

SHELTON PLANNING & ZONING COMMISSION MARCH 9, 2010

The Shelton Planning & Zoning Commission held a regular meeting on March 9, 2010 at 7:00 p.m., in Room 303, 54 Hill Street, Shelton, CT. The Chair reserved the right to take items out of sequence.

Commissioners Present:

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

Staff Present:

Richard Schultz, Administrator
Anthony Panico, Consultant
Karin Tuke, Recording Secretary

Tapes (1) and correspondence on file in the City/Town Clerk's Office and the Planning and Zoning Office. Attachments are not available on the website.

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairperson Parkins began the meeting at 7:00 p.m. with the Pledge of Allegiance in the Auditorium. Before beginning the meeting, Chair Parkins wanted to acknowledge the passing of Ed Toohey, who was a former Planning & Zoning Commissioner who served during the mid to late 1980's.

AGENDA ADD-ONS

Chair Parkins indicated that she had three items to add on to the Agenda tonight which would require motions. Under Old Business, an Application for Certificate of Zoning Compliance #5246 and #5133.

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously voted to add Separate #5246 to the agenda under Old Business/Applications for Certificates of Zoning Compliance.

On a motion made by Virginia Harger seconded by Joe Sedlock, it was unanimously voted to add Separate #5133 to the agenda under Old Business/ Applications for Certificates of Zoning Compliance.

The third addition to the Agenda would be under Other Business.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to add an agenda item under Other Business, 8-24 Referral for the proposed disposition of the White Street right-of-way located adjacent to 475-479 Howe Avenue

OLD BUSINESS

APPLICATIONS FOR CERTIFICATES OF ZONING COMPLIANCE

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

Mr. Schultz asked if Mary Grant was present, and she was not. This is the application that had been tabled. The Commission wanted to find out if she could modify her sign. He requested that the Commission table this because it is an important issue.

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

SEPARATE #5233, SIGNS UNLIMITED, INC., 19 CHURCH STREET, SIGN

Mr. Schultz indicated that this was for the Huntington Congregational Church. There was no one present from the church. This is superimposed on to the lawn so that it is easy to read. It complies with the current sign regulations; it is consistent and complimentary to the historic district. Staff recommends approval.

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously voted to approve Separate #5233 for signage.

SEPARATE #5230, CREATIVE DIMENSIONS, 707 BPT AVE, WALL & MONUMENT SIGN REPLACEMENT.

Mr. Schultz indicated that this was for Fed-Ex, the old Kinko's. The applicant (unidentified) showed the rendering of the signage and photos of the changes to the existing sign which will now say Office instead of Kinko's. The new signs are LED, not neon, which is hopefully more energy efficient as well. They are replacing all the illuminations so the Fed-Ex won't change but there will be new lighting.

On a motion made by Joe Sedlock seconded by Joan Flannery, it was unanimously voted to approve Separate #5230 for wall and monument signage.

SEPARATE #5243, SIKORSKY, 6 CORPORATE DRIVE, BUSINESS

Mr. Schultz explained that Sikorsky is replacing the General Electric location. They are already in there, this is after the fact. It is 92,880 square feet, 410 employees, 9-5, M-F. It is their real estate development sector.

On a motion made by Virginia Harger seconded by Joan Flannery, it was unanimously voted to approve Separate #5243 for the business.

SEPARATE #5246, HOTEL SIERRA/TD BANK, BPT AVENUE, MONUMENT SIGN REPLACEMENT

Atty. Dominick Thomas representing the Applicants, showed a rendering of the changes to the monument signage. He stated that he got the approval for the first sign in 2008 and his understanding is that the Shelton Hotel Associates came back in and got an approval for something that looked like this. The only reason they are back in today, is because they have had some difficulty communicating with the TD Bank people. As they know, this sign was committed as a result of the restaurant saying that they didn't need to be on the sign because they were up in the front.

Atty. Thomas recalled that there had been a blank there for them if they wanted to be on it, but when the final one came out; they decided that they didn't want to be on the sign. When they came in with the approval, they used the TD Bank logo and the Hotel Sierra logo – finally they were called by TD bank because they wanted it to say "open 7 days." Upon communication, he was an observer at the tennis match when the emails went back and forth about this, and then they communicated per his instructions to speak to Mr. Schultz to see if it could be handled by Staff. Because it is a PDD, it is back before the Board and that is why they are here. So the reason they are here is because they want to add "open 7 days."

