

**SHELTON PLANNING & ZONING COMMISSION**

**MARCH 12, 2013**

The Shelton Planning and Zoning Commission held a regular meeting on Wednesday, March 12, 2013 at the Shelton City Hall, Room #303/Room 208, 7:00 p.m., 54 Hill Street, Shelton, CT 06484.

Commissioners Present: Chairperson Ruth Parkins  
Commissioner Nancy Dickal (alternate for Elaine Matto/  
arrived 7:35 p.m.)  
Commissioner Joan Flannery  
Commissioner Virginia Harger  
Commissioner Anthony Pogoda (via Skype & conf. phone)  
Commissioner Thomas McGorty

Staff Present: Richard Schultz, P&Z Administrator  
Anthony Panico, Consultant (via teleconference phone)  
Patricia Garguilo, Court Stenographer  
Karin Tuke, Recording Secretary

Tapes (1), 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](http://www.cityofshelton.org)

**CALL TO ORDER**

Chairperson Ruth Parkins called the regular Shelton Planning & Zoning Meeting to order at 7:03 p.m. and announced that they would be moving the location of the meeting downstairs to Room 208 which is a larger room for the public hearings. She indicated that she would recess the meeting and reconvene it in Room 208.

**PLEDGE OF ALLEGIANCE/ROLL CALL**

Chair Parkins reconvened the meeting in Room 208 at 7:17 p.m. with the Pledge of Allegiance and a roll call of members present. She indicated that Comm. Tony Pogoda would be attending the meeting via Skype and P&Z Consultant Tony Panico (referred to as "A.J." to avoid confusion) would also be listening in via teleconference phone.

**PUBLIC HEARINGS**

Chair Parkins stated that the first items on the agenda tonight would be a public hearing for Application #13-3 and Application #13-4. She reviewed the procedures for public hearings and cell phone usage for those in attendance. She asked P&Z Secretary Virginia Harger to begin with the Call of the Hearing and any correspondence for Application #13-3.

**APPLICATION #13-3, BISHOP GOLF, LLC FOR MODIFICATION OF STATEMENT OF USES AND STANDARDS FOR PDD #30 (NEW USE: DRIVING SCHOOL), 784 RIVER ROAD (MAP 12, LOTS 37 AND 38).**

Comm. Harger read the Call of the Hearing for Application #13-3 and stated that there was no applicable correspondence.

**Joe Mingoello, Mingoello & Hayes Architects, 90 Huntington Street, Shelton addressed the Commission.** Mr. Mingoello indicated that he was present with Kevin Schumacher from the Sports Center. He stated that their application is to convert one of the mezzanine spaces into a driving school. They have a total of 24 seats for 24 students at any one time and one instructor. In terms of the parking, parents will drop off the students and then return to pick them up in approx. two hours. They would like to add this new use to PDD #30.

Comm. Harger asked what time of the day the classes would be held.

**Kevin Schumacher, co-owner of the Sports Center, Shelton addressed the Commission.** Mr. Schumacher responded that classes would be during the week in the evenings, during the

school year and during the summer it would be during the week at night with two classes on the weekend.

Comm. Harger asked if that would just be Saturday or Saturday and Sunday.

Mr. Schumacher responded just Saturday.

Chair Parkins commented that it would be Monday through Friday in the evenings.

Mr. Schumacher clarified that it would be two days out of the week; it would be more like a Tuesday and a Thursday or a Monday and a Wednesday.

Chair Parkins responded OK, two days during Monday through Friday.

Mr. Schumacher stated yes from 6:30 p.m. – 8:30 p.m.

Comm. Flannery asked if this would be replacing one of the other businesses that they applied for and never did – like the paintball shooting area.

Mr. Schumacher responded no, this replaces a tenant that had left them over a year ago. It was an auction sports company.

Comm. Harger asked if that had been located up on the second floor mezzanine.

Mr. Schumacher responded yes, correct.

Chair Parkins commented that the classes would be held on two days during Monday through Friday, 6:30 p.m. – 8:30 p.m. She asked if it would be two classes of 24 each for a total of 48 students.

Mr. Schumacher responded no, the max would be 24. They have room for 24 seats.

Chair Parkins stated OK, if they do two classes at once, the max would be 24 with 12 in each class or some other configuration.

Mr. Schumacher stated that it would only be one class per day. So it would only be one class on a Tuesday and one class on a Thursday night at 6:30 p.m. to 8:30 p.m. for two hours a night.

Chair Parkins responded OK that is during the school year. She asked about the summer hours.

Mr. Schumacher indicated that during the summer it would be the same schedule during the week. They might have it Monday and Wednesday instead of Tuesday and Thursday but it would still just be two days. It would be two classes on Saturday with one in the morning and one in the afternoon that are two hours each.

Comm. Flannery asked about the type of equipment that would be putting in.

Mr. Schumacher responded that they would just have an easel board and an overhead projection device. It is a relatively and extremely light business.

Comm. Flannery asked if there would be any simulators.

Mr. Schumacher responded no cars or anything like that.

Chair Parkins asked if they had Open Skate Rink times at the same time as these classes would be held.

Mr. Schumacher responded no.

Chair Parkins asked if there was anything going on at the same time as these Saturday classes.

Mr. Schumacher responded that there is always something going on at the Sports Center, if there wasn't then they would really have an issue. There is always something going on but as to what is going on this upcoming summer, he doesn't have that schedule set yet. However, their hockey program ends as soon as school stops and the Rinks Building really quiets down in the summer unfortunately.

Comm. McGorty asked if there was a concern with the parking.

Chair Parkins stated that she was concerned with the dropping off in that circle area.

Comm. McGorty commented that they generally just pull in and then just leave.

Comm. Harger asked how many weeks until the students do actual driving.

Mr. Schumacher responded 8 weeks.

Comm. Harger asked how many weeks the program was.

Mr. Schumacher responded 8 weeks.

Comm. Harger commented 8 weeks and then they do the driving. She asked if they still have to come to the facility to do that.

Mr. Schumacher responded no, they house their cars in hubs and for All Star their hub in this area is located in Hamden so there are no cars parked from All Star parked at the Sports Center facility. They come pick the kids up and away they drive.

Chair Parkins stated that she was just concerned about the Saturday classes. She stated that if it becomes a problem down there...

Mr. Schumacher asked if Chair Parkin's concern was about getting the kids from the car to the facility.

Chair Parkins responded yes, safely, yes without having traffic backed up onto River Road.

Mr. Schumacher stated, that with all due respect, he thinks that they are extremely skilled at that. They do it all the time with their hockey games and with other events that they have there. It is just a question of them being organized and having the proper personnel to issue people in.

Comm. Harger asked if he meant parking lot attendants.

Mr. Schumacher responded yes, if they have events, yes.

Chair Parkins commented OK, if they have events but they don't always have events on Saturdays but they have Open Skate.

Comm. Harger asked if they would be open to that kind of possibility.

Mr. Schumacher responded that they have Staff – they always have Staff.

Mr. Mingolello, Architect, commented that the drop off though for the Main Rinks, the parking is a straight shot in. The drop-off is a loop off of that area so they have to come off of that.

Comm. McGorty added that it is just a circle to drop off the kids.

Mr. Mingolello responded yes, it is a circle and it is a safe area.

Chair Parkins commented that she is very familiar with it. Her concern is the parents not wanting to go through that circle and wait while they are doing an Open Skate and then dropping their kids off on Route 110 and let them walk in.

Mr. Mingoello responded that he doesn't think that would happen.

Mr. Schumacher agreed that he doesn't think that would ever happen.

Chair Parkins commented OK, well they just went on record saying that.

Mr. Schumacher responded that he can't control what some people might do.

Chair Parkins stated that they have to control it if they are asking for a permit to do this – they can't just say that they can't control that.

Mr. Schumacher commented that it won't be an issue.

Comm. McGorty agreed that they need to make sure that is not going to happen.

Mr. Schumacher responded that they handle somewhere between 400 to 800 kids every Friday doing the same thing.

Chair Parkins stated that if people drop the kids off on Route 110 then they need to address it.

Mr. Schumacher responded yes, they would need to address that and yes that would be an issue.

Comm. Harger asked if they had private duty police on weekends.

Mr. Schumacher responded that they do hire them sometimes on Fridays for the Teen Skate and they'll hire them when it seems appropriate.

With no further questions from the Commissioners, Chair Parkins asked if there were any questions or comments from members of the public audience for or against this proposal. There were no public comments. She requested a motion to close the public portion. She asked Comm. Pogoda again if he had any questions or concerns.

Comm. Pogoda responded that he did not. Chair Parkins requested a motion to close the public hearing.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to close the public hearing for Application #13-3.**

Chair Parkins asked P&Z Secretary, Virginia Harger to read the Call of the Hearing for Application #13-4 and any applicable correspondence.

**APPLICATION #13-4, BISHOP MANAGEMENT OF SHELTON FOR MODIFICATION OF LIMITS OF PDD #73 AND DETAILED DEVELOPMENT PLANS (GRADING PLAN), 781-785 RIVER ROAD (MAP 12, LOTS 11, 29 AND 43)**

Comm. Harger read the Call of the Hearing for Application #13-4 and one piece of correspondence, an inspection report.

**\*See attached correspondence to the P&Z Commission from James P. Quill, P.E. of Atlantic Consulting and Engineering LLC Bridgeport, CT dated March 11, 2013 (date of property inspection report).**

**James Swift, P.E. and Landscape Architect, Village Drive, Shelton addressed the Commission representing the owner.** Mr. Swift apologized to the audience that the presentation board needs to face the Commission so that they can see the site plan renderings. Mr. Swift provided the Commission with the Certificate of Mailings for notification of property owners within 200 feet. He indicated that a sign for the public hearing was posted as required.

Mr. Swift noted up front that this application is for the boundaries of the PDD only. This doesn't increase the area of the PDD and it doesn't increase the square footage of the building size, number of parking spaces or anything of that nature.

Comm. Flannery asked him to repeat what this does affect.

Mr. Swift responded that it only affects the boundary of the PDD. He used a site plan to show that the original PDD was bounded by this brown and orange line shown and that was the parcels that were purchased that were a part of the property. He pointed out a piece of land at the top of the rendering.

Mr. Swift stated that at the same time that these two lots were formed, another lot was formed that accesses off of Wintergreen. Wintergreen has an access that goes down to River Road. He thinks that those accesses had something to do with utilities. They didn't have anything to do with access, of course, because of the grade change, but that was the land in its form.

Comm. Harger asked if he was talking about there being an easement from those lots.

Mr. Swift responded that their original parcels owned what is, in effect, a flag lot. He showed the location of the Wintergreen parcel as a house located above, basically owned the same type of a flag parcel going the other way. So this gentleman owned in fee that piece. As they were looking at this they had some project meetings and it was brought up that this was useless land to them and it was useless land to us concurrently so why don't they swap the land. This was started before any work was begun on the property. As it turned out, it was gratuitous and he'll discuss that in a bit but that is the bottom line.

Comm. Flannery asked how far the house was from that blue-colored piece of property.

