Mr. Gallante continued that the winter they just had included a lot of snow. The counts were done in the beginning of February after the month of January which had so much snow and so many school closures in the city. They recently obtained new data from the CT DOT for River Road that they collected from August 2010 last year which was seasonally adjusted. In the original report they had used data from 2008 from the DOT. The DOT collects their data about every two or three years, so they were in the middle of that cycle when they conducted their traffic study.

Mr. Gallante stated that they took their recent traffic counts from this February and matched it to the DOT that they determined for the volume on River Road. Their volumes used for the traffic study, for comparison purposes, in the morning near the site frontage were 14% higher than the State's volumes. The afternoon was 24% higher than the State's volumes – so they are conservative as far as the data they used for the condition here. There had been some concern because schools had been closed for a period of time in January but he always felt that the volumes that they counted were higher because everyone was getting back out on the road at that point. This is a Friday condition which typically has a higher volume than a Tuesday, Wednesday or Thursday – so he always felt confident that the volumes they were using were conservative.

Mr. Gallante indicated that for analysis purposes, they conducted counts and analyzed at the Warner Hill intersection with the Sikorsky driveway; Long Hill Avenue with River Road; the Sports Center with River Road and the condo driveway with River Road. They did a.m., p.m. and Saturday time periods. Manual counts are typically conducted from 7 a.m. to 9 a.m. in the morning; 3 p.m. to 6 p.m. in the afternoon. They wanted to capture the Sikorsky traffic activity. For the Saturday count, they did it from 10 a.m. to 2 p.m. For those three time periods, they pulled out the highest volumes.

Mr. Gallante explained that the morning peak was identified as 7:30 a.m. to 8:30 a.m. and the afternoon peak was identified as the 4:45 p.m. to 5:45 p.m. (and this is a Friday which is a very busy day). The Saturday peak was identified as 10:45 a.m. to 11:45 a.m. When they compared the volumes a.m., p.m. and Saturday, the afternoon on Friday had the highest volumes on the road. River Road near the site frontage had about 1400 vehicles, 2-way volume for a one hour period. In the morning at the same location, there were about 1100 vehicles. On a Saturday during the morning peak period, there were 900

vehicles. So, consistently, the Friday afternoons volumes are the highest. However, they analyzed each time period because their site traffic is different for each time period.

Mr. Gallante indicated that their next step was to account for other developments. He mentioned that the condominiums are ongoing as far as new unit developments. They have 34 more units to build in the next couple of years depending upon the market. There are two ways of estimating this. They did traffic counts at the driveway by coming up with a trip generator per unit using the information from the units occupied. They also have standards provided by the Institute of Transportation Engineers, better known as ITE that tells them how much traffic 34 townhouse condominiums would generate. It is interesting, but the book volumes and the volumes that they counted are almost identical. So they added in another 17, 18, and 12 trips for a.m., p.m., and Saturday for those additional 34 units. They also put in traffic for 4 units which are located on Murphy's Lane, Berkshire Commons and they plugged in a growth rate of 2% per year. But, basically, as far as volumes, traffic has not grown but actually decreased because of the economy. This is happening everywhere. However, they try to remain conservative in their approach.

Mr. Gallante stated that the next step was to estimate the traffic for the site itself. They used standards by ITE which is a requirement of the DOT and the State Traffic Commission. Retail development for Building A is about 11,800 square feet and the back building is Building B, medical/office space of 58,000 square feet. They took the whole number on the higher side for the square footage.

Mr. Gallante indicated that the retail development (Bldg A) will likely generate 12 trips in the morning peak (most stores are closed), the afternoon about 44 trips in a one hour period and on Saturday approx. 58 trips.

Mr. Gallante stated that the medical building (Bldg B) is a different type of development. He determined that it would be 134 trips during a one hour period, 201 trips during a Friday afternoon and 211 trips on a Saturday; this is assuming that the medical building is open. They assumed for this analysis, that the medical building would be open.

Mr. Gallante indicated that it is appropriate to take some credit for the retail portion of the development (ex., if someone is driving on River Road and decides to stop and go into that particular store). The State allows them to take a 20% credit for reducing those traffic volumes. It only accounts for 2 trips in the morning, 9 in the afternoon and 12 on a Saturday, but they account for that credit to account for someone that is already on River Road itself.

Mr. Gallante stated that, overall the combined development of the retail and medical office building would generate anywhere from 144 new trips on River Road to 257 trips on a Saturday, if the medical building was open. That traffic is then added to the roadway system at each of the intersections that they have counted to begin analyzing.

Without going through all of the steps, Mr. Gallante showed another drawing to explain where traffic is coming and going for this particular development on the east side of River Road. Based upon the traffic patterns, where people live, and the traffic patterns on River Road itself, in very broad terms, about 70% of the traffic going to that development comes from the south. It comes up River Road turning right into the driveway. The remaining 30% is coming from the north part of town. This is based upon the patterns that they have today.

Mr. Gallante indicated that they analyze that site traffic on the road way system in a future year, in this case 2012, and add it on top of the other condo development. They call this a build condition. For the last step in the analysis, he referenced Table 7 in the Traffic Report to show the impact and mitigation of the build condition. He explained the chart and the information in the various columns.

In response to Chair Parkin's earlier question about the traffic at the intersection of Long Hill Avenue and River Road, Mr. Gallante addressed the STOP sign control there and the existing delay. He indicated that State would probably not put a traffic signal in there because the volume of traffic coming out of Long Hill is 90% right turn. They have to have a certain amount of volume of traffic on River Road and the side street, which is Long Hill, for an 8 hour period on a typical weekday. They may have the volume coming out of Long Hill, but because it is a right turn, it is not as critical as a left turn movement coming out of a side street. Mr. Gallante stated that the State would probably not put a traffic signal in there. They don't like putting in a traffic signal unless they absolutely have to because of the cost and the maintenance. Even if they were to put it in as part of a review by DOT, he doubts very much that they require it because of the pattern of traffic at that intersection. He stated that they did look at that Long Hill intersection.

Mr. Gallante commented about the impact of this traffic on the road system and indicated that they looked at the Sikorsky driveway down at Warner Hill controlled by traffic signal. It is a busy intersection controlled by a traffic signal with a multi-lane approach to the intersection. It will continue to operate at a level of service "C" which is an average condition or average delay. "C" is just like in school – and "A" would be little to no traffic, and going down the scale, "D" and "F" would be capacity, in the old books called "a failure" but in reality, it is just a longer delay. This tells them that STOP signs at intersections including their future driveway, the condo driveway, the Sports Center driveway and Long Hill Avenue generally operate in the "C" to "F" range depending upon the time period and the intersection itself. This translates into a delay. Long Hill Avenue has the longest delay. It changes from a "D" to an "F" on a Saturday condition, if the proposed medical building is open; it would result in an increase in delay, per vehicle, of 52 seconds. So in coming to that STOP sign, your car may wait, on average, an additional 52 seconds to pull out onto River Road.

Mr. Gallante stated that it sounds like a lot of time and it is also a very conservative approach because the analysis is a computer model that assumes everyone drives the same way. For example, some drivers may be quicker while others are more conservative and wait to pull out to get going. The model assumes that everyone does exactly the same thing which is not reality. This creates a longer delay for all the vehicles coming out of any side street that is controlled by a STOP sign. Therefore, they need to look at the results on paper and realize that in reality, in the field, there may be a shorter delay. There are certainly delays on these side streets. The only mitigation is a traffic signal but it is highly unlikely. In this proposed driveway, the State would not require a traffic signal because they don't have the volume coming out of the driveway itself. River Road may have the volume, which it does during certain time periods, but it may not have enough volume throughout the day to meet that criteria.