Comm. Flannery asked, even though the company says "Neon" it is not a neon sign correct?

Atty. Thomas responded no it can't be a neon sign. It is similar to what is there now which is internally illuminated. They did have to confirm that there were conduits running up to the sign.

Chair Parkins asked if it was all black like that.

Comm. Harger responded that at the bottom it says that it charcoal.

Mr. Schultz commented that every bank is going to go 7 days now – that is a big thing.

Chair Parkins asked if that meant that they will all have to come for signs that say "open 7 days". Atty. Thomas responded that with a whole row of them they don't have to.

Mr. Schultz responded that maybe package stores are next. Staff recommends approval.

On a motion made by Virginia Harger seconded by Joe Sedlock, it was unanimously voted to approve Separate #5246.

Separate #5133, 12 Hayfield Drive, in-law

Mr. Schultz indicated that Hayfield Drive is off of Maple Avenue. This is a colonial and the in-law would be in the basement area. He showed a floor plan of the proposed 550 square foot apartment. The owner's parents will be residing there. Staff recommends approval.

On a motion made by Joe Sedlock seconded by Joan Flannery, it was unanimously voted to approve Separate #5133.

APPLICATION #09-38, MARK IV CONSTRUCTION, INC. FOR TEMPORARY SPECIAL EXCEPTION SITE PLAN APPROVAL (FILLING AND GRADING), 11 LADYSLIPPER DRIVE (MAP 24, LOT 42), R-1 DISTRICT (PUBLIC HEARING CLOSED ON 2/25/10).

Mr. Schultz indicated that at the last meeting, the consensus of the Commission was to direct Staff to prepare a favorable resolution. He has done that and all the members have a copy of the report. He read the draft resolution dated March 9, 2010.

See attached Draft Resolution for Application #09-38 dated 3/9/10.

Mr. Schultz noted that it was determined that the two residents from #6 & #10 Greenfield Drive have wells. The resolution states testing for any wells within 500 feet, but he wants to make sure that #6 and #10 are tested because those residents represented themselves at the proceedings.

Mr. Schultz stated that the well testing is a very simple procedure, the Department of Health has sample test containers and they tell you where to send it.

Chair Parkins asked who does the actual testing. Is it the landowner themselves?

Mr. Schultz responded that the applicant would be processing it with the permission of well owners and the test results would be sent back to the applicant because there is a nominal fee for that. Copies have to come to Staff for the files and to the property owners.

Chair Parkins asked if the applicant needs permission to access the property and the well.

Mr. Schultz responded yes and they have to coordinate that. And as he indicated, at least #6 and #10 Greenfield Drive will be tested.

Chair Parkins asked what he means by at least.

Mr. Schultz responded that when they have blasting, they do within 500 feet so it was suggested that the 500 foot range be considered. But with the wells, they can be anywhere – in the front or it could couple hundred feet further away. He specifically wants to identify #6 and #10.

Chair Parkins indicated she understood - #6 and #10 – in the event that they may be outside of 500 feet.

Mr. Panico asked if they would measure the 500 feet from the nearest property ownership or to the house.

Chair Parkins responded to the well – but specifically those two and any others.

Mr. Schultz added that Ladyslipper Drive has public water – so it is the other neighborhood that is down gradient. As indicated in the report, the Commission over the course of the three meetings saw the evolution of the Site Plan. The consensus was 3-1, and the applicant agreed to do it. They want the chunks removed and when the fill is being removed, if it exposes asphalt, concrete and rebar, they'll get rid of it and dispose of it in a proper fashion.

Comm. Flannery asked what if they find out that the wells have gone bad, do they get hooked up to the city system.

Mr. Schultz responded that would be an extreme situation. They would have to work with the Valley Health and the Department of Public Utility.

Comm. Flannery asked who would pay for it.

Mr. Schultz responded that it would be an unknown.

Comm. Flannery asked if that could be put in the report, or no.

Mr. Schultz responded to Comm. Flannery that she needs to understand that there are specific steps when contamination occurs. The Health District and the State of Connecticut follow strictly these steps.