Mr. Swift measured and responded that it was 28 to 30 feet.

Comm. Flannery asked if that was legal.

Mr. Swift restated her question "is it legal?" and added that it existed, they didn't create it.

Chair Parkins indicated that they are going to let him go through his presentation before they ask questions because he will just get off track.

Mr. Swift stated that basically, they swapped. They gave up this land to this owner and obtained the blue land to their parcel. It didn't have anything to do with what the PDD is. The land is the same area and it didn't in anyway affect the PDD. The PDD is the PDD. It just happens that this gentleman now happens to own part of the PDD which he certainly is not going to do anything with it.

He reiterated that if they were to compare this site plan, which is the site plan that was submitted, they will find it identical in every way – square footage, parking, layout, etc. – to the already approved Planned Development District. The only thing that was done is that it was slightly north a few feet but not much.

Mr. Swift provided a different rendering to discuss the grading and commented that this is where the gratuitous issue comes in. He indicated that this was always a tight site for the grading, of course. The original plans always had the section of the rock cut recognizing that there was overburden but they knew that it was going to be close. They called for test bits on all these areas of the site to be done before they started any excavation. The excavation contractor and/or the blasting contractor got a little frisky and started the work without having excavated those test bits. So, they started to do the drilling and they started to remove the material and what they found was that most of this stuff; the overburden was what they thought it was with the exception of this rear corner. He showed the location of the rear corner where they found a little pocket in here that had about 10 to 12 feet of overburden over the rock and they were too close to the property line.

Comm. Harger asked for a definition of overburden.

Mr. Swift responded that overburden means how far down do you have to dig before you hit ledge. He added that if you only had to dig a foot down to hit ledge then the section works very well and you don't have to worry about it. He commented that, in point of fact, is what

happened on most of the areas because they did a cursory review the best that they could before they did that. But when the overburden is deeper, then you need to move it farther away so that you can grade up to the property line.

Mr. Swift stated that now they have an issue. After they found out that they had this issue, they knew it was serious issue and that they had to figure out what to do about it. The solution that they came up with is to build a retaining wall which he showed on the plan in the color brown. He pointed out that it was on the original PDD area, in fact, the excavation is falling on that new piece that they purchased so what they are applying for is, in a larger sense, the ability to take this grading that was done and make it a part of the PDD.

Mr. Swift commented that when they were working with Staff back when...about how they would do that...this area, this strip of land that they obtained would not be used for parking, lighting, anything like that but clearly it is part of the PDD and there is a necessity for it because they have already encroached upon it in grading. Hence, that is why they are here to make it officially part of the PDD so that the Commission can see what is going on.

Mr. Swift stated that they have this wall which is designed to sit there and retain that earth. It is shown on his drawing but he is also going to submit to them a signed, certified copy of that retaining wall design for the record so that the Commission has confidence that it was properly engineering and designed. He indicated that what they propose to do at the top of that wall is, more or less; bring that grade back up to what it was. He showed that there has been some excavation of the rock in here so there is a little grading (inaudible) that needs to go on here but they are definitely grading into that new area. He added that is where they stand right now.

Mr. Swift commented that he doesn't want to call it simple, but it is that simple. This retaining wall is designed to restore that area back to where it was and just so that they are clear with the Commission, the toe of the rock cut actually does move onto that area of the proposed expansion of the Planned Development District. Just so the Commission is clear, this is the moot? toe of the slope out here, a little bit past where the previous PDD line was. Again, in an effort to be clear, no pavement crosses that line, no buildings cross that line, etc.

As far trying to mitigate, because he knows the ad joiners here are going to speak, what they want to do is to put a row of plantings in there that are a slight change to the plantings they had proposed before. Previously, they had wrapped a few white pines around in this direction but he isn't really comfortable planting a white pine on top of that retaining wall and he would much rather do something with arborvitae which is a dense evergreen. He thinks that it is a more efficient screen because white pine grows up and then you can kind of see underneath it. He thinks this particular variety of arborvitae gets fairly tall and very dense and he thinks that it is a more efficient screen. In that area where this arborvitae is planted, they are at the same elevation as the adjoining property owner and they accomplished that by constructing this wall.

Comm. McGorty asked if the arborvitae was the best to help retain that as well – the root structure.

Mr. Swift responded that they don't need to – it's not sloped. Where the arborvitae is to be planted is basically flat.

Comm. McGorty asked if they lost 15 feet or so.

Mr. Swift responded yes but the wall is coming up high enough that there is going be more (inaudible) there will be some slope.

Comm. McGorty asked if it would be a fairly level grade.

Mr. Swift responded more or less level grade to the adjoining property that got (inaudible)...

**Comm. Dickal arrived at 7:35 p.m. (alternate for Comm. Elaine Matto)**

Mr. Swift recapped that there is no increase in area of the PDD and no increase of floor area or parking in the PDD. The swap is to accomplish the grading on the PDD so that the grading is part and parcel of the Planned Development District.

Chair Parkins asked if Mr. Swift had completed his presentation. Mr. Swift responded yes.

Chair Parkins asked what type of concrete wall they were putting in there.

Mr. Swift responded that it is a conventional wall that has rebar in it so that there will be forms going up. If they look at the drawing which he submitted, the bottom of the wall will actually be pinned to the ledge that is exposed now and then the wall comes straight up from that so it is a conventional, concrete retaining wall.

Comm. McGorty asked what it would be faced with.

Mr. Swift responded concrete.

Chair Parkins asked if that was going to be visible from River Road.

Mr. Swift responded yes, it will be. There will be plantings down at the bottom and they can do their best to add as many plantings in there that will block it. They have some locust trees, some white birch which will obscure it to some extent but he can't tell them that you won't see it.

Comm. Harger commented that she just made a correlation and asked if the appearance of that is very similar to where Esther's Hacienda used to be and now it's a sporting goods store with blocks in the back.

Mr. Swift responded no, that is block and that would be different. It would not have that kind of texture to it.

Comm. Harger commented OK, so it is not like that.

Comm. Flannery commented that in her mind she is thinking of Yankee Stadium and how their concrete walls lasted 75 years. She stated that they are going to be putting up a concrete wall and she asked what they are going to do 75 years from now when it starts crumbling and falling apart.

Mr. Swift responded that then they would have to fix it. They could – as of now; they aren't accessing this from anybody else's property. They are building this from their property so if that wall should fail for any reason then they have to fix it.

Chair Parkins stated that there was no wall proposed at the beginning of this PDD.

Mr. Swift responded yes, that is correct there was no wall proposed.

Chair Parkins stated that this is a game-changer to the PDD – this is visual.

Mr. Swift responded yes.

Comm. Harger asked why it says on here "concrete retaining wall per design drawings" on their submittal dated February 24, 2012.

Mr. Swift responded that being a civil engineer, he is referencing that there is a design for that wall. It is not part of a civil engineering design, it is part of a structural engineering – he is just referencing that there is a drawing for it.

Comm. Flannery asked if they were going to be having a fence along the top because it is very – her concern and the reason that she opposed this the first time was because of children falling down off of that wall. She added that she just drove by this and she was in shock because it is very dangerous. She asked if there was going to be a fence up there to prevent children from falling off the wall.

Mr. Swift responded that when they originally proposed the project, the Commission required that instead of the standard four foot fence, the Commission required that they put in a six foot fence.

Comm. Harger added yes, it is on this drawing.

Comm. Flannery asked for more detail about the fencing because she is very concerned. She asked if it was going to be something that the kids could possibly climb over.

Mr. Swift responded that it is a Page Fence because that is the best, the longest lasting fence. He added that they wouldn't want to do a wood fence or anything that would have a much shorter life than a Page fence. One of the suggestions made, if you were concerned about that, was that it could be a Page fence with a finer fabric to it that isn't easily climbed. He added that could be done.

Chair Parkins commented that they could put utility fencing.

Mr. Swift responded yes, something that you couldn't climb over easily because you can't get your feet into it.

Chair Parkins asked if the land swap that was made though was made with the person that talked to Wetlands.

Mr. Swift responded yes, it was made with the person right here.

Chair Parkins stated that John is the person that lives in the house right there.

Mr. Swift responded yes, that is correct.

Chair Parkins asked if he had said that it was 600 feet off of their house – she asked if that is what he said when you measured it.

Comm. Harger responded no, it was 28 feet.

Comm. Flannery stated that it looks a lot closer than that.

Mr. Swift responded that the reason that it looks close, and again, this is not to minimize, but the reason that it looks close is because when you look at these kinds of things from a perspective they look flat. There really isn't any sense of this as being that much further away than anything else. When they did the slope behind Woodside Shopping Plaza and some of these Commissioners were here for that, there is a very large stone slope that was built back there. It must have been about 40 feet high. He looked at it from Bridgeport Avenue when it was nearly complete and thought it was terrible. He thought it was awful and would never hold that (inaudible) as well as one of Bob Scinto's buildings but when they sent the surveyors out and they got the locations of things, it turned out that the slope of it was 1:1. It was properly built but the perspective that he had – and again, he isn't trying to minimize this, but when you look at it standing down here and looking up that way...

Comm. Flannery stated that it looks like ten feet.

Mr. Swift responded yes and it is not.

Chair Parkins asked about the test bits.

Mr. Swift responded that they weren't done. This would have been a lot cheaper and a lot easier for the developer if they had done that.

Chair Parkins asked if there was a construction plan.

Mr. Swift responded that it was on the plans, but he guesses that – he restated that he really can't say because he didn't have anything to do with it. But if they had done the test bits and they had

found the issue, it would have been much easier to just excavate it, build it and be done with it instead now – you can tell that it is going to be a bigger issue to repair it. He added that they have to fix it though.

Comm. Flannery asked what will happen if they don't accept this modification.

Mr. Swift responded that they are going to have to stabilize that slope somehow. They'll have to go back, scratch their heads and go to Plan B.

Comm. Flannery asked what Plan B would be.

Mr. Swift responded that he did not know.

Comm. Flannery commented that there is no back-up plan – just this is a concrete wall.

Chair Parkins stated that she is not in favor of the aesthetics of a concrete wall there. It was not a part of the original proposal, obviously, it was an error of judgment on whether this was construction or whoever, she doesn't think it should just be "oh well, sorry, they'll have to put up a concrete wall."

Mr. Swift responded that there are options on the face of the wall that they can work (inaudible)...

Chair Parkins stated that naturally they have to make this safe – that is paramount and it is the first thing that they have to do but the aesthetics are... \

Mr. Swift responded that they have options and the Commission might give this some thought before they finish up tonight about holding this hearing open to look at some options for that then they'd be glad to do that.

Comm. Flannery asked if all the rain today have any effect on that with the erosion.

Mr. Swift responded not that he knows of but he did not look at it today. He indicated that Joe Grasso was Howard Soffan's representative for construction and he might be able to answer that

Comm. Flannery stated that what she means is that if they delay this another month until the next meeting, how is the rain or other weather conditions going to effect this wall.

Chair Parkins asked Mr. Swift if this hasn't been like this for six months.