End of Tape 1A, 7:47 p.m.

Mr. Gallante indicated that they looked at accidents which are important in any traffic study. He showed another diagram called a Collision and Condition Diagram which identifies every accident, plots the accident, identifies the type of accident, injuries/no injuries, right angle, rear end, roadway conditions, weather

conditions, time of day, etc. He explained that from that data, they try to determine if there are any patterns that can be addressed.

Mr. Gallante began with the intersection of Warner Hill Road and the Sikorsky Driveway on Route 110. He indicated that there are a significant number of accidents in the range of 40 accidents in a three year period. They are mostly right angle, turn movement accidents at the traffic signal. It is likely due to left turns.

Chair Parkins noted that there is also a "no turn on red" but people turn on red.

Mr. Gallante responded that people do that and it's a concern but most of the accidents are the right angle coming out of Warner Hill or making a left turn as opposed to making the right on red turns. It is a concern but it's a different type of accident. The other type of accident with a high number is the rear end collisions.

Chair Parkins commented that in making a left turn, they have a green light.

Mr. Gallante responded yes, they have the green light but they don't have the right of way. They have to wait for the oncoming car on River Road making a left turn that thinks it has enough time to turn – those two cars meet and collide. The other type of accident that is fairly high is the rear end collision which is somewhat typical of a signalized intersection, especially in this case with the high volume. The volumes are much higher at this intersection than up by the proposed site. This is a very busy area on Route 110 because Sikorsky is driving the volume.

Mr. Gallante explained that in going up River Road, there are about six accidents during a three year (2006-2008) period by the Long Hill Avenue intersection. This data tells them that there were two turn movement accidents, one rear end collision and two accidents coming out of Long Hill. All accidents are important but it is not a significant enough number over a three year period for a traffic signal. They looked at the accidents, the volume, and traffic patterns at the intersection because this is a key intersection. From his experience with the DOT, they would not come back and say to put a traffic signal there. The numbers don't identify a serious concern.

Comm. Flannery asked about the accidents north of that location.

Mr. Gallante responded that in going up, north of Long Hill Avenue there are a couple of driveways with turning movement accidents where there is a car wash and deli. At the Sports Center driveway, there were two accidents in a three year period. He has heard from someone in the audience that is a difficult spot to come in and out of but actually the sight lines are fairly good, the road is flat, but the speed is certainly high. Two accidents in a three year period is not an issue.

Mr. Gallante stated that at the condominium driveway, which is fairly new, they only show one accident over three years in that location. As the development continues, they may see more accidents develop. He stated that in coming around the curve, north of the condos, there is an appropriate sight line that was approved by the State, however, it may not be ideal at the maximum because you lose the sight line going around the curve going northbound. The State put in a left turn lane for the condominium.

Mr. Gallante addressed the issue of putting a left turn lane southbound into their property, a bypass lane, or an extra lane coming out of the driveway will be part of the State's review.

Comm. Harger asked what it meant by "collision of moving objects" in the report.

Mr. Gallante responded that it would be a deer and he's seen plenty of them there.

Mr. Gallante indicated that in regard to the left turn or bypass lane, it is really the State's decision. Most of the traffic for this site is coming from the south; the left turn movement in from the north is not the higher of the two volumes. They may possibly ask for a bypass lane, but they are not at that point yet. He indicated that he would answer any questions that they have.

Chair Parkins thanked Mr. Gallante for the very comprehensive answer to her question. She asked if the accidents were to increase, would the DOT continue to look at it.

Mr. Gallante responded that the DOT collects the data on a regular basis. The State does look at that on the State roads, separate from any particular development projects.

Chair Parkins asked the applicants if the presentation was completed.

Mr. Swift responded that it was and he would take any questions.

Chair Parkins asked if the Commissioners had any questions or comments. With no comments from the Commission, she asked if there was anyone from the audience wishing to speak for or against this application.

Dr. William Dragan, Centrix 3D & F LLC, 770 River Road, Shelton, CT addressed the Commission. Dr. Dragan indicated that he would like to ask if another entranceway to this property would be a problem because they have a problem right now with the entranceway to the Sports Center being so close to their entranceway. Most of their people are afraid, and have to be very cautious because, if people coming out of the Sports Center see their turn signal into their parking lot coming out too soon - they will just shoot out. So they have to be very careful. If they had known that it would be that close to their place, he would have posted at that time. He doesn't see another entranceway right next to their property because they have an entrance and exit with people coming and going all day from their place. Dr. Dragan stated that he would be very cautious about having another driveway on that side.

Dr. Dragan asked another question about what this development would do to their zoning because they might want to increase and put in another building or extend their building. Right now they have light manufacturing. He asked how it would affect them.

Mr. Panico responded that he would still enjoy the existing privileges of the industrial zone that applies there right now. It is not being taken away. Whatever rights he had to develop, he'll continue to have those rights to develop.

Doug Dempsey, 6 Ashwood Circle, Shelton, CT addressed the Commission. Mr. Dempsey indicated that he lived at the Crescent Village Condominiums and he represents the Board of the Association. Mr. Dempsey asked about the comment regarding the possibility of there being a drive-through coffee shop and the mention of 12 trips. He asked if that meant 12 trips per hour.

Chair Parkins responded that she believes it meant 12 trips per hour.

Mr. Dempsey commented that he thinks that if there is going to be a coffee shop with a drive-through, he thinks that there will be more than 12 cars per hour going through there. He questions if the 12 trips number is correct. He doesn't know anything for a fact, but he does know that when he drives down River Road in the morning, there are a lot of cars turning right into the Oronoque Shopping Center to go to Dunkin Donuts. There are more than 12 cars per hour.

Mr. Dempsey stated that the second question he has is about the State review giving them something additional for the traffic. He asked why they don't wait for the State's review, and if the State approves the increase, then approves the 5-story building, rather than putting it up and having the State maybe agree or not agree with their additional traffic lanes.

Mr. Panico responded that the Applicant will have the obligation of satisfying whatever requirements are imposed upon them by the STC and State Highway Dept. In regard to getting that information ahead of time, unfortunately, the STC DOT will not review an application until there has been action by the local Planning & Zoning Commission.

Chair Parkins added that this Commission has to approve it first before the State will review it.

Mr. Dempsey responded that it doesn't seem to make much sense.

Mr. Panico commented that their attitude, he presumes, is that they have a State facility there and it is either going to be adequate for what they want to do or they are going to make you make the improvements to make it adequate. If they don't and if the bill for that is too high, then you just say no thank you but you have no Certificate and cannot proceed with the project. They have to have that Certificate before they can pull any permits.

Chair Parkins added that right now this is for approval of a development concept. This is not final site plan approval.

Mr. Dempsey asked if there was also another condominium that had been approved for the marina area and if that has been considered in this.

Chair Parkins responded yes, that's at Murphy's Boat Yard.

Candy Schwemmer, 689 River Road, Shelton, CT addressed the Commission. Ms. Schwemmer indicated that she lives just north of Murphy's Lane. She has concerns about the traffic. She asked about the year the traffic study was conducted.

Chair Parkins responded that it was 2010 - 2011.