Comm. Flannery commented that if they get the wells tested one or two years from now, if they do go bad, do those property owners, now have to take care of it?

Mr. Panico responded that he thinks it would depend upon the nature of what caused them to go bad. Was it related to this activity or was it an entirely different reason.

Mr. Schultz added that the Health District will try to make that determination, because as they know, sometimes it is not that easy. They had issues on Lane Street, as Joan knows.

Comm. Flannery commented that she paid \$4K for a new well because of blasting in her neighborhood.

Mr. Panico indicated that testing results might show a bad result because of a problem with their own septic system.

Mr. Schultz stated that the Commission made it perfectly clear that the applicant needs to monitor this and the Commission wants to see him follow through because it is part of public safety and welfare.

Comm. Flannery commented that going back five years or whatever with Split Rock, Mr. Blakeman reassured her that if anything happened with her well, he would pay for it. Her well collapsed, and she had to pay \$4,000. She doesn't want anything to happen to these people and their wells. Her second question is about the rebar and the asphalt being removed from the slope but what about what is already there they aren't touching. What about that rebar?

Mr. Schultz responded that was an issue that concerned all the Commissioners here.

Chair Parkins explained that they have to take off the top...

Mr. Schultz added that there may be some areas that will be covered permanently and that is why the testing will be done.

Comm. Flannery asked how far the backyard goes out before it starts to drop, is it like 40 feet?

Mr. Schultz responded that it is a little bit more than that, he has it at 43 feet. It is 40% of the fill material that is scheduled to be removed.

Comm. Flannery asked what it was before or what it is right now.

Mr. Schultz responded that from the fence to the top of slope is 63 feet, then it drops down in a 1:1 slope.

Comm. Flannery asked if they were losing about 20 feet then.

Mr. Schultz responded, yes, approximately – that is still a lot of fill. This was not an easy issue to deal with because it is after the fact. This is kind of what Inland/Wetlands deals with when it is after the fact. With filling in the wetlands, they have to determine how much should be removed without removing the entire wetlands area. Mr. Schultz stated that this Commission held all the appropriate meetings, listened to all the comments; this is not a perfect solution, but it appears to be fair. They've given it a lot of consideration and they went through the steps of watching these plans be revised.

Mr. Panico asked if Item #8 concerning the wells needs to be strengthened with respect to warning the Applicant that he has a responsibility here. This just says testing should be done – he thinks what Joan is saying too.

Comm. Flannery responded yes, that was her point.

Mr. Panico indicated that if there is an issue it needs to be equitably addressed by the Applicant.

Mr. Schultz responded that he will include that – in the event of an issue, appropriate measures will be taken with Naugatuck Valley Health District.

Chair Parkins asked, if when they taking this fill out, can't the backhoe that is already there just lift up some of the dirt to see what is underneath it.

Mr. Schultz responded that they will be up there monitoring it. The simple answer is yes.

Chair Parkins added that if they could just lift it up without moving it to get an idea and put it back down.

Mr. Panico commented that he thinks that the person monitoring it will know there's a whole slab there even though only a corner of it is showing.

Mr. Schultz added that the property owner does not want it there.

Chair Parkins agreed that if they have the proper monitoring, there is a good chance they can ascertain if most, if not all, has been removed.

Mr. Schultz stated that this is a good case for the newer Commission members to see how this evolves, to go up there, after Staff says the work has commenced just to monitor it.

Mr. Panico commented to Joan that these things have a way growing too – if they see the corner of a slab and have to take a slab out, chances are that another one might be found right next to it even though it is two feet in – it is going to have to be removed. If they know it is there, then they have to take it out. The person monitoring this has to be right on the job watching.

Mr. Schultz added that fortunately, as they know, Mark IV, has the equipment to do this.

Chair Parkins commented that it is out there already.

Mr. Panico stated that once they dig a hole and expose a problem, it is just as easy to take the problem away as it is to cover it up again.

Chair Parkins indicated that she thinks that is a better solution than pulling it all out and bringing stuff back in.

Mr. Panico agreed that short of that, removing everything, cleaning up the fill and bringing it back in again would be a real horror show.

Chair Parkins stated that she thinks it is a better solution - taking as much measure as possible to guarantee and to hope that not much more stuff underneath there.

Mr. Panico indicated asked Rick if all that activity would be done before they bring in the additional six inches of loam on top of it, correct?