Mr. Swift responded that it hasn't been six months.

Chair Parkins commented OK, not quite but it has been through a blizzards, rain, etc.

Comm. McGorty asked how it was holding up with that in regard to erosion and the warming up.

Mr. Swift asked Mr. Grasso if there was any sloping (inaudible)...

Mr. Joe Grasso responded that there is some erosion coming down but it is not dramatic yet.

Comm. Flannery commented "yet."

Mr. Grasso stated that it is something that they'd like to get control over (inaudible)...

Mr. Swift added that they do want to fix it sooner rather than later.

Chair Parkins stated that making it safe is paramount.

Comm. McGorty asked what the timing would be to stabilize it and start this.

Mr. Swift responded right away, you know as soon as they get...

Comm. McGorty asked if they could do something to at least get them to stabilize it with the concrete and then they'll have to dress it up.

Chair Parkins stated that they will make it conditional that they will (inaudible)...

Comm. McGorty stated making a condition that final acceptance will be on the (inaudible) because they want to get that stabilized especially with the warmer temperatures there is more run-off and erosion.

Comm. Dickal stated that is her big issue also because she lives behind a large concrete wall. Over a period of time and because it is on a slope, it has forced the concrete to crack in some areas and push outward. Aesthetically, it really is not appealing so that is her main concern; besides being a safety issue.

Mr. Swift responded that he understands that. They can color the concrete and texture the concrete.

Mr. Grasso interjected that with the wall, for aesthetic purposes, they can stain it, put a color stain in and try to blend it in. He added that they can plant ivy over the top and let ivy grow naturally down the side of the wall. Mr. Grasso indicated that they could look at possible cladding of it but that is something that is sitting up high and if those clads start to break loose than they will be dropping the rest of the way down.

Comm. Harger asked if he said "cladding."

Mr. Grasso responded yes, cladding like a brick veneer or a stone veneer that you could do on a home.

Chair Parkins added that it could be like the stone that they have down at the hotel on Bridgeport Avenue.

Mr. Grasso stated that they can certainly look at that option, if they can find a system that will (inaudible)...

Chair Parkins commented that it's not a veneer. It is a little more than a veneer.

Mr. Grasso stated that they can't just do a stone because it is not going to have that strength that a poured concrete wall will have. In regard to the strength of the wall, today's engineering is much different than the engineering used 75 years ago. He indicated that they have better waterproofing materials available to them today to waterproof the backside of these walls so that the walls aren't impervious to the water and deteriorate with the weather conditions of the frost, warmth, frost, warmth because that is what breaks down these walls. Mr. Grasso stated that the waterproofing, the reinforcements, today's engineering – much better than 75 year old walls that are in existence now. This wall will last well over 100 years plus. He questioned how long any of these walls could last because the engineering is so much different today than what it was a long time ago. The walls that they see breaking down now – they've learned from those walls; so they can definitely produce a better a wall today.

Comm. Flannery stated that eventually it will break down.

Mr. Grasso responded yes, 100 years, 200 years...

Comm. McGorty commented that it is also their responsibility to maintain it (inaudible)...

Mr. Grasso commented that with today's engineering and new products they can stay on top of it and if they see a problem, they can address it and deal with it immediately. He added that the work to make it last is done in the construction from the backside.

Comm. Flannery stated that she is just thinking about what happened two years ago in March of 2011 in Shelton, there was a development on the bottom level and a 100 year old house on top that went down the hill because of the development on the bottom. It happened two years ago in

Shelton. She added that she is concerned about that house on the top of that hill and she asked how they were going to make sure that that house stays there.

Chair Parkins stated that the bottom line is that they have to put up a wall to make this structurally safe. There is no argument from anybody on that.

Mr. Grasso stated that that house is sitting on top of the rock – on top of the ledge and the ledge isn't going to go anywhere. What they are holding back is the dirt portion of it. It is not the entire side of that house or of that yard.

Chair Parkins stated that they would be negligent if they did not allow them to build a wall to make this safe. Her issue is the aesthetics.

Comm. Flannery commented that she was thinking of picking up that house and moving it away from that wall.

Mr. Grasso responded... OK.

Chair Parkins asked if she meant "physically."

Comm. Flannery responded yes, getting it off the foundation. She thinks that these people should physically pick up that house and move it away from the wall.

Chair Parkins asked about other types of facades or face treatments.

Mr. Swift responded that there are split forms, they are faces that you could put onto a wall and when the foundation forms you would put patterns on the side of it. Those are (inaudible)...

Chair Parkins commented that if they leave the public hearing open, they will be able to (inaudible)...

Mr. Swift responded if that is the desire.

Chair Parkins stated they can close the hearing and direct (inaudible)...

Mr. Schultz asked Jim Swift about the limits of the retaining wall is OK (inaudible)...

Comm. McGorty commented that they can say (inaudible)...

Mr. Swift responded that the retaining wall is within the limits of the existing PDD.

Mr. Schultz stated that the Commission can authorize that and keep the public hearing open because it is within their PDD. They just make the motion to modify the overall plan, the grading plan, authorize that construction and keep the public hearing open on the aesthetics.

Chair Parkins asked Comm. Pogoda on Skype if he had any questions for the Applicant.

Comm. Pogoda asked if Jim Swift could outline on his drawing where that chain link fence is supposed to be going. He wants to make sure of the location.

Mr. Swift showed the site drawing and pointed out the fence location on the outside of the property line. It is not necessarily, right dead on the top of the rock cut or top of the wall. He pointed out the dark line depicting the fence at the top of the property line. He added that the structural engineer has also required a slightly smaller fence on top of the wall – so it is a belt and suspenders kind of a thing. Mr. Swift summarized that there would be a 6 foot fence all around where the rock cut is and where the slope starts to come down in the location where they started to disturb the soil and it is coming down. There will be a second fence that will be right on top of the wall because there are funny little things going on in here. He elaborated that the joint between where the existing top of ledge excavation is on the top of the wall – he showed that this elevation and this other elevation are actually the same elevation but they have to make

that transition in there somehow. It will probably be done with a combination of a little bit of stone riff-raff and that sort of thing.

Comm. McGorty asked if the trees would be on their side of the fence.

Mr. Swift responded that yes, the trees would be on our side of the fence.

Comm. McGorty asked if there would be enough room in there to put all of that.

Comm. Harger asked about the funny little things that are going on and if they were in any way going to impact the stability of (inaudible)...

Comm. Pogoda indicated that he had another question about the six foot high fence – he asked if six was enough and do the homeowners affected by that fence have adverse reactions to a chain link fence that they would be looking at.

Chair Parkins responded that they haven't opened this open to a public portion yet so they will address that question when they do that. She would think that a six foot fence would be certainly be sufficient if it is the closed mesh so that you couldn't get your foot into it. She added that there are different size openings on fences so as long as it is a closed type of mesh than it will be very difficult to climb.

Mr. Grasso stated that the fencing that would be used is the type that would be used around pools to keep kids away from the water.

Comm. Pogoda asked again, when the audience speaks, he wants to know how the homeowners feel about looking at a chain link fence versus having something a little bit more decorative than a chain link fence.

Chair Parkins responded that they could put in a black vinyl coated fence up there anywhere it is visible from the neighbor's property. It tends to blend in with the trees.

Comm. Pogoda asked if they think six foot is sufficient enough in that area.

Chair Parkins responded that she thinks so but as long as it is the closed mesh.

Mr. Swift stated that they do need to hear from the ad joiners.

Comm. Harger asked again about the funny little things that are going on going to impact the stability of the abutter's homes.

Mr. Swift stated that was covered in the letter that was read into the record from Atlantic Consulting and Engineering.

Comm. Dickal commented that 28 feet is not a lot of space. Her concern is, if this is approved and that house is as close as they are approximately saying it is what repercussions would that homeowner have in the event that there should be some instability such as a crack in their foundation. She asked if that would fall solely on this homeowner or the people doing this project.

Mr. Swift responded that there is liability insurance and one of the things was the blasting itself. The homeowner was covered under blasting insurance.

Chair Parkins asked the homeowner if the blasting company did an inspection of the home before blasting.

Comm. Dickal asked if it included the driveway and everything.

The homeowner responded that they did a blasting inspection but he didn't know about the driveway.

Comm. Flannery asked him what his name was.

The homeowner stated that his name was John Wardowski and he lived in the house (inaudible).

Comm. Flannery asked if he could spell his name.

Chair Parkins told Comm. Flannery that she would like to conduct this meeting because she is the chairwoman and she is out of order. She thanked Mr. Wardowski and informed him that the public portion would be open soon and he will have a chance to speak.

Mr. Swift stated that right now the existing house is probably within 16 feet of where the excavation is now. When the wall gets put in and they put the material back in, it will probably be more in the neighborhood of 30 feet. A lot of that material is going to be put back in, not just the slope but...

Chair Parkins stated that is the property boundary and she understands that has always been the property boundary. She asked if that was correct.

Mr. Swift responded yes but he is just saying that it will be flat in relation to the ad joiner's property beyond the property boundary.

Chair Parkins stated that they have 28 feet to the property boundary. She asked how many feet there was from the fence to where it begins dropping off. She also asked if it started dropping off at the fence line.

Mr. Swift responded let me (inaudible)...

Comm. McGorty stated that it is level all the way out to that wall. He is putting in the 15 foot wall.

Mr. Swift stated that right now the house is within 14 feet of the proposed PDD boundary. Right now the house is within 16 – 18 feet with the existing excavation.

Chair Parkins asked if he said 16 to 18 feet of the excavation.

Mr. Swift responded yes, 16 to 18 feet of the excavation as it exists right now. He stated that what they are proposing, once they put the wall in is that the excavation would not start until they are some 27 to 30 feet away from the house.

Chair Parkins indicated that she would open this up to the public and requested that anyone who speaks please sign in on the sheet provided.

**John Wardowski, 21 Turner Road, Shelton addressed the Commission.** Mr. Turner provided several photographs to the Commission taken of and around his home.

Chair Parkins asked if he was the owner of that house on top of that hill and if he could state his address.

Mr. Wardowski responded that he was the owner of the house located at 21 Turner Road. Before he started he wanted to ask about the letter that was introduced into the record from the engineer stating that his home was inspected.

Chair Parkins stated that they have a letter from Atlantic Consulting and Engineering LLC. She re-read a portion of the letter indicating that a field inspection was conducted specifically to confirm that work in the northwest portion of the site was not affecting the residents located at 21 Turner Road. Upon review of the work in place, the undersigned determined that the excavation that had taken place to date had not adversely affected the stability of the subject residence. A design has been prepared by this office for the final retention of earth in the vicinity that will provide additional stability to that area of the site. She stated that it was signed by a professional licensed engineer.

Mr. Wardowski used one of Mr. Swift's site drawings and indicated that he is the homeowner located right next door as they can see from the pictures. As far as the encroachment and removal of land is concerned, he is very disappointed by it. The size of the land that was acquired was about 20 to 25 feet wide and that was between them and him by about 45 feet deep by about 200 feet long (20'W x 45'D x 200'L). He added there was like a 20 to 25 foot buffer zone between the two properties.