Ms. Schwemmer indicated that she was just concerned about the traffic. She pulls out of her driveway every morning about 7:40 a.m. and there is a steady line of cars going south. She comes home every day around 4 p.m. and there are cars coming, going and slowing down in and out of the Cumberland Farms, Long Hill Avenue and the Sports Center. There can be a line going into the Sports Center depending on the activity going on, with cars trying to get out quickly. She doesn't have any problem with the development, but she is concerned about the increase in traffic and the danger of accidents on that part of River Road.

Dr. William Dragan, 770 River Road, 3D & F LLC, Shelton, CT addressed the Commission. Dr. Dragan indicated that he had another question if this is

not the final drawing. He asked if that entrance and exit could be changed by the State.

Mr. Panico responded that there is not much opportunity for them to change the location of the driveway but they could mandate certain additional improvements in front of their property such as a de-acceleration lane or the opportunity for a bypassing and stacking for a left turn coming from the north.

Dr. Dragan asked if the placement of that driveway would remain.

Mr. Panico responded that there aren't any other options since the building is there. The building occupies the balance of the front of the property.

Dr. Dragan commented that they are just concerned that it is too close to their property because they have people going in and coming out and they have to be so careful. He thinks that it would create a bigger hazard.

Mr. Panico responded that the only comparison he could make would be that even if they didn't proceed with this development but simply wanted to develop that property to its maximum under the industrial zone regulations, there will be an additional traffic burden. It might be a different nature of traffic but there will be a traffic burden, and it will come out of that driveway since it already exists.

Dr. Dragan commented that they would be concerned if the driveway were too close to his driveway because it would create a problem for them.

Mr. Panico stated that he believes that they are about as far as they can get on their property from his property.

Dr. Dragan indicated that on the other side though, they are right next to them.

Mr. Panico responded that it is not likely that they'll move it because they enjoy an existing curb cut where they are.

Mr. Bill Purcell, Greater Valley Chamber of Commerce, 900 Bridgeport Avenue, Shelton, CT addressed the Commission. Mr. Purcell stated that he supports the concept as presented this evening. It represents an attractive, adaptive reuse of an under-utilized building by converting it to retail uses. It takes advantage of the beauty of the River and represents the first new construction in the office market that they have seen in this community for some time. He applauds the concept of bringing this into the PDD. With respect to Dr. Dragan and his concerns about changing the area zoning, the PDD gives them the flexibility to work with the development team and come up with something satisfying everyone's interests and needs.

Mr. Purcell stated that he wanted to echo some of the speakers that preceded him. Certainly, safety is paramount and there is no question that safety and traffic flow is paramount. As they have learned that is clearly the domain of the STC and they can be sure that this development will go through a rather rigorous screening from the STC before coming back to this Commission for final approval. He thinks that the traffic engineer aptly pointed out that the traffic that is there is largely the result of a major employer, Sikorsky, which is a significant generator along Route 110. He supposes that progress has its cost because they have a major employer that is vital to the region and vital to their nation and the price that they ultimately pay is with high traffic volume of people coming and going.

Mr. Purcell indicated that in terms of the scale of this development versus the scale of what lies down the road – 6,000 employees on this campus – this will have a nominal impact in terms of the entire stretch of the road.

Mr. Purcell stated that his final point that was made from advocates on behalf of Long Island Sound. He is a naturalist who enjoys the beauty of the river, too. He thinks that they've heard the developer say that he is certainly open to meaningful public access to the river. He indicated that he says that in the context that he applauds the City because they have done a marvelous job of creating many opportunities for meaningful public access along the Housatonic River. They are now turning towards the River, and taking advantage of its beauty like this project is doing.

Mr. Purcell commented that tomorrow evening, as an example, Jim Ryan from the Shelton Economic Development Corporation will have a public forum on more public access with the extension of the River Walk and integrating the Canal Street Redevelopment with public access to enjoy the beauty of the river. He thinks that they can have all the worlds in this project – safety, access and a quality development. He thanked the Commission.

Chair Parkins asked if there were any other comments regarding this proposal.

Mr. Panico commented that it was ironic to note that it is only because they have an ambitious development proposal that is generating the need for 260 parking spaces that they even have the State involved. If the applicant had proposed a less ambitious development, it would have resulted in fewer than 200 parking spaces and there would be no STC involvement at all. It would have strictly been an as-of-right because it would have fit into existing zoning and they would have had to accept the burden without any improvements to the area.

Comm. Sedlock asked if they were to allow the public access to fish, look, or whatever – who takes on the responsibility of maintaining that and the garbage that comes with it.

Chair Parkins responded that it comes with an easement, so if the easement is given to the City, it would be their responsibility.

Mr. Schultz added that they have a Trails Committee under the umbrella of the Conservation Commission.

Comm. Sedlock stated that he thinks it is a wonderful idea. He happens to live next to a river on Mill Street and every year, the people on his street have to clean up what the fisherman have left behind the previous year. He was wondering if they asked this development to do something down by the river, if it would be more harmful than helpful.

Comm. Flannery indicated that she also had that concern. A month ago she went to the Sports Center to go ice skating and she had to park way in the back by the river. There was a lot of litter all over the parking lot. She asked if they did make a meaningful public access, who would clean up the litter? There are similar problems at Far Mill River where they have to ask the Boy Scouts to clean up all the time.

Chair Parkins responded that it is unfortunate that when they allow people to enjoy the beauty of nature that they feel the need to use it as a garbage disposal.

Comm. Sedlock indicated that is what he was thinking – it would be a great idea to do something down there but it might be a better idea to just leave it alone.

Mr. Panico commented that the one saving grace is the proximity of the proposed office building to that location as opposed to it being an access point at the tail end of a parking lot with no one in close proximity to it.

Howard Soffan, developer and owner of Bishop Management Company addressed the Commission. Mr. Soffan addressed Comm. Sedlock's issue and stated that at 784 River Road, the Sports Center which he owns, they clean up garbage in their back lot from the people with access to the fishing area on a very regular basis. The burden, although it is an easement, falls upon the owner of the property. At 865 River Road, where he replaced Esther's Hacienda with a brick building, they have fishermen at the river right there that are constantly creating a mess. He sends down people constantly to clean it up. So the nuisance value is there. The Sports Center is close enough to this property in proximity and there are a large amount of fishermen who go there on a regular basis.

Comm. Harger asked if there were any signs posted regarding no littering at those sites.

Mr. Soffan responded that they can speak to Dr. Dragan too – people just come through their property like it is their own and what goes on the ground along the way...well, it is unbelievable.

Comm. Harger commented that it certainly isn't because of lack of effort on their part at all.

Comm. Sedlock stated that he doesn't understand it because people who fish are generally people who care about clean rivers and things like that. It doesn't make sense that they leave their personal stuff there.

Mr. Soffan responded that he understands somewhat at the Sports Center but he does not understand it at 865 River Road where it is a pastoral setting and they leave anything and everything. He addressed Mr. Schultz and commented that this was a big issue at that site because they didn't want to kill the fishing there because there were people that regularly liked to fish there. He did exactly what they said they would do and now the maintenance burden sits on them.

Comm. Sedlock commented that if this becomes a PDD, he hopes that they consider something besides a coffee shop because they generate the most garbage.

Mr. Soffan responded that with no disrespect to Mr. Swift, it will not be a coffee shop.

Chair Parkins stated that as the applicant mentioned at the beginning of the presentation, it is at the pleasure of this Commission that they will grant the easement, so if it is something worthy and Shelton should have it, then they will be amenable to it. But it is not something that they are actually proposing, so it's at the discretion of this Commission. She appreciates the comment about the coffee shop because she agrees with Comm. Sedlock. She asked if there were any other questions or comments.