Mr. Schultz responded yes, absolutely.

Mr. Panico stated that hopefully, if they can get the stuff removed below the dense surface then they will put another six inches of loam on top of that. Hopefully, it will be done right.

Mr. Schultz stated that after a motion and a second, he would continue read the stipulations.

- A. Submission of a final revised site plan incorporating all requirements set forth by the Commission including a 3:1 slope, upgraded vegetation, restoration plan and guaranteeing all plant material for a minimum of one year from the day of installation.
- B. Submission of a monitoring program detailing truck traffic control. Mr. Schultz emphasized that this is very important because there will be a lot of activity going on there.

Sediment and erosion control – both on site and the tracking apron because they are getting into the muddy season right now and it can get out of control. Well monitoring and concrete, asphalt and rebar removal and disposal.

- C. Provide well testing for all private wells within 500 feet, he noted the addresses on Greenfield, of the fill area prior to the removal of the fill and for an additional two years completed annually on the anniversary date. All test results will be provided to Staff and property owners.
- D. Work shall commence within three months from the date of this issuance of permit, weather permitted and completed within one year.

Mr. Schultz added that the Commission could grant up to one additional year. The worst case scenario would be if they have a terrible wet season starting from May and they have to put it off. He told the Commission, that they have the ability, without having another hearing, to grant up to a one year period.

- E. Submission of a cash sediment and erosion control bond and site completion bond prior to the issuance of a permit in the amount to be determined by the Commission to assure satisfactory completion of all required mitigation work, landscaping, and the maintenance of sediment erosion control measures.

Mr. Schultz indicated that Staff will include the other notes.

Chair Parkins asked if that monitoring program would include the mud mats and any kind of street sweeping that needs to be done

Mr. Schultz added that they'd be communicating with the whole neighborhood – because that is what it is all about. Staff would be up there constantly and they will know who to call. They have two way radios and cell phones.

Chair Parkins asked who submits the monitoring program.

Mr. Schultz responded that is Mark IV Construction. Essentially, they are doing A-Z.

Chair Parkins asked if they would be submitting a plan to Staff including the use of mud mats, street sweeping, etc... She wants to make sure that street sweeping is included in that, if there is a lot of mud in the road.

Mr. Schultz responded that is part of the sediment erosion control – dust, mud, anti-tracking, etc.

Comm. Harger asked about 1A of the draft resolution where it mentions guaranteeing all plant material for a minimum of one year. She asked if they could discuss that because maybe it should be two years. This has been such

disruption of that whole environment up there that by they time things get going and cleaned up, maybe if it's too late in the season, they might get wiped out.

Chair Parkins commented that it would be one year from the date of installation not from the date of the motion. So, if it is planted in September than it has to be until the following September that it goes to.

Mr. Panico added that it takes them through a complete a growing season.

Comm. Flannery stated that if they are familiar with the Wells Hollow, in the development there, they put all these trees in. After the year was up, they all turned red, died and they were never replaced. She indicated that she agreed with Comm. Harger that is should be two years. Maybe they should just change that in general when something like this is done – it should be two years instead one.

Mr. Schultz asked if that was a consensus. Usually, they are guaranteed for a year, and if they die they get replaced and last another year – for the end result it will be covered.

Chair Parkins asked if anyone had any questions before making a motion.

Comm. Flannery commented that being the science teacher, she is still concerned about the rebar and the asphalt that they will never see and the oil seepage from it. But now that she knows Ladyslipper has city water, maybe something could be done. She asked if they could be hooked up with city water, if there is a problem with the wells down below.

Mr. Panico responded that he thinks that would depend upon the nature of the problem and what the proper remedy is. If the well had to be replaced, extending into city water might be a viable alternative.

Mr. Schultz stated that there are steps in place that the Health District deals with that. They see it all the time with 8-24 Referrals and the extension of public water because of a contaminated well or lack of yield. And then the health district issues the order.

Chair Parkins stated that she thinks this will be a very well watched job so it will be removed and won't become a problem.

Comm. Harger asked if somewhere along the way something doesn't work as well expected, would it come back to Rick.

Mr. Schultz responded yes, he would bring it up under his Staff Report.

Comm. Harger commented that she just wants to be advised of it.