Mr. Wardowski indicated that when Jim Swift said that they wanted to add this strip of land to the PDD, well, that strip of land for the most part is gone. They can see from the pictures that it is not there. It is more or less just adding air to the PDD. The vast majority of the land is just gone. Mr. Wardowski stated that the fact of what it did was brought a 45 foot vertical drop straight down, 20 – 25 feet closer to his house. They must have removed 10 to 15 trees that were on that area. He added that a few months ago if you had taken a look out the window of his home, they would have seen a beautiful, private wooded view and now there is just a clear view of the landfill.

Mr. Wardowski said that it is so close to his home and they can see that from the pictures and when he looks down, he sees the bottom of their property. He understands that they are going to put up trees that can grow to 12 to 15 feet tall but it is difficult to know what that is going to do to his view because of the proximity. He understands what they are saying that they ran into some loose rock and someone didn't do their due diligence and he doesn't know exactly who to blame.

Mr. Wardowski stated that what he is certain of is that someone should have slowed down the project and continued carefully. This was not done carefully – and that is why he is here tonight just to say how disappointed he is. As they can see, this is a large piece of land; it is not like it was something that was taken out with one rogue blast. He stated that if someone had blasted and too much land had come away, you would think that somebody would put the brakes on this, slowed down a little bit and done their due diligence and they wouldn't be here tonight.

Mr. Wardowski indicated that another big issue is what they are talking about doing – the retaining wall up here and adding land in up here. He commented that they can see this in the pictures too that all of this land down here is already removed so they are talking about adding in some land up here but all of this right here is already all gone. They are talking about adding land up in the top corner but they aren't talking about adding any land down toward the road that was removed as well. He restated that the land that is being proposed to be added to the PDD is already gone.

Mr. Wardowski commented about the safety concerns that the Commission brought up before, he couldn't agree more. He never truly envisioned the end product when it was originally proposed. He probably had his priorities all wrong and was worried about how much land was going to be left but when he thought that the 20 – 25 buffer zone would be there, he figured OK, what is he really going to do. He never really envisioned the 45 foot vertical drop straight down.

Mr. Wardowski stated that he had spoken to Joe Grasso this weekend about what type of fence they could use and he understands that a wood or vinyl fence could blow over and a chain link fence would be easy to climb. What he is most concerned about with the fence is that it is into the ground and there is no way a kid can get underneath it or over it. It is just a huge concern of his. He knows that there is different zoning as well to request an 8 foot fence but he would like to request one. He doesn't know if you folks would approve it but given the proximity of the project, he would feel more comfortable with an 8 foot fence. His main concern is that he has a 7 year old nephew with Down's syndrome who he is really concerned about. He goes to school and he does well, but like any other kid, if you turn back on him and he's gone. Mr. Wardowski commented that whatever fence goes up, he stressed that it has to completely hug the ground and there can't be any way for someone to get underneath the fence.

Mr. Wardowski indicated that when he was speaking to Joe Grasso, he brought up the type of fence that would be similar to the type of fence that would be around a pool. He commented that whatever ends up happening with the fence, he is still stuck with a 45 foot vertical drop so if someone gets over that fence, it is certain death.

Mr. Wardowski addressed the blasting and he indicated that this has really been a trip. He has reported damages to the blasting company and the blasting company's insurance company sends out an engineer to request the data from the blasting company and put together an analysis and then he gives it to the insurance company.

Per the engineering analysis, about 1/3 of the time that blasters were blasting they did not even have the seismic reader on the property. When they did have the seismic reader on his property, it was not between the blast site and his property, but between his property and his neighbor's property. Basically, effectively, if he had called the Fire Marshal to make a complaint and the Fire Marshal would have stopped by, the data would be wrong. The engineer was luckily able to take that into account when he put together his analysis and he's thankful for that because he doesn't know what their insurance company would end coming back and saying. The Engineer was able to determine that several different times the blasters set off blasts that were actually double the regulatory limits. It started a very long process.

Mr. Wardowski indicated that everything went fine until the Engineer submitted his report to the blaster's insurance company which was submitted on February 7, 2013. In that time he has spoken with their insurance agent about one time after making at least a dozen phone calls. Mr. Wardowski said that he has recently reached out to everyone from Joe Grasso to the Fire Marshal for help in this area. The damage that he is aware of right now consists of everything from cracks in the sheetrock, the ceilings, the trim; the seals along his insulated windows are blown out. The foundation damage -he understands to a certain extent that if there is foundation damage - it will be noticeable in the home in terms of things like the closing and the opening of the windows and doors. His concern is that the material that his home is built on, and as they can see from all the blasting, he is just on a bunch of rock up there and who knows if there might be some type of settlement years going forward.

Basically, in summary, he would love to have some type of slope down into the property because of the 45 foot cliff. Looking back from the Sports Center he never envisioned how dangerous the end product would look. Knowing that someone would be able to get over that fence and it would be certain death or knowing that someone would get over that fence and it would not mean certain death - this is very important to him. He thinks that they should have to put back as much land as possible. They are talking about a retaining wall going down a fraction of it but the rest of the land that is supposed to be added to the PDD is already gone – well, the majority of it is gone.

Mr. Wardowski clarified that if it was 20 feet wide at River Road and 25 feet up toward the top of his property, so it widens out a little bit. In the photos, they can see that there are a few feet left but they are talking about 15 – 25 feet that was removed. If they are talking about a retaining wall, he thinks that they would put back as much land as possible and build as large a retaining wall as possible but even better would be to have some of the land put back and then have a slope down into the land. Mr. Wardowski stated that he is not an engineer or an architect, he doesn't know how this is handled but it is like slanted concrete wall or if it's just a (inaudible) he's not sure. He would love to have some type of slope going down into that property.

Mr. Wardowski indicated that he isn't sure if this would be possible but what he does know right now, for certain, is that he has a 45 foot vertical drop that is 20 – 25 feet closer to his home due to this encroachment. Even if some of this land is put back, and even when they build the retaining wall it will be engineered from the bottom and come up. So he's not really sure how much land is going to be left up top or how much land is going to be added because the retaining wall is being structured from the bottom and coming up.

Mr. Wardowski stated that he doesn't think that the PDD should be extended for land that isn't even there, unless the land is put back. As he said, he would love an 8 foot fence if the Commission would approve that; hopefully, the trees could go on his side of the fence to cover up whatever that fence would look like. He knows that there has been a lot of talk about how the fence would look but he can't say that he knows exactly what pool fencing looks like. He is trying to envision it but he's thinking of a chain link fence which would be the worst because kids could jump right over it. He indicated that he would just want the safest fence possible that could get all the way into the ground and be as tall as possible.

Chair Parkins asked Mr. Wardowski for clarification in the photographs as to which house was his. He pointed out his home in the photos.

Chair Parkins stated that she will admit that when she saw this place, she was in shock as well.

Comm. Flannery asked if they could deny the modification and have all the land put back in.

Chair Parkins asked how they could do that.

Comm. Flannery stated that she was just asking if it was possible.

Comm. Dickal commented that she has some serious issues with the way that she is looking at this picture here. They are talking about the fence and she knows exactly what kind of fence because there is one in her area too. It has brown stuff that goes through it and the tall trees are behind the fence so aesthetically it looks pleasing. However, this is an enormous drop here and that has her very concerned especially if it is a big, tall tree whose roots have been disturbed and a bad storm will weaken them. Those are some of the issues that occurred in her neighborhood and the trees came down onto homes. She added that this looks very bad to her.

Comm. Dickal asked about the letter read and if it was from the developer who came out – the engineer - and inspected – OK – she asked the Mr. Grasso (?) if they offered to have this gentleman (Mr. Wardowski)? hire somebody on his own accord to have somebody come out and assess the safety. Did they offer him to hire his own person to come out and assess the safety issues of it?

Mr. Grasso responded that did not come up until just the other day so he called the engineer who is involved in the project. Mr. Grasso stated that he asked him to come up and look at this and determine if the work has impacted the structure of this home to the point where it is unsafe.

Comm. Dickal commented that her only concern is that this firm is in any way ...

Chair Parkins added that they are liable for that (inaudible)....

Comm. Dickal stated that she thinks it would be reassuring to the gentleman that resides there to get a second opinion just like if you found out you were terminally ill.

Mr. Wardowski responded that he recently reached out to an inspection company and as he reached out to the people who inspected his home the first time around he was thinking a similar thing. They told him that Connecticut State Inspectors will come out to a home but they will only do a visual inspection. They said that the only way to know for certain if you have any foundation damage right now is to literally excavate all the way around the home. He was told that even these inspection companies don't have that type of equipment so you would have to go to some type of a private contractor to excavate all around the home.

Chair Parkins stated that is for any kind of structural damage as a result of the blasting. She added that she thinks that they are more focused on the stability of your house.

Mr. Wardowski responded OK, like if it were to fall down the hill.

Comm. Dickal commented yes, that is what her big concern is (inaudible) like if you sought a second opinion and compared the two.

Mr. Wardowski stated OK, so this isn't a discussion about the blasting or anything. This is (inaudible) about the house not falling off...

Comm. McGorty commented that at this point in time (inaudible) that everything is fine.

Mr. Grasso stated to Mr. Wardowski that his house isn't going to slide down the hill.

Chair Parkins stated that (inaudible) about your house falling off the cliff.

Mr. Wardowski responded that it looks like it is about to fall off the cliff but... (inaudible)...

Comm. Dickal stated that she wasn't disputing this (inaudible)...

Comm. McGorty stated (inaudible)

Comm. Dickal stated that for herself and for the homeowner, it would be a reassurance that they have no safety issues. Let's be honest, if this was your home and this was happening to you, she's certain that you'd be upset by the situation.

Chair Parkins stated, and she asked Rick Schultz to correct her if she is wrong, that they approved the PDD so they have the approval for the PDD to go forward but they have to make this situation safe. It isn't a situation where they can order them to bring all the fill back in and cancel out the PDD.

Mr. Schultz responded yes, right, and just to clarify, Staff issued a Stop Work Order and this is the result of that. The submission of this modified plan is a result of the Stop Work Order. Staff has been working with both parties.

Comm. Dickal stated that her concern wasn't putting the fill back in because even if they filled it back in, nobody knows how safe it would be because the soil has been compromised. Her concern is to make sure that this homeowner is going to be able go to his home and make sure it is safe, especially for any child that will visit him.

Chair Parkins stated that they only have so much power within their Commission to do things; otherwise, it becomes a civil matter. The applicant spoke about fighting it out in court (inaudible) whatever they need to do in this matter. They have to make the situation safe.

Comm. Dickal stated that was her main concern.

Mr. Swift stated that when you talk about safety he thinks that there are two issues that are up for discussion. One is the safety of people and children around this kind of a drop and the second is the safety of the house and the possibility of it moving. He stated that the house isn't going anywhere and he thinks the letter covers that. The example that he provided before, when you look at something, you can't read the depth. There is no possibility that this house is going to fall over – that is not the danger here. The danger here or the question here is whether there was any damage to the house during the blasting process and it seems that there has been some documentation that has to be reviewed. In regard to it being a safety issue, Mr. Swift said that you can call it what you will but – it is an issue. The safety issue is pedestrians and people falling off the ledge.