Comm. Flannery asked if there was any possibility of changing the glass curtain wall.

Mr. Soffan responded that after the last public hearing, he did some research at the PPG because she was asking about it and he was formerly in that business. To date, PPG is working on a product but they have not developed it as of yet.

But there is a product out there that they are working on to act as a deterrent to birds flying into curtain wall. As this process goes along, and working with Staff, they will continue to take a look at it to see where they stand a year from now.

Comm. Harger asked about the five story height and indicated that she'd like to be given some idea of how high it is.

Mr. Mingolledo responded that if they look at the height of the Rinks, that is 63 feet and that is pretty much the height of a five-story building.

Chair Parkins asked for a motion to close this public hearing, if there were no other comments.

On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously voted to close the public hearing for Application #11-09.

APPLICATION #11-08 BISHOP DEVELOPMENT OF SHELTON II, LLC FOR INITIAL DEVELOPMENT CONCEPT APPROVAL AND PLANNED DEVELOPMENT DISTRICT ZONE CHANGE (RETAIL WITH DRIVE-THRU), COAST AREA MANAGEMENT SITE PLAN APPROVAL AND AMENDMENT OF FUTURE LAND USE PLAN OF THE PLAN OF CONSERVATION AND DEVELOPMENT (POCD), 781 AND 782 RIVER ROAD (MAP 12, LOTS 29 AND 43) R-3 DISTRICT

P&Z Secretary, Commissioner Harger read the Call of the Hearing and three pieces of correspondence.

***See attached correspondence dated February 23, 2011 to Richard Schultz, P&Z Administrator from Kristal Kallenberg-Dorismond, Environmental Analyst, Office of Long Island Sound Programs, Connecticut DEP.**

***See attached correspondence dated February 22, 2011 to Richard Schultz, P&Z Administrator from Fire Marshal, James M. Tortora.**

***See attached correspondence dated February 18, 2011 to Richard Schultz, P&Z Administrator from City Engineer, Robert Kulacz.**

James Swift, P.E. and Landscape Architect addressed the Commission.

Mr. Swift submitted the certificates of mailing for the record. He indicated that this parcel is directly across the street from the Sports Center. He showed an aerial photograph of the proposed area. He indicated that the proposed site is surrounded by single family residences and there is undeveloped land to the south. It is a PDD application with a CAM application. They are proposing a fairly modest sized retail building with one story and 5800 square feet. It has a parking count of 29 spaces and access for this is going to be off of River Road.

Mr. Swift showed the circulation through the entrance and explained that it would be slightly raised up from River Road. In this case, most of the parking is in the front, and there will be a landscaping barrier across the front so that they won't be looking at cars. He showed the circulation around the back of the building with angled parking and a double bypass across the southern area. He explained that there is also a drive-through window there. He stated that the proposal is for a bank but as this Commission knows, this is a PDD.

Mr. Swift indicated that he was concerned about the City Engineer's question about the bypass because it is nearly a full width of the driveway as opposed to the 16 feet on the other application. But as the Commission knows, as they get

into more detail, they would work with the City Engineer very closely and comply with whatever requirements he has.

Mr. Swift indicated that in regard to the 43 foot drop – at this site, across the street from the Sports Center, the grade rises steeply and then tends to plateau. It is a good news/bad news situation for them. It is a burden for the development of the site because they have to bench into the area to make a flat area. Obviously, they can't build any steep driveways, parking lots or things of that nature. From their perspective, there is some material to be removed. It is fairly good news for the ad joiners, because the grade change is so significant.

Mr. Swift showed a drawing that is a cross section, two-scale of what is going on there. He showed River Road and the grade they would have to obtain in order to develop this site.

Comm. Flannery asked if they were going to take all of that out with blasting – is it all rock?

Mr. Swift responded that there is rock here, yes. They have a situation where they are going to be hidden primarily from all of their ad joiners because they will be hidden down below. That is the good news part of this. They will also be screening it. This project obviously has residential ad joiners and they will be sensitive to that. He showed a rendering where they will be planting evergreens and buffer planting all around those areas. So between the grade change that tends to hide the building and the landscaping, he feels that they can isolate themselves very well from all their ad joiners.

Mr. Swift commented that the grade pitches out into River Road, and they have access to sanitary sewers in the road and all utilities including storm drainage, gas and water.

Mr. Swift stated that they have a fairly detailed, but preliminary, soil erosion control plan to make sure that they have something on record indicating that they can control erosion and discharges that could possibly reach River Road.

Mr. Swift stated that it is a fairly simple and straightforward plan, and he'll have Joe Mingolledo show them the architecture.

Chair Parkins asked Mr. Swift to go back to drawing that showed a house or some other kind of structure by the cut in and where that structure is located on the aerial photograph.

Mr. Swift responded that is a house on Wintergreen. It has access on the cul-de-sac.

Comm. McGorty asked if that was directly behind them.

Mr. Swift responded yes, virtually directly behind – he showed the location of the proposed building.

Comm. McGorty asked how close it was to their property.

Mr. Swift responded that from what he can see...that to give a little bit of background, this was actually two building lots right now. When that was done, he thinks that the builder recognized that the excavation that would have to take place for anything to happen here is significant for both - for commercial and residential, given those grades coming off of River Road. That kind of excavation would have to take place for houses as well. The reason that it was developed this way, for these two lots, there is a strip of land divided into two

areas - for residential it is fairly costly to get into a State highway for connections to sanitary sewer, water and gas. For residential housing it is not affordable to get into the State highway to do those things like mill the street, repave it, etc., it is quite extensive. When they did this subdivision with the last few houses off of Wintergreen, they provided this strip to get up to the utilities that exist in Wintergreen. So if this was developed as housing, they would be excavating to get their utilities up off of Wintergreen. So, that is a little bit of background on that portion there.

Mr. Swift stated that they took a good look at it; the building and the parking cannot be seen from behind grade area of this particular residence. This particular residence is going to look over it. Clearly some of the upper floors could see the top but the landscaping will be double rowed there with evergreens.

Comm. McGorty asked how much of a buffer is there between the rear property line and their property line.

Mr. Swift responded that they have not pushed as far back as they can. They have a fairly generous amount of land here that they can do things with. They can plant double rows of evergreens there.

Comm. McGorty stated that his concern was the steep cliff really close to their boundary line - especially if they have young kids or something.

Mr. Swift responded that they have anywhere from 20 – 25 feet in one location and about 45 – 50 feet in another area for plantings or a fence, whatever they would like.

Mr. Panico asked if he had done any geological investigation as to what that rock is like.

Mr. Swift responded that he has, not so much for the quality of the rock. Even soft rock can be pre-blasted to make sure it is a good, clean line. It might be a little steep. Normal rock is six on one. He has fairly generous width on this so if he had to go four on one, he could still (inaudible)

Mr. Panico commented that his concern would be the aesthetic appearance of this 40 foot rock cut. If it is a nice, clean cut, it is not bad but if it is jagged edges and the grain is running into it and they are cutting across the grain, it is not going to be very pretty.

Mr. Swift responded that they are going to line drill it, pre-split it so that it is fairly clean – not just for pretty, but for stability because it is very important. There are no drillings or anything that is in danger here but they are going to do it for that reason. Also, they are going to leave enough room so that they can plant white birch which is normally seen against rock and some larger shade trees. So they not only have plantings at the top of the slope but also at the bottom. Also, the building hides a good deal of that too.

Mr. Panico asked what slope he was going to put that rock base on.