Mr. Schultz responded that Staff is going to encourage Commission members to go out during the week or on the weekend. They will want to watch the evolution of it.

Chair Parkins asked Rick if he had staff in terms of watching and being mindful of what is under there and getting it all out.

Mr. Schultz responded that with the part time help that they have, they are pretty close to covering a full 7 days of monitoring it, if they have to.

Chair Parkins indicated that she wanted to make sure he has the staff available to do that.

Mr. Schultz responded yes and phone numbers will be given to the property owner and the neighbors as to who to call if the need arises – because they get crazy storms and if something should happen they have to get out there and contact the right people. They also have digital cameras to take photos for the file.

Mr. Panico noted that the Commission is concerned about the time when that material is being removed and with whatever gets exposed, they have to be sure it comes out.

Chair Parkins commented that they have to try to ascertain if there is anything else underneath it – not actually making piles and moving it all but to the best of their ability using the equipment they have on site.

Mr. Schultz added that is why the Commission is using the words “disposed of properly.” They don’t want this to be headache for another town or another area.

Mr. Panico stated that he thought there should be some additional words in regard to testing and identifying a problem. It is fine but he thinks they need to convey the thought that problems need to be resolved by the applicant.

Mr. Schultz responded that he put the wording in for Naugatuck Valley Health and DEP in the event of an issue, there has to be proper notification.

Comm. Flannery commented that she thought it said the applicant should be involved.

Mr. Panico clarified that if it is determined that the applicant’s activity had a role in the failing of the well, and then the applicant has a responsibility. He asked Rick if he felt this covered it.

Mr. Schultz responded yes, and he is going to cc Naugatuck Valley Health on this.

Mr. Panico stated that he was more concerned about the applicant being aware.

Mr. Schultz responded yes, absolutely.

On a motion made by Joe Sedlock seconded by Virginia Harger with the conditions cited by Staff and the modifications to the draft resolution, it was roll call voted (4-1) to approve Application #09-38 with the changes discussed at the 3/9/10 meeting. Comm. Flannery voted in opposition.

NEW BUSINESS

APPLICATION #10-03, SCHIABLE REALTY, LLC FOR MODIFICATION OF SITE PLAN APPROVAL (RESTAURANT/PUB), 475 HOWE AVENUE (MAP 129D, LOT 33) CA-3 DISTRICT – ACCEPT FOR REVIEW

Mr. Schultz indicated that there are two parts to this; there is an 8-24 Referral. Essentially this is to accept it, to modify it because this is just the lower level on Howe Avenue for the package store. They will also be acting on the 8-24 Referral on the excess right-of-way. Comm. Harger indicated that she would put it back on the DSC agenda.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to accept Application #10-03.

Chair Parkins asked if anyone had any questions under Old Business/Applications for Certificates of Zoning Compliance on Standards 1 -10.

Mr. Schultz commented that there are two new single family dwellings so things are looking better.

Comm. Harger asked Rick if there was anything out of the ordinary to worry about with these home offices.

Mr. Schultz responded no.

Chair Parkins continued with New Business.

NEW BUSINESS

APPLICATION #10-04, KEVIN RUSSO FOR MODIFICATION OF SPECIAL EXCEPTION APPROVAL FOR A CRD DEVELOPMENT AND RE-SUBDIVISION OF LOT 7, MEADOW WOODS ESTATES, 7 PLUM TREE LANE (MAP 145, LOT 124) – ACCEPT AND SCHEDULE PUBLIC HEARING

Mr. Schultz stated that as he reported at their February meeting, the Commission lost the lawsuit on a technicality but nevertheless, this Commission felt it was not worth it to appeal it – so the Applicant is moving ahead for the 8th lot. He checked with Corporation Counsel, and they have to fulfill the public hearing requirements and Staff recommends April 28th, the 4th Wednesday.

Comm. Flannery asked what the zoning problem was for this application.

Mr. Schultz recalled that this Commission several years ago determined the 8th lot. He explained the requirement for a 150 foot square that has to fit inside the lot without encroaching into an easement. This has a high tension wire easement, so the Commission indicated that they have never approved a lot that did not have the square in the lot. They went to ZBA for relief which they got and P&Z Commission challenged the ZBA.

Mr. Panico asked what the technicality was.