Comm. McGorty commented that they aren't here for what could have happened to the foundation or anything like that.

Chair Parkins stated that it seems (inaudible)...

Mr. Swift indicated that the house is not going to fall down the hill.

Comm. McGorty stated that it is on ledge but what is falling on their laps here is how do they get that retained and make it safe so that no further erosion happens.

Chair Parkins commented that in addition to that, she thinks the landowner is being extremely reasonable.

Comm. McGorty responded sure, absolutely. He added that he doesn't think an 8 foot fence is unreasonable – he should get a 10 foot fence.

Chair Parkins stated that she thinks that as a result of that, the Applicant should go above and beyond to do anything– dealing with blasting companies saying “that's not us, that's not us”– if she was this particular Applicant she would definitely be reaching out to these people.

Comm. McGorty agreed that he seems very reasonable in lieu of what has occurred here so...

Chair Parkins stated that if he feels better with an 8 foot fence on that section of the property then she will certainly agree to that.

Comm. McGorty agreed yes, absolutely.

Mr. Grasso stated that he met with John (Wardowski) on Saturday and told him that he knows that a 6 foot fence is permitted but you have to ask the Commission for an 8 foot fence. He was the one who told him that if he wants the 8 foot fence, he doesn't care; he'll put up an 8 foot fence and do whatever it takes. Mr. Grasso stated that he also said that he would move the fence on this side so he has vision of the trees.

Chair Parkins stated that if the trees are planted on his property (inaudible)...

Mr. Grasso responded that they will move the fence so that the trees will stay (inaudible) ...they are going to put the fence on this side so he can't see the fence (inaudible). He is trying to make things work.

Comm. McGorty added that they should just move the fence farther away from (inaudible)...

Chair Parkins stated that there is not much space up there.

Mr. Grasso responded that is because they are looking at what is missing and after they get their wall put back together, they have the width of the yards and yards of material back in there and not just the material, specific gravel (inaudible)...

Chair Parkins asked if they were going to be putting some of that fill back.

Comm. McGorty responded that they have to go around that corner where they are going to build the retaining wall (inaudible) to make the slope 1:1 and then backfill it to the 15 foot wall.

Mr. Grasso pointed out the location of the wall on the site drawing. So, again (inaudible)

Mr. Wardowski commented that down further from there, they are talking about extending the PDD, but all that land is already gone. It is kind of like, he asked - if they extend the PDD, what is it being extended for because there is no land there?

Comm. McGorty stated that it has got to be on the record and documented that it is going to be a part of the property. It's air but yeah, for the record it has to be included in the PDD.

Chair Parkins added that it's the boundary, identified as (inaudible) ...

Mr. Wardowski asked if it was unreasonable to ask for a slope to go down into the property for safety reasons. He thought they were talking about safety reasons with the house moving and safety reasons with the fence. He is worried, for safety reasons, about somebody getting over that fence.

Chair Parkins stated that then they would have to extend the wall all the way across the property. She asked Mr. Swift if that was correct.

Comm. McGorty commented that the wall doesn't really do anything to prevent people from - it's 15 feet but it's a couple of feet above grade. He asked how many feet above grade it was.

Mr. Swift responded that the wall is not going to be much above grade, like 6 inches, but there is a fence above that.

Comm. McGorty stated so that's not (inaudible)...

Comm. Dickal asked if they would have the wall, then gravel that makes a tiny slope, then the trees and then the fence in front of it.

Mr. Swift responded yes, right.

Comm. Dickal commented that was more aesthetically pleasing because that is what happened in her neighborhood because those evergreens that grow tall and the fence has brown (inaudible) that goes through it and it looks very nice. There is a tiny slope that is all gravel.

Chair Parkins stated that she wouldn't recommend that slat between the fences because that stuff does not last. She commented that she would suggest the small, 8 foot (inaudible)...

Comm. McGorty commented that the trees on his side will also lose more of the yard the bigger that they get.

Chair Parkins stated that she doesn't know because she doesn't have a pool.

Mr. Grasso stated that they protect our kids with high fences like this and keep them from getting into pools which is a huge problem.

Comm. McGorty commented that they also don't want something they can climb (inaudible)...

Mr. Grasso commented that it is very high and they can't put their foot into it and climb it and that is how it was designed.

Comm. Dickal stated that the holes are tiny (inaudible)...

Chair Parkins asked how far along that property line they would be extending that particular fence. She asked if they were going to build an 8 foot fence all the way around it.

Mr. Swift responded as much as the Commission would like but certainly from the beginning to this corner (he showed the corner on the site plan) to at least that other corner and whatever else the Commission thinks is necessary. He asked them to remember, that as far as the landscaping there is a standard provision in the PDD notes that the Commission has the authority to require additional landscaping above and beyond what is shown on the plan already. They agreed to work with the homeowner to put plantings, no matter where the fence is, on either side of it. They understand that they have to take a few extra yards of it.

Comm. Flannery asked if there were other neighbors here.

Mr. Swift stated that the neighbor who picked up this property up here is probably OK with that.

Comm. Flannery stated that she just wondered if the other people here wanted the higher fence.

Mr. Schultz stated that the retaining wall component is important because it is a part of the stabilization. They can do that as a separate motion.

Comm. McGorty stated that they can leave the hearing open and decide on the 8 foot fence, the plantings and other details.

Chair Parkins asked if they could keep the public hearing open on the details.

Comm. McGorty stated that they should retain it, stabilize it (inaudible)...

Mr. Schultz responded yes and focus on those detail issues but take action on the retaining wall which is in the existing PDD and allow them to do the work because they are going to have to build a ramp to get up to it. It is quite involved work.

Mr. Wardowski asked how much land was going to be added in with the retaining wall.

Mr. Swift responded that it would probably be about 14 feet or so at the least from where the existing cut is right now up to the retaining wall.

Mr. Wardowski asked how far down the retaining wall goes to.

Comm. McGorty responded 15 feet.

Mr. Swift responded that he believes it has a 12 foot maximum height.

Chair Parkins stated that they checked 15 max.

Mr. Wardowski stated that 15 max was like down the width of his property.

Mr. Swift stated that it was not that far, maybe halfway to his house. To clarify, he indicated that where the rock cuts starts and goes down fairly steeply is closer to him than the retaining wall so the wall is at a certain height until it gets to a certain point and then it jogs back to the rock cut. There is something going on in that (inaudible) that they have to fill in with boulders or something so he doesn't mean to tell him that they are filling in completely from where the excavation is now out 15 feet everywhere. They are only doing that with the wall. He added that they could probably walk around the site and point out a little clearer (inaudible)...

Comm. McGorty commented that it looks like it would go midway to where the deck starts based on what they have there. The end of wall would be about where his deck starts midway to the house.

Mr. Wardowski asked if the wall would go all the way down to River Road.

Mr. Swift responded that is a question of the foundation. It is very, very hard and he wasn't sure this could be done to build a retaining wall on top of a rock ledge because if you think about it, you have to have a flat surface to put a footing on to pin it in. As you keep going, the rock – there is no shelf anymore – there's a shelf here. He showed where there is a shelf on the plan because they had the overburden but here they didn't have the overburden so now they have just a sheer ledge so no, it can't really keep going.

Chair Parkins asked Comm. Pogoda on Skype if he had any further questions.

Comm. Pogoda responded that he had no questions at this time.

Chair Parkins asked if there was anyone else in the audience wishing to speak on this application.

**Denisa Kirnag, 17 Turner Road, Shelton addressed the Commission.** Ms. Kirnag indicated that she was John Wardowski's neighbor on Turner Road. She doesn't have a problem like John does dealing with safety. But like John mentioned, they had a problem with the blasting and he also mentioned the agent from the insurance company whose name is Donna Walter. She's tried to reach her too and she never calls back.

Ms. Kirnag stated that they have problems with the main water pipes so they don't actually see what is going on because it is under the ground from all the shaking. It was shaking and she was home a couple of times during her lunch break and when they blasted everything was shaking in the house. The Water Company shut their water off because they had a dead line and they had a problem because people were supposed to fix it (inaudible) because of an accident with the power lines but they didn't even know it because it was (inaudible). The point is that the water pipes broke close to John's house because their house is very close to their line, right under the window and they also have septic there. Ms. Kirnag stated that no one knows what is going on with the septic but like John said that they will have to come and dig to deal with that.

Ms. Kirnag indicated that they have a new pool too and the pool is leaking.

Comm. McGorty asked if it was a result of the blasting that the pipes broke.

Ms. Kirnag responded yes, oh yes, they had the Engineer come and he took the pictures. They also had the company who fixed that from the blasting because it was shaking the ground. As John mentioned, the ground just drops and Aquarian Water Company came and it identified the problem with the pipes from the shaking. The pipes were plastic, not metal, so they had to call a different company that specializes in these plastic pipes. They had one company come that

couldn't find the leak because it was actually leaking on her neighbor's property not their property. They didn't know where the leaking was coming from until they came and checked everything.

Chair Parkins asked if the "people" she talks about or the "company" was the blasting company that came.

Ms. Kirnag responded no, the water company, Aquarian and they gave her the number of another company that could fix the plastic pipes.

Chair Parkins asked if that was at her expense.

Ms. Kirnag responded yes and her water bill came too and it was \$2,300.

Mr. Wardowski added that her water is now coming into his garage because they live on a slope so now he has water coming up to his garage. He stated that the type of problems that they are running into with this insurance company, and they were just talking about it beforehand, that she is so fed up with trying to reach this insurance company that they know a private adjuster or a public adjuster. This guy is going to come to her house, look around her house and say that she has "x" amount of damage. So, if for example, he has \$10,000 in damage to his house and the insurance company agrees and then he goes out and hires a private adjuster and he says that it is another \$5,000 more then he gets a 10% commission on that extra money. Mr. Wardowski said that his neighbors are so fed up with it that they are going to call this guy right now so if he comes out and inspects their home and says it is \$10,000 worth of damage then they are going to just pay 10% off the top, out of pocket, because they are so fed up with this insurance company.

Chair Parkins asked whose insurance company they were speaking of.

Mr. Wardowski responded it was the blaster's insurance company. They are a company by the name of NOBEL and between the two of them they must have called this same insurance agent over 20 times. They have the same insurance agent. He finally got a hold of her supervisor on Friday; he spoke with the Fire Marshal on Thursday and Joe Grasso on Saturday. This insurance agent was supposed to call him last Friday and he hasn't heard anything. He stated that it has been an absolute nightmare trying to get someone out to the house.

Chair Parkins stated that she would expect that the construction company and/or the Applicant would also be stepping in on your behalf to address these issues and she hopes that happens because that is absolutely the right thing to do. She told Mr. Wardowski and Ms. Kirnag that they should not have to be going through this kind of hassle with insurance companies. She indicated that they were going to get a motion on the table to continue this public hearing to April 9<sup>th</sup>.