Mr. Swift responded that right now he designed it somewhere along the four on one. They believe that it is going to be six on one. He has done examinations. They don't have borings yet but they have done some examinations with holes left there so that they are confident that they can achieve the slope that they need.

Chair Parkins asked if the traffic study done for the first application applies to this application as well.

Mr. Swift responded yes.

Chair Parkins asked for clarification on the square footage of the building.

Mr. Swift responded that it was 5800.

Joe Mingollelo, Mingollelo & Hayes Architects, 90 Huntington Street, Shelton addressed the Commission.

Mr. Mingollelo indicated that the proposed building is 100 x 58 for 5800 square feet. They have designed it as three stores, but it could be two or one. There is some design flexibility based upon the tenant. It is a one-story building. There are three entrances. They've clad it with some stone down below, normal store-front work, brick or stucco up above. The sign and lighting is consistent with the architecture. It should be a flat roof, and not a very tall building – about 14 – 17 feet to the parapet. He showed the location of the drive up at the end of the building. The same architecture will turn the corner on both ends and the back of building would be simple with some access or service doors.

Mr. Panico asked if the architectural treatment would vary considerably if they had a single tenant building as opposed to three tenants.

Mr. Mingollelo responded not necessarily. If they had one tenant up front, then they probably...

Mr. Panico asked that if they know that it is going to be a bank, then they'll design a bank, not three retail stores retrofitted into a bank.

Mr. Mingollelo responded that most retail buildings are designed as retail buildings, and if a bank comes along, they would probably be concerned with a drive-up window. So, they have created that now. It has to be designed with some flexibility especially with the market the way it is these days.

Chair Parkins asked if they would just take out the other two doors if they had to.

Mr. Mingollelo responded yes, exactly, take them out and fill it in with stone and...

End of Tape 1B 8:33 p.m.

Mr. Panico commented that he meant that the overall tenant of the building might look different as a bank opposed to a retail tenant.

Mr. Mingollelo stated that if they have a tenant up front, long term – a lot of businesses today have traditional or contemporary looks with a lot of glass, stone and geometry.

Mr. Panico indicated that he was just saying that the design solution would come out better if it were a known tenant and instead of one level of 5800 square foot – maybe if it was a smaller footprint with some office space above it to begin to screen that 43 foot cut in the back.

Mr. Mingollelo stated that he understood – by adding some verticality to it and changing the roof lines a little.

Chair Parkins commented that then it would be raising it up for more visibility up above. She asked if the treatment plan on this is to match the other tenant.

Mr. Mingolledo responded that he would like to see the same materials – the retail building across the street mirrored over to this one and vice versa – absolutely, yes.

Comm. Sedlock asked if they have had any contact with the people living in that that first house.

Chair Parkins commented that she thinks that person may be in the audience. She asked if there was anyone from the public wishing to speak for or against this proposal.

John Wardowski, 21 Turner Road, Shelton, CT addressed the Commission. Mr. Wardowski indicated that he lives in a house which is literally right next door, and right on top of this property. Right now it is a residential zone and that is the way that he thinks it should be because it is surrounded by two other houses. He thinks that it is correctly zoned right now.

Mr. Wardowski indicated that his main concern would be if a restaurant were to go in there. He commented that any type of fumes in the air or anything like that could possibly decrease the value of his house. This is the biggest investment that he'll ever make and he's quite concerned that this will affect the value of his home.

Mr. Wardowski commented that with all the activity already coming out of the Sports Center, he doesn't know how many 12 year old kids are going to go to a bank after a hockey game. In the prior meeting minutes, there were notes that the Subway owner was very happy that they were there and comments that Casa Nova does a much better business now because of the development. Mr. Wardowski stated that actually one of the comparisons to what this might look like is actually compared to Dutchess as well. Not being a developer himself, obviously, it sounds like the best thing to possibly put there would be a restaurant. A restaurant right there would probably make a lot of money but he's concerned that the fumes may decrease the value of his home.

Comm. Flannery asked Mr. Wardowski if he had any young children that would be in danger of this cliff being there.

Mr. Wardowski responded that he has a five year old nephew with Down's Syndrome and a six-year old niece that come over often.

Chair Parkins commented that the applicant already indicated that they would be willing to put up a security fence.

Comm. Sedlock asked Mr. Wardowski if his main concern was the fumes – if it were to be a restaurant.

Mr. Wardowski responded yes, exactly.

Dr. William Dragan, 770 River Road, 3D & F LLC, Shelton, CT addressed the Commission. Dr. Dragan stated that he wasn't against any of the projects but he is concerned about the blasting that is going to have to be done. When the Sports Center was built, there was a lot of blasting and they had damage to in their building to their foundation. He is concerned about what is going to happen there because it looks like there is going to be blasting going on here. That is his only concern as far as this project – excessive blasting that could

damage their building. They have some sensitive equipment in there too. He thanked the Commission.

John Wardowski, 21 Turner Road, Shelton, CT addressed the Commission. Mr. Wardowski indicated that is concerned about the blasting as well. He has a septic tank on that side of the property. It was asked if they know what quality of rock this is and he doesn't believe that they know. It is a one acre piece of land that could be 50 feet deep – he's not an expert, but it sounds like a lot of rock to blast.

Joseph Mozdzer, 24 Wintergreen Lane, Shelton, CT addressed the Commission. Mr. Mozdzer indicated that he was another ad joiner to this development. He is opposed to this zone change. He thinks that this should stay as residential. This is going to have a negative effect on his property value. He agrees with the previous speaker and also does not want to have a restaurant with smells close to his property. He doesn't believe a bank is going to move in there either. It is the perfect place for a restaurant. If they put in a drive-through with some type of food, they will definitely smell it. It would probably be open late and they would have to hear the traffic too. It is basically right in his backyard along with this 45 foot drop.

Mr. Mozdzer indicated that he had two small children – one is five years old and the other is three years old. There are actually a ton of other kids living on Wintergreen Lane that are very young so he is concerned about the safety.

Mr. Mozdzer stated that he also doesn't want to see a sign lit up over there – that would be another bad thing. Presently, right outside of his window, he has to look at the Rinks sign beaming into his home.

Mr. Mozdzer indicated that he would also be concerned about the blasting.

Howard Soffan, developer and owner of Bishop Management Company addressed the Commission. Mr. Soffan indicated that he has heard the comments from the public regarding this property. He would like to give them some history. When they built 865 River Road, which was Esther's Hacienda, there was blasting with neighbor's right behind them, and the cliff was a lot more significant than it is here. There is a deeper buffer zone here that there was not at that site. Not only did they put up fences, but they landscaped to make sure that all the neighbors were happy. The blasting was successful and that area was in excess of 45 feet.

Mr. Soffan stated that when they blasted for the Sports Center, as Dr. Dragan spoke, they did pre-imposed blasting. They had some caulking issues in the foundation and the contractor came back. It would be no different than what they would do here today and being responsible as a developer to make sure that this property comes out the way it should be.

Mr. Soffan stated that he has heard through Mr. Swift that people are concerned that this was going to be a McDonald's. Under no set of circumstances, and he will go on the record to say, that this is not going to be a McDonalds. It is not going to be a Duchess – they own a restaurant inside the Rinks. The ultimate tenant is not visualized as a restaurant. In fact, at a later point in time at the Sports Center, they may entertain building a restaurant but that would be closer to the water as opposed to putting it out here. He thanked the Commission.

Chair Parkins asked about the blasting and if there was a requirement within so many feet of the blasting site that the people are offered pre-inspections of their foundations, etc. She asked if they had a standard on that.