Mr. Schultz stated that it shouldn't have been the Planning & Zoning Commission, it should have been from Richard Schultz, Zoning Officer.

Everyone on the Commission groaned in unison and agreed that was terrible.

Chair Parkins asked why they aren't appealing that.

Mr. Schultz responded because the appeal period is over and Asst. Corp. Counsel...

Mr. Panico asked if it was going to stand.

Mr. Schultz responded that it stands.

Mr. Panico commented that puts them in the position of disregarding their own regulations. He asked if they would be reviewing this application under the purview of variances granted by ZBA.

Mr. Schultz responded yes, correct.

Mr. Panico asked if that meant it wouldn't change their approach on their own regulations.

Mr. Schultz responded yes, that's right.

Mr. Panico commented that if that is the case, it's fine; because he doesn't think they should back off from how they've been interpreting that particular provision. It is perfectly clear and understandable.

Mr. Schultz commented that when they have a regulation that is ambiguous, it has to be clarified.

Mr. Panico responded that it was not ambiguous.

Mr. Schultz stated that to some people it was.

Chair Parkins added that there was no hardship on that.

Mr. Schultz suggested April 28th for the public hearing.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to accept Application #10-04 and schedule a public hearing for April 28, 2010.

PUBLIC PORTION

Thomas Hanko, 6 Greenfield Drive, addressed the Commission. Mr. Hanko apologized that his issue was on the agenda but he needs to clarify something that came out in their decision. He stated that he never represented that he has well water on his property and they've included that in their decision.

Mr. Schultz asked what his address was.

Mr. Hanko responded that he is at 6 Greenfield Drive.

Mr. Schultz asked him if he had public water.

Mr. Hanko responded yes.

Mr. Schultz responded that it doesn't say 6 & 10 in the stipulations, it says within 500 feet, but he apologized on that oversight, but it is #10.

Mr. Hanko asked to have a copy of the final decision from the Commission. Mr. Schultz gave him a copy of the resolution report.

Mr. Schultz asked him how did he get water and #10 didn't.

Mr. Hanko responded that #10 chose not to hook up.

Mr. Schultz assured him that Staff has to work very closely with the neighbors, so he'll be talking to him.

With no further comments from the public, Chair Parkins moved on to Other Business.

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

ON A MOTION MADE BY ANTHONY POGODA SECONDED BY JOE SEDLOCK, IT WAS UNANIMOUSLY VOTED TO CLOSE THE PUBLIC PORTION.

OTHER BUSINESS

APPROVAL OF MINUTES: 1/27/10, 2/9/10, AND 2/24/10

On a motion made by Anthony Pogoda seconded by Joe Sedlock, it was unanimously voted to approve the minutes of 1/27/10, 2/9/10 and 2/24/10 with the noted changes.

8-24 REFERRAL: REQUEST FOR SEPTIC SYSTEM EASEMENT AREA WITHIN PUBLIC RIGHT-OF-WAY FOR 14 HORIZONS DRIVE

Mr. Schultz stated that this request is from the Mayor's Office dated March 3rd requesting an 8-24 referral for the purpose of reviewing the easement restriction in the public right-of-way in the vicinity of 14 Horizons Drive. He passed around the location map and noted that none of the septic systems in the reserve area fall within the right-of-way but that area has to be free and clear of man made structures. He read the City Engineer's Report dated March 9th.

***See attached City Engineer Report to Richard Schultz dated 3/9/10.**

Mr. Schultz added that the other extreme is to do substantial grading and obviously, this Commission would rather see the preservation of natural features. He indicated that the BOA will receive the City Engineer's letter as well.

Chair Parkins asked how they got a lot that wasn't approved.

Mr. Schultz responded that the lot was approved, this is an older one approved in the 70's, and now with the restrictions that they have for the septic systems and the 100% reserve area.

Chair Parkins asked if their regulations changed since this lot was developed.

Mr. Schultz responded yes, Valley Health regs. They have many of these one acre lots that were marginal because of rock out cropping, shallow bedrock, bad soils and now because the value of the homes are \$500K plus, they can afford to put in more expensive septic systems.

Mr. Panico commented that it really wouldn't impair installing cable and stuff like that. Mr. Schultz responded that this is something that they won't see too much.