**On a motion made by Thomas McGorty seconded by Nancy Dickal, it was unanimously voted to continue the public hearing for Application #13-3 until April 9, 2013.**

Mr. Schultz indicated that the other motion regarding the work on the wall can be done under Old Business – Application #13-4 is also under Old Business.

Mr. Wardowski asked if that means that the retaining wall will be built then.

Comm. McGorty indicated that it was going to be.

Chair Parkins stated that they are going to have to assess (inaudible)...

Comm. McGorty explained that they are going to keep the meeting open and work out the aesthetics – trees, fencing, facing, etc.

Mr. Wardowski asked about (inaudible)...fence length.

Mr. Grasso asked about giving the Applicant the details (inaudible)...

Chair Parkins responded that they would like to see some samples (inaudible) to make sure that what they are envisioning is what the Commission is envisioning. They'll work out the aesthetics.

Comm. McGorty stated that they just have to get it stabilized right now – with all the warming up, water and everything; they don't want any more erosion.

Mr. Schultz added that they have to get that site safe.

**OLD BUSINESS**

**APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE**

**SEPARATE #6529 – TONY DELLAMONICA, 5 WHITE STREET, SIGN**

Mr. Schultz stated that they promised him again that it would be submitted but it still has not so they obviously have to table this again.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to table Separate #6529.**

Chair Parkins checked to make sure that Tony Pogoda and Tony Panico were still on line. They both confirmed that they were still there.

**SEPARATE #6563 – MARK FABRIZI, 500 RIVER ROAD, BUSINESS**

**SEPARATE #6564 – MARK FABRIZI, 500 RIVER ROAD, BUSINESS**

Mr. Schultz stated that the next two Separates are one location, two separate operations. This is Sal Matto's property down by the River next to Latex Foam.

Chair Parkins asked if they didn't approve that for the Sacred Heart boating.

Mr. Schultz indicated that he now has a buyer with two proposals. Sacred Heart is now out. He read the proposals with the first one Marquee Customs & Classics LLC, a manufacturer of motorcycles. He indicated that this is an industrial zone that allows manufacturing and assembly process of goods. The overall building is 8,960 square feet. This leased area is 4,300 square feet with one employee and this individual makes custom motorcycles and manufacturers between one and ten depending upon what his needs are. He plans on occupying the site and manufacturing the motorcycles.

Comm. Harger asked if by "occupying" does he mean he's living there.

Mr. Schultz stated no, but this individual wants to purchase the property and there are two separate occupants. He will be the primary occupant, occupying half of the building for the manufacture of motorcycles.

Mr. Schultz indicated that the other half is RFAB & Sons General Contractor and this is a general contractor. He stated that the Commission approved the general contractor but restricted the outside storage. They will be leasing the other half which is 4,500 square feet. There will be one employee and everything will be stored inside. He added that one good thing about this building is that can accommodate structures. On the side of the building there is a fence for smaller trailers, etc. Mr. Schultz stated that they have two uses that are permitted as-of-right. The key thing from the Commission the last time was for screening and the condition of no outside storage which would be unsightly because it is right on the River. Obviously, the owner is going to be watching this because his house is right there off of Fanny Street. He has evergreens that he planted but he is convinced that both these operations will work and that there will not be any noise component.

Mr. Schultz added that no signage has been proposed.

Comm. Harger asked if the overall size was 9,000 square feet with only one employee on each side.

Mr. Schultz responded yes, and this is family-related.

Comm. Harger asked if the General Contractor would just have his office.

Mr. Schultz responded office and equipment. This is one of the little areas in Shelton that is industrially zoned and allows this type of use and up the way with Latex upgrading it to the south and Mr. Matto's house to the north at the end of Fanny Street. So, it is a nice pocket.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #6563.**

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #6564.**

**SEPARATE #6565 – JOHN RUFFALO, 34 CANAL STREET, BUSINESS**

Mr. Schultz asked if In-Line Plastic was present here. Representatives for In-Line Plastics indicated that they were present.

**Richard Jagoe, owner of Tomlinson Hawley Patterson, General Contractor, Trumbull, CT representing In-Line Plastics addressed the Commission.** Mr. Jagoe stated that they want to go back into the building that they were using before. He indicated that he was representing John Ruffalo, the architect, who had to attend to a family emergency and he has done a lot of the work for In-Line Plastics. In-Line Plastics wants to go back into the building that they did work in for 20 years.

Mr. Jagoe stated that it was about the cost of the building. The vacant side has been run down (inaudible) at the corner of Water, Canal and Howe Avenue.

Mr. Schultz stated that it might move to Bridgeport Avenue and to Commerce Drive so this is not (inaudible)...

Comm. McGorty commented that this was great because it's the entrance way into Downtown and their building is very nice and this will continue that.

Chair Parkins asked if they were going to do any outside aesthetics.

Mr. Jagoe responded that they will be.

Mr. Schultz stated that they would like to invite them to the Downtown Subcommittee when they get to that because he knows that they like to visit the site. He told the applicants that the DSC meets every second Friday of them month.

Comm. Harger asked if they had any design elevations or anything.

Mr. Jagoe stated that they haven't gotten to that point yet but it will come. He said that part of the plan was to move Milford up here and (inaudible).

Mr. Schultz stated that this is for occupancy and the DSC will see the exterior renovations.

Chair Parkins asked about occupancy and in terms of that is there enough parking for employees and are there going to be additional employees coming in.

Mr. Jagoe responded that it wasn't going to be any different than what it has been. They occupied it for 20 years and there is a parking lot there on the old Wilkes Brothers property.

Chair Parkins asked if that was where the Yankee Gas facility is located.

Mr. Jagoe responded no, but that is one of their parking lots but on the other side where the Wharf Street and Howe Avenue (multiple comments, inaudible)... There is a parking lot there that will be occupied.

Mr. Jagoe indicated that if they look down there, they will see a two story building that is masonry and a saw tooth building (inaudible) drive up Howe Avenue.

Chair Parkins asked if they anticipate any parking issues or people parking along the street.

Mr. Jagoe responded no.

Mr. Schultz stated that Staff makes the recommendation to approve with that note for attendance at the Downtown Subcommittee.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #6565 with the condition that the Applicant attend the Downtown Subcommittee Meeting with exterior renovation plans.**

**SEPARATE #6517 – FOROCCIA’S, 702 BPT. AVE., SUITE 100, BUSINESS & SIGN**

Mr. Schultz indicated that this was a change of occupancy at Split Rock in the corner of the building where Oolee Café was located. This will be the New Renaissance Group, LLC with a fresh, casual restaurant with 2,099 square feet. Mr. Schultz showed a rendering of the proposed signage. He indicated that the hours of operation would be 7 a.m. to 9 p.m. and they are assigned 15 to 20 parking spaces.

Comm. Harger asked if there was anyone present for the applicant.

Mr. Schultz responded no. This is for occupancy and signage.

Comm. Harger stated that she was curious as to how the name was pronounced.

Chair Parkins asked Comm. Pogoda if he received this in his package and he responded no.

Comm. Harger held up the sign for Comm. Pogoda to review and commented that the interior is staying the same.

Mr. Schultz added that the sign uses channel letters.

Chair Parkins commented that it was the same place that the other café was in.

Comm. Pogoda asked if this is just replacing what was there.

Comm. McGorty responded yes, same footprint.

Comm. Harger asked Mr. Schultz to check on the “c” on “eattery” that looks like “cattery.”

Chair Parkins agreed that it looks like it says “cattery.”

Comm. McGorty commented that it might be “catering”

Mr. Schultz responded that he would check on that.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Separate #6517.**

**SEPARATE #6550 – CURTISS RYAN HONDA, 12 NELLS ROCK RD., TEMP. PARKING**

Mr. Schultz stated that this is the Nells Rock Road side of the property of Crabtree. Curtiss-Ryan, as they know, is there, and this is after-the-fact. They are requesting temporary parking for a one year period of time for up to 100 motor vehicles – unregistered motor vehicles.

Comm. Flannery asked why it was temporary and not permanent.

Mr. Schultz responded because it is a PDD and they can be asked to leave whenever they start the project. This Commission, when you have temporary arrangements, doesn’t like to exceed it for more than a one year period of time. In case there are any issues then they can revisit it.

Comm. Harger asked if they didn't have the lot across the street and the lot that is down by the commuter lot still.

Mr. Schultz responded yes, they are doing very well.

Comm. McGorty asked if he didn't also have them where they got rid of Captain's Pizza.

Mr. Schultz stated yes, they are doing very well.

Chair Parkins agreed that yes, they are selling a lot of cars. She added that she was not in favor of approving this.

Mr. Schultz asked if he could recommend tabling this until he gets all other ancillary issues resolved.

**On a motion made by Comm. Harger seconded by Thomas McGorty, it was unanimously voted to table Separate #6550.**

Chair Parkins commented that this means that they are not in compliance because they have the cars there right now. She strongly suggested that they quickly come into compliance.

**SEPARATE #6553 – ALAIN & LUCY BAILLARGEON, 43 ROARING BROOK, IN-LAW**

Mr. Schultz stated that this is a two-story colonial house at the end of Roaring Brook and they are occupying the basement level that has a walk-out. It is highlighted in the yellow area of the site plan which he provided to the Commission. The total in-law apartment area is 675 square feet so it is much smaller than the up-to 900 square feet allowed.

Comm. Flannery asked if they were converting the basement.

Mr. Schultz responded yes and he's sure that it has already been done. If he guessed, it is probably after the fact.

Chair Parkins commented that it looks like it has quite a guest house on there too.

Mr. Schultz responded that Inland Wetlands has (inaudible)...

Comm. Pogoda asked if this was going to be the whole basement.

Mr. Schultz responded no – well, yes, the whole basement area

Comm. Pogoda asked again what the square footage would be

Mr. Schultz responded it was 675 square feet excluding the utility room. There is a walk-out. It is internally connected with two means of egress and ingress. There are no exterior changes.

Comm. Harger asked if all of these out buildings have been correctly (inaudible) approved.

Mr. Schultz responded yes, they were all applied for through Wetlands. Wetlands has had an issue about the permits over the years. He showed the Commission an aerial photo of the property because it is an interesting property. Staff recommends approval.

**On a motion made by Thomas McGorty made by Virginia Harger, it was unanimously voted to approve Separate #6553.**

**APPLICATION #12-21 – PETITION OF TALBOT PARTNERS LLC FOR PDD ZONE CHANGE (INITIAL DEVELOPMENT CONCEPT PLAN: 262 UNIT APARTMENT DEVELOPMENT), 784 BRIDGEPORT AVENUE (MAP 19, LOT 56), OP DISTRICT (PUBLIC HEARING CLOSED ON 1/23/13): EXTENSION ON DECISION PERIOD.**

Mr. Schultz stated that Staff received a letter dated March 12, 2013 addressed to himself from Atty. Dominick Thomas to indicate that Talbot Partners is granting an extension to the P&Z Commission to extend the decision period until April 25, 2013.