Mr. Swift responded yes, absolutely. As this Commission is aware, this town has instituted some fairly strict requirements and oversight for blasting issues. They would be following that very closely. He stated that he would like to make a final point that if this is developed as this commercial project or residential with houses – the commitment will be that it would have to be blasted for anything to be built there. It is just that steep. They would be glad to provide, staff or communicate in some form what that would look like as well. As far as the blasting issues goes that is probably not a yes or no – a blast or no blast issue – it is going to be.

Chair Parkins asked if he knew what the standard was for distance.

Mr. Swift responded that he isn't sure – he wants to say that it is 500 feet but he is only 80% sure of that.

Comm. Harger asked what the distance was from the rear of the proposed building to the nearest neighbors.

Mr. Swift responded by showing a site map to show the location of Mr. Wardowski's house. He indicated that aerial photos aren't exact in how they map out. He showed a more correct plan and pointed out the location of Mr. Wardowski's house, and a strip owned by another person that follows all the way down to River Road. So even though Mr. Wardowski is the closest neighbor to this project, there is a strip of land between them. He showed the house depicted on the cross section schematic which is actually a little bit farther away.

Comm. Flannery asked if it was 500 feet away.

Mr. Swift responded that it was nowhere near 500 feet – it is much closer than 500 feet. There will be pre-blast surveys done for all of these people.

Chair Parkins asked if he was aware that there is a new subdivision on that front parcel that just got approved – on Long Hill.

Mr. Swift responded that if it is within the mandated distance, it will also be included.

Comm. Flannery asked who pays for that.

Chair Parkins responded that it would be the developer.

Comm. Sedlock asked if Mr. Swift could go back to the drawing with the cross section showing the house located on that hill. He asked who the owner of that house was.

Mr. Swift responded that it was Mr. Rodorigo.

Comm. Sedlock asked about the second man who spoke on Wintergreen Lane – and the location of his home.

Mr. Joseph Mozdzer, 24 Wintergreen Lane, Shelton, CT responded that his home was located diagonally northwest – he has the little strip running down to River Road. That aerial photo makes it look like it is farther away.

Mr. Mozdzer commented that especially in light of another residential development on that other section that was mentioned, he doesn't see how it is fair to just pick this spot and make it commercial when it is residential right now. He has no problem with a couple of houses. In fact, when the prior developer built the other two houses on Wintergreen five years ago, he was trying to

increase the density. He threatened the other owners at the time that they'd better go along with this or they might end up with a commercial building there or they'll put a road going through with 10 more houses on the street, etc. Everyone agreed to let him increase the density, build the extra houses on these three lots and finish it. So, he went and built two houses and leaves one undeveloped lot – now he has the worst of both worlds with two houses next to him and possibly a coffee shop or whatever moves into that spot. Mr. Mozdzer concluded that he really did not think that this was fair at all and it should remain residential. He thanked the Commission.

John Wardowski, 21 Turner Road, Shelton, CT addressed the Commission. Mr. Wardowski stated that he wanted to echo those comments about there being more houses – there is residential all around there.

Chair Parkins commented that they would be located much farther down on Long Hill Avenue and there would be no view of that.

Mr. Wardowski responded that it would still be residential. This location just still seems like a restaurant, a Dunkin Donuts, a Starbucks would be an ideal thing. In one of the prior meetings, one of the suggestions was that it might be a specialty custard store. He honestly thinks that it is eventually going to be a restaurant. He isn't saying that the developer is lying – they may plan for this, and plan for that, but...

Chair Parkins responded that it is purely speculation at this point, that he is saying that it is going to be a restaurant.

Mr. Wardowski responded yes, it is speculation regarding the biggest investment he's made in his life.

Chair Parkins commented that with the PDD, they have the control over what will go in there.

Mr. Wardowski responded that he didn't know what that means about the zoning being changed.

Chair Parkins indicated that it would become a PDD, but the use of that PDD is regulated by this Commission.

Mr. Panico added that restrictions can be placed on any potential for restaurants.

Mr. Wardowski stated that he just wants to make his final point that this is zoned as residential and he thinks it should remain zoned as residential.

Chair Parkins responded that she understands his comments. She asked if there were any further questions or comments from the public or from the Commission. With no further comments, she requested a motion to close this public hearing.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to close the public hearing for Application #11-08.

PROPOSAL OF THE PLANNING & ZONING COMMISSION: REWRITE OF SECTION 44: SIGN REGULATIONS

Chair Parkins indicated that they would move on to the Proposal of the P&Z Commission Rewrite of the Sign Regulations. She added that this is a public hearing that has remained open.

Mr. Schultz stated that Staff is anticipating favorable recommendations and possible adoption. He indicated that all the Commissioners have a packet containing all the correspondence. He indicated that one piece of correspondence is from Corporation Counsel who is recommending that the Commission keep the public hearing open. Staff recommends the May 10th meeting so they have an opportunity to sit down with Corporation Counsel to address their concerns. They also have correspondence from the ACLU.

***See attached correspondence addressed to Mayor Mark Lauretti from Sandra Staub and Martin Margules, American Civil Liberties Union dated April 25, 2011.**

***See attached correspondence to Richard Schultz, P&Z Administrator from Alderman John "Jack" Finn dated April 20, 2011.**

Mr. Schultz stated that this letter indicates that there are some issues that need to be addressed. Corporation Counsel has received this and is investigating the claims. He indicated that there was also correspondence from Alderman Finn suggesting that the Commission consider the removal of Section G on Page IV-9 dealing with Community Signs. He believes that they should not be able to regulate that provision and property owners should have a constitutional right in placement of signs on their property.

Chair Parkins asked if Alderman Finn's letter reiterated a lot of what had been brought up in the ACLU letter.

Mr. Schultz responded right. As a matter of record, Alderman Finn and Alderman McPherson proposed a draft sign ordinance and that was scrutinized by the same group and subsequently withdrawn. He added that they also have correspondence from Alderman John Anglace as well which he will provide to the Commissioners. Alderman Anglace has had an opportunity to review it and applauds the Commission in moving ahead because this is obviously something that they need and it is something that this Commission has worked a long time on. He added that Bill Purcell of the Greater Valley Chamber of Commerce is present tonight too. They have had meetings with his group that have ended on a good note. The business community finds it to be reasonable and understands the need for it. He suggested they continue this public hearing to the May 10th meeting and Staff will have an opportunity to meet with Corporation Counsel.

Chair Parkins stated that she wanted to give the public who have come tonight an opportunity to speak. She added that she received a memo from Mayor Lauretti who is out of town tonight but he would like to give some additional input to this in the public forum, so he has also requested that the public hearing remain open to address it. With a consensus from the Commission, they will keep this public hearing open, but allow any audience members to speak on it tonight.

Atty. Brian Tims, ACLU Connecticut, President of the Southwest Chapter, 1000 Lafayette Boulevard, Bridgeport, CT addressed the Commission. Atty. Tims stated that he wanted to first address any fears that simply because the ACLU of Connecticut has expressed some concerns – when he spoke to Alderman Finn and the Board, one main concern was whether they would be sued.

Atty. Tims stated that he was here to express concerns from his organization about the proposal and, hopefully, open up a dialogue to address these concerns. Atty. Tims indicated that litigation is always a potential but just as the City would like to avoid any litigation, so would they. He wanted to highlight a

few points in the letter that Mr. Schultz referenced which was addressed to Mayor Lauretti and dated 4/25/11.