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to report favorably on the 8-24 Referral: Request for septic system easement area within public right-of-way for 17 Far Horizons Drive.

8-24 REFERRAL FOR THE PROPOSED DISPOSITION OF THE WHITE STREET RIGHT-OF-WAY LOCATED ADJACENT TO 475-479 HOWE AVENUE

Mr. Schultz read the 8-24 Referral from the BOA dated February 22, 2010 regarding a motion made at the 2/11 BOA meeting requesting the 8-24 Referral for the proposed disposition of the White Street right-of-way adjacent to 3475-479 Howe Avenue. It should be noted that the Commission did a planning exercise last month which was a precursor to the 8-24 Referral because the Street Committee wanted to know the planning implications on this.

Mr. Schultz recalled that the Commission's position was that it made sense and that they should proceed with an 8-24 Referral, which they are now seeing. He read the City Engineer's Report dated 3/9/10 with his recommendations.

***See attached report from Robert Kulacz, City Engineer, dated March 9, 2010.**

On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to report favorably on 8-24 Referral for the proposed disposition of White Street right-of-way located adjacent to 475-479 Howe Avenue.

APPLICATION #09-36 REQUEST FOR 90 DAY EXTENSION TO RECORD MYLAR MAP FOR DLUGAS SUBDIVISION

Mr. Schultz stated that they have a request from James R. Swift dated February 23, 2010 on behalf of his client regarding P&Z Application #09-36 Dlugas property, 88 Valley Road, a 2 lot subdivision approved by this Commission. This letter requests a 90-day extension of the subdivision approval for the above project. The applicant has two 90-day extensions, this would be the first. Staff recommends approval.

On a motion made by Virginia Harger seconded by Joan Flannery, it was unanimously voted to approve a 90-day extension to record a Mylar map for Dlugas subdivision, Application 09-36.

SUNSET RIDGE SUBDIVISION: REQUEST FOR RELEASE OF PERFORMANCE BOND FOR ACCEPTANCE AT WHIPPORWILL ROAD

Mr. Schultz indicated that this particular subdivision had some litigation regarding the detention basin which has been resolved, but this is specifically to accept Whipporwill Road into the City street system. Accordingly, he read the letter from the City Engineer.

***See attached correspondence from Robert Kulacz, City Engineer, dated March 9, 2010.**

Mr. Panico asked if, in the beginning of the report, what the date was that this was approved and done.

Mr. Schultz responded that this was approved in June of 1998 – 12 years ago. The City has been maintaining the property, so it was suggested by the applicant to ask P&Z to accept the infrastructure – the road.

Mr. Panico asked if that hadn't been done on several other occasions in the past – he knows that the City Engineer has commented that the road has been there several years now so there was no sense going to a maintenance plan. Doesn't that apply here too?

Mr. Schultz responded that it's the Commission's call. They can approve the release of the \$5K cash performance bond and not post the \$5K maintenance bond or convert it to a maintenance bond, but the City Engineer is recommending it. As they know, the \$5K is minimal. He asked Atty. Thomas if he wanted to add anything.

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission. Atty. Thomas commented that there is much more to it than this – he read them a letter from October 30, 2002. When he made the request, and the City Engineer's report came in, it had nothing to do

with Whippoorwill. He indicated that this was the only town, in the towns that he deals with, that when someone posts a maintenance bond, the Town goes out and plows. When he was Oxford Town Council, a request came to him for a hill like this that asked the town to plow it and it was bonded – he said no. When it is a maintenance bond, the developer plows it because if he rips up the pavement, then he fixes it. Shelton does it differently. He didn't do this subdivision. So in 2002 when he was involved with this, no one ever said to him that they hadn't accepted the road yet. Of course, if they had, he would have pursued it. The issues that he read were the issues. They came back in 2004 again with a request to reduce the bond because the bond had been knocked down to \$10K at that point. In 2004, because they are involved with the DEP and everything, the focus was on what they call the "Bruno Swail." At that time, the litigation was about to be settled and he was appointed as the ombudsman to coordinate all the stuff that went on with the City, the insurance company and Don Ballou who handled it. Again, no one mentioned Whippoorwill Drive. Atty. Thomas stated that he was holding – the insurance company has put up \$213K and he has been functioning as the bank drawing down as a construction mortgage. All the work has been completed, inspected by Don Ballou who was appointed by the court. He has been keeping the City Engineer's Office advised. Everything was completed, signed off on, there were two extras, the detention pond was completely rebuilt, the swail was completely done – and he is holding a \$300,000 retain age – not set by him – set by Don Ballou who has coordinated this with the DEP and that is being held in his trust account. He is not to release it until they have gone through May, they are concerned about the growing season. But to hold this bond, at this point, when the City has been plowing the road for 12 years - there are cracks, maybe because the City used the wrong kind of salt, he doesn't know. He thinks it is patently unfair to Mr. Budenhagen to hold his money up when the town – he wasn't aware that the City hadn't approved it. He added that if they had mentioned it – he was involved in this in 2000, 2002, 2004 with respect to the bond and not once did anybody say that the road had not been approved. He thinks it is unfair and thinks they should send it to the BOA and release it.