Mr. Schultz stated that their meeting will be held April 24<sup>th</sup> and they would like one day beyond that. He indicated that they expect to have all of their Commissioners and their Consultant present.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept the extension on the decision period for Application #12-21 until April 25, 2013.**

**APPLICATION #13-5, PETITION OF HAWKS RIDGE OF SHELTON, LLC FOR PDD ZONE CHANGE AND INITIAL DEVELOPMENT CONCEPT PLAN, (PHASE I: 60 SINGLE FAMILY DEVELOPMENT AND 80 UNIT MULTI-FAMILY DEVELOPMENT) LONG HILL CROSS ROAD AND BEARD SAWMILL ROAD (MAP 39, LOT 14 AND 17 AND MAP 51, LOT 7), LIP DISTRICT: RESCHEDULE PUBLIC HEARING DATE**

Mr. Schultz stated that the fourth Wednesday will be April 24<sup>th</sup> and they should have a full Commission and Staff.

Chair Parkins commented that this was rescheduled from March 27<sup>th</sup>. They will not be having a meeting on March 27<sup>th</sup>.

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to reschedule the public hearing for Application #13-5 for the Petition of Hawks Ridge of Shelton LLC for PDD Zone Change and Initial Development Concept Plan for Wednesday, April 24, 2013.**

**APPLICATION #13-2, KIDS ZONE REALTY, LLC FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (CHILD DAY CARE CENTER WITHIN DWELLING UNIT), 7 PLATT ROAD (MAP 64, LOT 8), R-1 DISTRICT (PUBLIC HEARING CLOSED ON 2/27/13)**

Chair Parkins clarified that Tony & A.J. were still on line and they confirmed that they were.

Comm. Flannery asked if this was open for discussion. Chair Parkins responded yes, it is.

Comm. Flannery stated that she was upset that they are knocking down walls in this house to make the upstairs no longer a family house but into a business by taking down bedroom walls, living room walls, removing the kitchen, etc. She stated that this is an R-1 zone and this should remain a family house. They should not convert the basement into the family living area. They are making this house into a business by knocking down the walls.

Chair Parkins indicated that maybe they should touch a little bit on their regulations regarding this – in the Special Exception area.

Mr. Schultz responded that he has received comments from the Commission regarding a couple of issues. This section is under 33.16 which is the Special Exception is why there was a public hearing. This is the first time that this regulation, adopted about 15 years ago, has been used in the City of Shelton for a child daycare center within a residential dwelling unit, and in this case, it is in an R-1 zone.

Mr. Schultz read from the regulation that the childcare daycare center shall conform to the following – he added that all of these issues were gone over by the Applicant's attorney; however, he wants to go over it again because some Commissioners have some issues. If they want some legal advice then this is the time to direct Staff to get that.

Mr. Schultz referenced Paragraph A that the person or persons conducting such use shall reside in the dwelling unit and that shall be no more than two non-resident engaged in the conduct of such use. In talking with Mr. Panico who drafted these regulations, it was subsequently adopted by the Commission. As was stated, the Greater Bridgeport Regional Planning Agency suggested that you not adopt this regulation because they thought it was too intensive a use in a residential zone. But, nonetheless, the Commission of 15 years ago thought that different types of child daycare uses should be allowed in residential zones. This is the first time that this has been used. The question has come up with several Commissioners regarding whether the “applicant” is the same as the “operator.” Mr. Schultz stated that is an issue. It was clarified by the Applicant’s attorney at the hearing, that the “operator” who will reside there is obviously not the “applicant.” If this is something that they want clarified, Staff can look into that.

Mr. Panico commented that the intent of allowing that type of a daycare facility in a residential area was to accommodate the possibility of someone opening up their home to daycare. He stated that he thinks the Commission has to ask themselves whether this application before them really fulfills that intent or not. He added that they aren’t quibbling about the words of who the “operator” is and who the person living there is. To think of it in terms of taking an existing single family residence and totally rehashing it into something that really doesn’t seem to fulfill the intent of preserving it as a single family residence and in doing that in order to be able to accommodate the 20 children. Mr. Panico stated that in his estimation he is not convinced that they have preserved the residential intent of the regulations. He thinks that they have to pick it apart and maybe they want to get a legal opinion on it but that disturbs him quite a bit.

Mr. Panico stated also that Atty. Anthony’s interpretation of the fact that he’s entitled to this because of the fact that this is a pre-existing lot from years before zoning. In his estimation that really doesn’t override the requirement in the Special Requirements of your regulations that says in order to qualify for this, it has to be a conforming lot and in R-1 zone a conforming lot is 40,000 square feet.

Mr. Schultz stated that is paragraph 1 R-1 (inaudible)...

Mr. Panico added that 29,000 square feet does not conform despite the fact that it may be a (inaudible) or pre-existing, non-conforming lot. Mr. Panico stated that in his estimation one does not override the other but once again if they are going to go Corporation Counsel and get a legal interpretation then they might want to clarify that one as well.

Chair Parkins stated that would be “d.”

Mr. Schultz added that it would be “a” and “d.”

Mr. Panico stated that some valid points were brought up at the hearing with respect to preserving the physical exterior of the house but what about the siting of the house putting a seven car parking lot, big rubbish containers, etc. He added that in his opinion, they have changed the character of the single-family residential setting. In contrast to some of the other daycares that they do have sprinkled around town where you really don’t know in looking at them that there is a daycare there. They really do it in an unobtrusive way but this doesn’t seem to meet that test in his estimation. Mr. Panico commented that he has some serious reservations about it.

Mr. Schultz asked if they would like to direct Staff to get a legal opinion because he’ll get on that right away so that they can have an opinion for the next meeting. The Commission now has 65 days to review this application. He asked if everyone was in agreement with that.

Comm. Flannery, Comm. Dickal and Comm. McGorty indicated agreement.

Chair Parkins responded that she would certainly like to have it on “d” because she doesn’t think that it is as ambiguous as ? (inaudible). She realizes what the intent may have been but, again, it is what their regulations state now that they have to consider.

Mr. Panico stated that he can't certify taking a single-family residential unit, ripping out half of the living space on the main floor and then trying to replace the dwelling unit downstairs in the basement – he thinks it is a real reach.

Chair Parkins commented that it is basically taking a residential house, turning it into a commercial operation and putting a rental apartment downstairs.

Mr. Panico responded exactly and he doesn't think that was the intent of that regulation.

Chair Parkins stated that they would direct Staff to get the opinion of legal counsel on a, c and d – well, actually all of them – 33.16.1a, c and d.

Comm. Harger asked about 3 (inaudible)...

Chair Parkins responded no, they've got adequate off-street parking.

Comm. Harger commented, no there were more (inaudible)...

**On a motion made by Thomas McGorty seconded by Nancy Dickal, it was unanimously voted to direct Staff to obtain legal opinion from Corporation Counsel regarding Application #13-2.**

**APPLICATION #13-3, BISHOP GOLF, LLC FOR MODIFICATION OF STATEMENT OF USES AND STANDARDS FOR PDD #30 (NEW USE: DRIVING SCHOOL), 781-785 RIVER ROAD (MAP 12, LOTS 29 AND 43)**

Mr. Schultz read a draft report resolution dated March 12, 2013 regarding Application #13-3 for the new use of a driving school.

**\*See attached Report Resolution Application #13-3 Bishop Golf, LLC for Modification of Statement of Uses and Standards for PDD #30 for a New Use Driving School, 781-785 River Road.**

Comm. Harger requested a condition that there be no parking on River Road.

Chair Parkins commented that was already a part of the PDD.

Comm. Harger asked about there being no correspondence from the Fire Marshal or the City Engineer and she wanted to know if that was because of a lack of correspondence.

Mr. Schultz responded no, they chose not to have any. The Fire Marshal gets involved with the occupancy and the CO is issued by the Building Official and he does a joint inspection but because this is just a new occupant in the Mezzanine he doesn't have any concerns.

Mr. Panico asked what the effective date would be.

Mr. Schultz responded March 22<sup>nd</sup>.

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was roll call voted (6-0) to approve Application 13-3 with the noted conditions.**

**APPLICATION #13-4, BISHOP MANAGEMENT OF SHELTON FOR MODIFICATION OF LIMITS OF PDD #73 AND DETAILED DEVELOPMENT PLANS (GRADING PLAN), 781-785 RIVER ROAD (MAP 12, LOTS 11, 29 AND 43).**

Comm. Harger stated that she thinks that the homeowner that was here tonight has put up with a heck of a lot and she is shocked at what kind of potential damage he has incurred as well as the woman, the next door neighbor. She thought that with the State Law in Shelton being in the forefront with the blasting regulations that were passed a few years ago, that this would have been prevented.

Chair Parkins indicated that it is only prevented from the City's point to the extent that they enforce the blasting regulation. The Fire Marshal has no control over the insurance company and the blasting company and that is where the Applicant needs to step up and say something (inaudible)...

Comm. Harger agreed and (inaudible)...

Chair Parkins added that the onus is on him – the Applicant.

Comm. Flannery recalled that when Split Rock blasted near her house, Monty Blakeman never reimbursed her \$4,000 for well damage.

Comm. Harger commented that it is just a shame that they've had to go through that.

Chair Parkins noted that they are being extremely gracious.

Comm. Dickal agreed that it was remarkable how civil they were.

Chair Parkins commented that when you are dealing with a homeowner like that, they really should go above and beyond to work with them because they aren't being unreasonable. Having said that, Chair Parkins indicated that they need to get that safe there.

Mr. Schultz indicated that he prepared a draft report resolution but he'll have to modify it because it is all inclusive. He added that they aren't approving the extension of the PDD Zone Change into that 20 foot but it is to authorize the construction of the retaining wall.

Chair Parkins added that it is still subject to design approval.

Mr. Schultz responded yes. He read the draft report resolution dated March 12, 2013 for P&Z Application #13-4 Petition of Bishop Management of Shelton to modify boundary of PDD #73 and final site development plans to accommodate the construction of a concrete retaining wall and associated regrading of property along the northerly property line on property located at 781 – 785 River Road. The subject petition was submitted in response to a Stop Work Order issued by Staff. The Applicant advised Staff that there was a need to construct a retaining wall to stabilize the soft spot in the rock cut in the northwesterly portion of the site. Furthermore, it was determined that the excavation in that area went beyond the limits of the property line and a property swap had taken place with the adjacent property owner to accommodate the encroachment.

Mr. Schultz added that they have a land swap going on which was identified that would allow you to consider the expansion of the PDD Zone Change because an encroachment goes into that piece.

He continued that accordingly, Bishop Management of Shelton submitted Application 13-4 as a response to the Stop Work Order (he added they stopped the job and submitted the plans – that is what they saw tonight) and seek approval modification of the boundary line (which they aren't going to act on tonight) by adding a strip of land which is approximately 20 feet in width to the northerly limits of the property. This additional property will allow for the construction of a concrete retaining wall situated in the northwesterly corner of the site to address the stability of that slope area. It will also allow for the final excavation of rock along the northerly property line. At the public hearing held on 3/12, the adjacent property owner expressed his concern with the proposed modification.