Atty. Tims stated that the two provisions in the proposed sign regulations that caused concern for their organization include 44.5.1G which reads that an application for a Certificate of Zoning Compliance is not required for temporary signs for public and charitable purposes provided they are erected not more than 45 days before a publicized event and are removed within 7 days after the publicized event.

Atty. Tims stated that the other provision that is cause for concern is 44.4.10 which provides that no signage shall be mounted or posted on any tree or utility pole. He wanted to also mention that he wasn't here to take issue with any of these proposed regulations to the extent that they affect commercial property, public property, intersections, utility pole. He understands that safety is paramount. To the extent that these regulations apply to those areas – he isn't here to take issue with those. He is addressing concerns about the limitations that these proposed regulations would place on a Shelton resident's ability to place signs on his or her own private property.

Mr. Panico asked if he was referring to private residential properties.

Atty. Tims responded yes, private residential property, correct. To echo three main points made in the letter. First, the regulations are impermissibly content-based which simply means that the regulations, specifically "G," can permissibly discriminate between signs that possess or contain a certain type of content versus another type of content. The types of signs that are permitted are those that contain or those that are related to public and charitable purposes that are connected to a publicized event. It has a very narrow window.

Atty. Tims stated that one of the examples in the letter is a sign that says "Abortion is Murder." Some may say that is for a public purpose while some may not. There is an ambiguity or vagueness in there. But it wouldn't be tied to any publicized event so it would not be permitted under "G," and the Shelton resident would have to go to the Zoning Commission, seek a Certificate of Zoning Compliance, submit a plot map as to where they would put that sign on their lawn, and seek permission. By doing that, it is impermissibly content-based.

Second, even if a court would find that this regulation is not so content based, it operates to foreclose the entire media of expression. So any other sign that is not for a public or charitable purpose, tied to a publicized event would be prohibited. Atty. Tims clarified that when he says "prohibited," he means that the resident would have to seek a certain approval for compliance and submit all the paperwork that would be required. In and of itself, he would submit that is an undue burden that would be placed on the resident's exercise of his speech.

Mr. Panico responded that the original intent of that paragraph was not to do the things that he is suggesting. It was to control the potential attempt by someone to put a sign on their property advertising something that is going on somewhere else. They are saying that is not acceptable. It was not intended to prevent them from expressing an opinion. That was certainly not the intent and if that is causing it, they will clarify it.

Atty. Tims responded that his experience with Alderman Finn and the Board might be useful here because he thinks that there was a similar unintended consequence in their proposal. For example, it became apparent when speaking with Alderman Finn that he was most concerned about signs on public property.

Mr. Panico commented that they were concerned about political signs. That was the whole thrust of what they were preparing.

Atty. Tims stated that it was referred to as visual clutter and he can appreciate the concerns for aesthetics in the community. He can appreciate that.

Mr. Panico stated that they have that same concern and he thinks that they will probably enumerate it in their introductory statements.

Atty. Tims stated that is a legitimate concern but, however, it has to be done within a constitutional framework. It became apparent in speaking with Alderman Finn that he was most concerned with signs on public property. Once he pointed out to him that the regulation as proposed would, in fact, prohibit signs on private residential property, he indicated that he did not mean to do that. Alderman Finn was willing to work with him to revise it. There are unintended consequences that may come to light which require just a simple fix.

Chair Parkins asked if it was common practice for him to review proposed regulations of Planning & Zoning Commissions.

Atty. Tims responded yes, as a State organization, it is. Their organization addressed a similar sign proposal up in Manchester. They may have addressed other municipal proposals.

Chair Parkins clarified that she was asking if this was something standard that they do across the State or is this something that they do when it is brought to their attention.

Atty. Tims responded that when things come to their attention that may cause a constitutional concern, they will take a look at it.

Chair Parkins indicated that she understands that but her question was whether it was standard practice for his group to review the Planning & Zoning Regulations across the State.

Atty. Tims responded if they implicate constitutional ...

Mr. Panico asked if he was saying, if someone brings it to your attention...

Chair Parkins asked if it was typical that someone brings it to your attention or is it more standard that you automatically review them.

Atty. Tims responded that it most often comes to their attention from members or in fact, to be honest, after working with Alderman Finn on his proposal, he contacted him about your proposal. So, that is how he learned about yours.

Chair Parkins thanked Atty. Tims.

Atty. Tims asked if there were any questions from the Commission for him.

Chair Parkins responded no, Corporation Counsel has received a copy of this and he will be reviewing it to make sure that they don't offend anyone or violate anybody's constitutional rights.

Mr. Panico stated that he felt good just because he really only found a couple of locations that might be a problem. Corporation Counsel did an excellent job of steering them away from a few other of things that they wanted to do which he probably would have picked up on. He is very sensitive to that, what their

limitations are under the state statutes, with respect to what they can control and what they can't control.

Atty. Tims stated that he wanted to return to Mr. Panico's comments about what is perceived to be the intent behind the proposal. He asked if they were most concerned about signs on public property or were they also interested in limiting a resident's ability to post signs on private residential property.

Mr. Panico responded no, quite frankly their issues in the past have not been with residential property. But when they started into this, they decided that the old regulations weren't salvageable; they had to write new regulations. Therefore, they have to deal with signs throughout the community (inaudible)

Mr. Schultz commented that this was a comprehensive approach.

Mr. Panico indicated that included residential properties, non-residential properties, various districts, various types of uses, signs that are permitted as of right, signs permitted with a certain permit procedure, etc.

Atty. Tims commented that just to be clear - the way that he believes it is set up is that it prohibits all signs that are not otherwise permitted or allowed pursuant to Certificate of Zoning Compliance. When they create that framework and prohibit everything that is not otherwise permitted, then if it is not otherwise permitted, it is prohibited.

Mr. Panico asked if he would like them to provide a section here that every resident in the community is allowed to have signs on their property that say "I believe in abortion," "I'm against abortion," "I'm against the Gulf War," or "I'm for the Gulf War..." He asked if they should stipulate that. - It's just common sense.

Atty. Tims responded that may be so...

Mr. Panico indicated that it was just like if someone wanted to put a Christmas display in the middle of their lawn, they don't tell him that he can't do it.

Atty. Tims commented that he thinks that this may be simply a case of unintended consequences.

Mr. Panico responded – only if you interpret it that way.

Atty. Tims commented that their concern is that it can be interpreted that way. While it may not be enforced as such, he thinks...

Mr. Panico responded that until they come up and tell somebody that they've done something that they can't do – is there a problem?

Atty. Tims responded that there is because the residents of the City of Shelton need to be able to look to the written law for guidance.

Mr. Panico indicated that they cannot possibly write a regulation that addresses every conceivable situation, leaving absolutely no interpretation on the part of the Staff or the Commission. It would a Bible. They have to take a common sense approach and generally outline what is permitted, what is not permitted and what the standards are on which things are permitted and go from there. If issues come up, as he has pointed to here, which are apparently in conflict, then they will be addressed. But until they have been inappropriately used, there has been no foul. He could test them if he wants. He could make an application and have them reject it and then say that there is a problem with their regulations.

Atty. Tims responded that then they would be leaving it up to the residents to conduct themselves in a way that is contrary to the written law of the City. Like he said, the way it is set up, everything is prohibited unless it is otherwise permitted. As it is written, the residential lawn signs that say "Abortion is murder" or "I love God" – they are prohibited.

Chair Parkins responded that it his interpretation – as a specialist in the ACLU. That would probably not be the interpretation of a layperson that just wants to put a sign up on their lawn.