Mr. Schultz added that he wants to elaborate on that by including detail of finished grades, detail of the wall, detail of the fence including the increase in height to at least 8 feet, details of the fence style itself and the relocation of the evergreens to this side of the fence.

Comm. McGorty commented that he thinks they should be careful there because he mentioned that when you put trees right in front of a fence then there is a mechanism for the kids to climb on.

Comm. Dickal commented yes the branches(inaudible) ...

Comm. McGorty stated that when he said that, John Wardowski said “oh yeah, I didn’t think of that...”(inaudible)...He thinks that they should be careful with that wording right there.

Mr. Grasso? stated that he thinks they can address that.

Chair Parkins asked if this was a resolution that Rick is preparing for them to vote on after they close the public hearing – not tonight.

Mr. Schultz responded no, he has to modify this for the Commission to be able to vote on the retaining wall because that retaining wall has got to be put up.

Comm. McGorty stated that the vote is strictly going to be for the retaining wall and everything else will follow.

Chair Parkins asked how they can vote on the retaining wall when (inaudible)...

Comm. McGorty stated that this is something that is quick thinking (inaudible)...

Mr. Schultz stated it was within the PDD.

Chair Parkins stated that she understands that but how are they are going to approve a wall without knowing what the aesthetic treatment will be - So, they are going to approve a concrete wall.

Comm. McGorty added that they could make it subject to final finish.

Chair Parkins stated that they have to get started on it.

Comm. McGorty indicated that it is going to be concrete – it is going to be cement no matter what - but how they face it...

Mr. Schultz stated that it would be poured concrete.

Chair Parkins indicated that they said something about stamping it or putting a design on it with patterns.

Comm. McGorty commented that they can do something in the form that puts modeling on it.

Mr. Schultz indicated that they are going to see the design.

Chair Parkins commented yes, the form - that’s when they are constructing it.

Comm. McGorty indicated that if they don’t do it that way then they have to do some sort of stone or other face...

Comm. Dickal stated that they tried ivy and it looks untidy (inaudible)....

Mr. Schultz indicated that they have veneer, they have the forms that go up which puts designs in it because that is what the stakes do.

Comm. McGorty indicated that he hates to hold it off to see the stampings because he thinks that with the warmer weather coming and the more rain they get then there’s more erosion.

Chair Parkins stated that she doesn’t want to hold it off either.

Mr. Schultz indicated that he doesn’t think that they could finish the ramp and the installing the forms...

Comm. McGorty commented that there is a lot that has to happen just to get there to do it.

Mr. Schultz indicated that the next meeting was April 9<sup>th</sup>. There were no concerns expressed by the Fire Marshal or City Engineer.

Chair Parkins stated that she wanted to make it clear to them that if they don't come up with something aesthetically pleasing now while they are building the wall, then they are going to have to treat it afterward and ivy is not going to be the answer.

Mr. Schultz stated that essentially they need a motion to approve the construction of the retaining wall associated with Application #13-4 subject to the following conditions. He will include all the details they've discussed.

Chair Parkins asked who wants to approve this resolution without (inaudible)...

Mr. Schultz stated that they've got to authorize that retaining wall.

Comm. Flannery commented that this is like ObamaCare.

Mr. Schultz added that he was not lifting the Stop Work Order so they also have that. If something happens, he has to modify the Stop Work Order. There is a Stop Work Order that has not been lifted by him or directed by this Commission.

Chair Parkins responded that she was not saying that she didn't trust him but she is literally putting her signature, her vote on something that (inaudible)...

Mr. Schultz indicated that it was her call – or she could just authorize the construction of the ramp.

Comm. McGorty stated that they could authorize based on (inaudible)...

Mr. Schultz restated that she could authorize the construction of the ramp because there is a Stop Work Order and they can't do any work.

Chair Parkins indicated that she wants to lift the Stop Work Order so that they can start making it safe.

Mr. Schultz responded - in part - but not to work on the rest of the site.

Comm. McGorty asked if she was concerned about the total resolution. What they want to do right now is approval to begin work on the retaining wall.

Chair Parkins responded OK but they have to put the conditions in there.

Mr. Schultz stated they would authorize lifting the Stop Work Order and authorize the work related to the retaining wall including the installation of the ramp but no forms.

Mr. Panico suggested putting in the ramp and footings.

Chair Parkins stated OK as long as they make it safe, she just wants to make sure that they know...

Comm. McGorty indicated that is first and foremost to stop any further erosion.

Mr. Panico told Rick Schultz to advise them that there is no pouring of the wall itself without final approval of the treatment of the face by the Commission.

Comm. McGorty asked if that has to be handled strictly at the meeting.

Chair Parkins responded that she doesn't see why.

Mr. Panico commented that if it is ready before it's time for a meeting, Rick can get their proposal, notify the various members and see what they think. If they are reasonably satisfied with it then they can go ahead and continue with the wall itself. He added that certainly the grading to create the road to get up to it, the pouring and forming of the footings themselves is a few days work right there.

Mr. Schultz added that no pouring of the wall shall be permitted unless authorized by the Planning & Zoning Commission – so it's your call.

Mr. Panico added until there is an approval of the face treatment.

Comm. McGorty asked if they'll be notified immediately as to when they are ready to pour the wall.

Mr. Schultz responded yes, absolutely.

Comm. McGorty indicated that he doesn't want to drag this out and make it worse than it is.

Mr. Panico indicated that they should be working on a face treatment immediately to show the Commission how they might be able to handle it.

Comm. McGorty asked if they have to have a meeting for that.

Mr. Panico responded not if they can prepare the drawings and Rick can run the drawings by everyone. He asked what they were looking for – some kind of paneling effect.

Comm. McGorty commented that Joe Grasso was talking about these forms that will have that detail and modeling effect built into them so when they pour it, it is built into the face

Mr. Schultz added that it is like a concrete patio.

Comm. McGorty added versus putting some bonding stuff on the front of it which will eventually fall off.

Mr. Panico stated that he wouldn't be in favor of that and indicated that a good, clean, poured in place retaining wall with some sort of articulation in the face with panels or a treatment of that sort in his opinion is the best way out.

Mr. Schultz added that they can also put coloring in it.

Mr. Panico stated that various concrete walls have been treated to make them look like more than just a solid homogenous wall. Whatever is out there, let them (inaudible)...

Comm. McGorty asked about a time limit (inaudible)...

Mr. Panico commented that doing it this way will get them off the dime and they'll start giving some thought to how to do it.

Chair Parkins responded OK, they are approving the wall and just not approving the aesthetics of the wall – the construction of it.

Comm. McGorty stated yes, they have to run it by us before they pour it.

Mr. Panico commented it's the wall proper (inaudible)...

Comm. McGorty stated yes, the footings and ramp (inaudible)...

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was voted (5-0) with one abstention to lift the Stop Work Order for Application #13-4 and authorize the construction of the retaining wall including the installation of the ramp and footings for work related to the construction on 781-785 River Road property with the stipulation that**

**no pouring of the concrete wall shall be permitted until the Commission has approved the final face treatment of the wall. Comm. Pogoda abstained from voting.**

Chair Parkins indicated that this motion passes.

### **NEW BUSINESS**

**APPLICATION #13-5, GARY DEWOLF FOR MODIFICATION OF SPECIAL EXCEPTION/SITE PLAN APPROVAL (MEDICAL OFFICES ON UPPER FLOOR), 887 BRIDGEPORT AVE. (MAP 8, LOT 20), IA-2 DISTRICT: ACCEPT AND SCHEDULE A PUBLIC HEARING.**

Mr. Schultz indicated that this was the Huntington Walk-In Medical Center under construction. He does not anticipate impact on the neighbors if they want to put this on the April 9<sup>th</sup> agenda.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to accept Application #13-5 and schedule a public hearing for April 9, 2013.**

### **PUBLIC PORTION**

Chair Parkins asked if there was anyone in the audience wishing to address the Commission on any item not on the agenda. There was no one from the public wishing to address the Commission. Chair Parkins requested a motion to close the Public Portion.

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

### **OTHER BUSINESS**

#### **APPROVAL OF MINUTES: 1/23/13 AND 2/19/13**

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was voted (5-0) to approve the minutes of 1/23/13 and 2/19/13. Comm. Flannery abstained from voting.**

#### **APPLICATION #12-22: BERNSTEIN SUBDIVISION: REQUEST TO MODIFY CONSERVATION EASEMENT AGREEMENT**

Mr. Schultz indicated that as the Commission is aware, they approved a two lot subdivision subject to a conservation easement being accepted by the Board of Aldermen. The City of Shelton has a boilerplate language and they want to deviate by adding the following language which he will read. He indicated that this precipitated it being assigned to the meeting agenda by Corporation Counsel and the Commission needs to approve it and then it goes to the BOA.

Mr. Schultz read that “said Conservation Easement shall conclude the Grantors and the Successors *blah, blah, blah...* from undertaking any activities prohibited in the City of Shelton’s protection of the Conservation Easement Ordinance which shall include but not be limited to clearing vegetation, excavation, filling, dispersing fertilizers or pesticides or constructions, *blah, blah, blah...* or in any manner disturbing the land except for the purpose of maintaining a walking path through that portion of the Conservation Easement in the rear of Lot 22 (that is one of the two lots that the Commission approved) to property of the Grantor on the other side of the rear (?inaudible) right-of-way; said path to no gradient of 6 feet in any way. The permitted activity in the easement area of Shelton shall include only clearing of brush and trees and maintaining a safe grade to the walking path.”

Mr. Schultz stated that this walking path is a deviation from the acceptable language that the Board of Aldermen will approve. He added that whenever there is a deviation, it has to go before this Commission and then the BOA.

Comm. Harger asked where this property was located.

Mr. Schultz responded this is before the Indian Wells Country Store – that property -the old Route 110 used to go through it and you could see it.

Chair Parkins commented that he said something about crossing the railroad and property on the other side of the tracks. She asked what he meant by that.

Mr. Schultz responded that they have the right to cross the railroad tracks in the new deed because this property precludes the train use. Mr. Schultz indicated that it's a reasonable request. It is not a public path. It is a private development. Staff recommends approval as noted. Usually, they don't need to do this but Corporation Counsel requested it.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to approve Application #12-22.**

#### **PAYMENT OF BILLS**

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve the payment of bills, if funds are available.**

#### **STAFF REPORT**

Mr. Schultz distributed and reviewed the P&Z Staff Report dated March 12, 2013 and discussed items such as upcoming ZBA pending applications, CT Siting Council issues and the UI Substation application, Zoning Enforcement and Sign Enforcement and upcoming meetings.

**\*See attached P&Z Staff Report dated March 12, 2013**

#### **ADJOURNMENT**

**On a motion made by Joan Flannery seconded by Nancy Dickal, it was unanimously voted to adjourn the meeting at 9:30 p.m.**

Respectfully Submitted,

*Karin Tuke*  
P&Z Recording Secretary