Mr. Panico stated that at Christmas time, if a person wants to put a nativity scene on their front lawn and all the connotations that go with it – they can't turn around and tell them that they can't do it because they're in violation of the sign regulations.

Atty. Tims stated that all he was saying is that he thinks that understanding should, and can be fairly reflected.

Mr. Panico asked if he would have them sit down and attempt to devise a full, comprehensive list of all the things that they could do on their property. He indicated that he thinks that is unreasonable.

Atty. Tims responded that it is not as complicated as it sounds. They even mentioned that they have endeavored to make it a comprehensive regulation.

Comm. McGorty stated yes, without spelling everything out.

Atty. Tims indicated that he wasn't saying that they need to say – you can have a sign that says this, you can have a sign that says that...

Comm. McGorty responded that is what it sounds like you're saying.

Mr. Panico indicated that they want to deal with the everyday issues that come up. If a person wants to sell their property, he has a realtor, the realtor wants to put a sign on the property – it is all spelled out because that is the stuff that happens all the time.

Atty. Tims responded that what is not spelled out is the ability to post signs as to any ...

Mr. Panico stated – because that doesn't happen every day of the week. They don't have someone coming up every day of the week stating that they want to put up a sign on their lawn that says "I support abortion." That does not happen normally so why should they address it in here and put down "you can have a sign that says "I support abortion.""

Atty. Tims stated that he isn't saying that they have to write the regulations such that every single type of sign, every single topic or subject matter is numerated but rather a general category such as "Signs on Residential Property."

Mr. Panico responded that he wanted to put the ball back into his court and suggest that he submit a proposal that this Commission should consider incorporating into their regulations to address that issue.

Atty. Tims indicated that he could certainly do that. Just as he worked with Alderman Finn, they had gone back and forth with numerous revisions. What was most important is that he was satisfied that his goal was being accomplished within the confines of the Constitution. He hopes that this doesn't turn into a

negative back and forth but that is the goal here as well – that their goals are accomplished within those confines.

Mr. Panico commented that they haven't discussed it as a Commission yet, but he would certainly put some language in their opening paragraphs that – A) they do want to control the potential for clutter and B) they don't want to violate anyone's First Amendment rights.

Atty. Tims responded that as he said, to the extent that there are some conflicting provisions here, he thinks that it is merely unintended.

Mr. Panico stated that he has no problem addressing those couple of things that he pointed out to the degree that they aren't going to do what he thinks they are going to do. But he does have difficulty creating language that anticipates a problem and puts it in there.

Atty. Tims responded that it concerns residential signs and that is a wide category. It concerns residential signs that aren't tied to a publicized event. They might think that it is a rare occasion when somebody wants to put up a sign about the war or abortion or this or that – but it happens, and the resident should be able to look to the written law to determine what they can and cannot do. And, as he said, based upon the way that it is written, the only type of sign that would be permitted would be one for public and charitable purpose tied to a specific event.

Comm. Harger stated that in that particular category G – the whole sticking point, the word "purposes" - the whole intent was "the Catholic Church up the street will be having a carnival for Memorial Day." So, in a case like they should wait to put it up until 45 before the event and the sign should come down no later than 7 days after the event. That is what the intent of this was.

Chair Parkins added that there is also the question of what definition is being used to describe a non-profit organization.

Comm. Harger suggested that maybe they should just change the first phrase in it (inaudible)

Chair Parkins commented that quite frankly, they just don't want themselves (inaudible)

Mr. Panico asked if he believed that every resident in the community ought to be able to put a sign on their property saying that "Mrs. Jones, three blocks down the street, is having a Tag Sale on Saturday." He asked if that was permissible. They are advertising that tag sale. That tag sale is for somebody's gain. Assuming that they wouldn't allow it in a commercial area, why would they allow it in a residential area?

Atty. Tims stated that the City can impose reasonable restrictions on the signs but as written here – the signs all together, many signs, and many types of signs are just prohibited outright. The City does obviously have control to impose reasonable...

Mr. Panico asked if there was anything in those "prohibited signs" that would prevent somebody from putting the signs he described on their front lawn - because he could not find anything.

Atty. Tims responded that the structure leads to that conclusion. He indicated that he would point one out...

Chair Parkins commented that is the difference between liberal minds and layman's lines.

Comm. Sedlock added that this is just going around and around in circles.

Mr. Panico stated that until they have stepped on somebody's rights, there is no issue.

Chair Parkins commented that she thinks that at this point, they have received the ACLU letter and their Corporation Counsel has received the letter and he is going to provide his comments and recommendations to the Commission. They will certainly be glad to work with him on that matter.

Atty. Tims responded OK and thanked them for their attention.

Chair Parkins thanked Atty. Tims. She asked if there were any other comments.

End of Tape 2A, 9:20 p.m.

Mr. Bill Purcell, Greater Valley Chamber of Commerce, 900 Bridgeport Avenue, Shelton, CT addressed the Commission.

Mr. Purcell stated that he would reserve his comments until the May 10th meeting and invite others that had hoped to be here this evening. Hopefully, they will be able to discuss this closer to the 7 p.m. hour rather than 10 p.m. Perhaps, if possible, if it could be the first order of business that would be wonderful. Hopefully, they will be able to get some of those who participated in the forum that they hosted at the Chamber several months ago. He'll be back for that meeting on the 10th. He thanked the Commission.

On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously voted to continue the public hearing for the Proposal of the Planning & Zoning Commission Re-Write of Section 44: Sign Regulations, until the May 10, 2011 meeting.

OLD BUSINESS

APPLICATION #11-09 BISHOP MANAGEMENT OF SHELTON FOR INITIAL DEVELOPMENT CONCEPT APPROVAL AND PLANNED DEVELOPMENT DISTRICT ZONE CHANGE (MIX USE FACILITY), COASTAL AREA MANAGEMENT SITE PLAN APPROVAL AND AMENDMENT OF FUTURE LAND USE PLAN OF THE PLAN OF CONSERVATION AND DEVELOPMENT (POCD), 762 RIVER ROAD (MAP 12, LOT 35), IA-2 DISTRICT

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to table the discussion of Application #11-09.

APPLICATION #11-08 BISHOP DEVELOPMENT OF SHELTON II, LLC FOR INITIAL DEVELOPMENT CONCEPT APPROVAL AND PLANNED DEVELOPMENT DISTRICT ZONE CHANGE (RETAIL WITH DRIVE-THRU), COAST AREA MANAGEMENT SITE PLAN APPROVAL AND AMENDMENT OF FUTURE LAND USE PLAN OF THE PLAN OF CONSERVATION AND DEVELOPMENT (POCD), 781 AND 782 RIVER ROAD (MAP 12, LOTS 29 AND 43) R-3 DISTRICT

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to table the discussion of Application #11-09.

Comm. Flannery commented that she liked Comm. Harger's idea about putting a balloon on that property to compare how high the five story building would be to the Sports Center.

Mr. Schultz responded that Staff can request that to be done.

Chair Parkins commented that it can't be submitted because the public hearing has been closed.

Mr. Panico suggested that they may be able to have it done if it's submitted as a Staff request.

Chair Parkins stated that they closed the public hearing on it so nothing else can be submitted into the record.

Comm. Flannery responded that she did request it though.

Chair Parkins stated that then they would have had to keep the public hearing open if they were to be submitting the results.

Comm. Flannery commented that she regretted that she waited until too late to ask about it.

ADJOURNMENT

On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to adjourn at 9:25 p.m.

Respectfully submitted,

Karin Tuke
Planning & Zoning Commission, Recording Secretary