Mr. Schultz commented that the BOA are going to have the final say – that's the checks and balances. If they approve the release without the stipulation, it still goes to the Aldermen. They are going to read the City Engineer's letter.

Atty. Thomas commented that he'll have to deal with it then.

Comm. Sedlock asked if they are plowing it, why hasn't it been approved.

Chair Parkins responded that it's an oversight – the assumption.

Mr. Schultz indicated that they have many roads for a variety of little things like the curbs, the developer doesn't pursue it, so they hang on to the bond.

Comm. Sedlock asked if there wasn't a timeframe on that.

Mr. Schultz responded that everything has to be done within five years – that is accepting it and getting on the maintenance.

Atty. Thomas commented that their biggest problem is that they plow it and maintain it. If they did what other towns do and say, when there is a maintenance bond on it, the developer plows it. That is the way it gets done. Once it gets plowed, the developer isn't going to worry about it.

Chair Parkins commented that the developer still has liability until the City accepts the road.

Atty. Thomas responded that unless he comes into his office and asks him that and he tells him that – most of them aren't going to fix it.

Mr. Schultz responded that he raises an interesting issue – when they look at the subdivision regs down the road, if they aren't going to service the road, it will force their hand to get the road accepted instead of dealing with this. It needs to be re-looked at.

Atty. Thomas commented that apparently there is some sort of a form that the developer has to fill out.

Mr. Schultz responded that they finish within two years, State statutes give them five – so the infrastructure has to be done within two years. It is just the acceptance of the road that gets delayed sometimes.

Comm. Sedlock asked if this was done by the BOA.

Mr. Schultz responded yes, they have the final say. It goes into the road system after the BOA accept it.

Chair Parkins added then they can set the conditions in terms of the acceptance of the road, this Commission just decides whether to release the bond or not.

Atty. Thomas commented that from the P&Z perspective – whether it is OK to send it to them. He's going to have to discuss it with the BOA but they are more aware of this issue and the Bruno litigation.

On a motion made by Joe Sedlock seconded by Virginia Harger, it was unanimously voted to release the Performance Bond for acceptance of Whippoorwill Road without the stipulation of posting a maintenance bond.

Mr. Schultz stated that they have to get this road into the City system, that's a priority.

Atty. Thomas made a comment that this week he was tasked with getting certified copies of minutes. The minutes that are online do not have the attachments. The minutes in the P&Z Office do have the attachments. Members of the public that he spoke to were not aware of it either. Everybody thought that what was online was everything that was in the minutes. He doesn't want to put more work on Rick to have to scan in all the attachments connected to the motions.

Mr. Schultz responded that they are covered now – they have a color scanner now.

Atty. Thomas indicated that it is just something that has to be addressed because of issues with respect to records and everything like that.

PAYMENT OF BILLS

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

STAFF REPORT

ZBA Application #210-1 is back on that agenda March 16th for the conversion of a 3 family to a 4 family out by St. Joe's. The Commission directed Staff to write

a letter indicating that there appears to be no hardship, it is self-created and it does not comply with the on site parking requirements. Mr. Schultz indicated that part of the parking encroaches in the City right-of-way. That letter was sent to the ZBA Chairman. If it is granted, he'll let them know at the next meeting.

90 Oliver Terrace

Mr. Schultz indicated that they all have a copy of the application to DEP. Staff will be meeting with the Applicant to go over some site plan related issues and will report back to the Commission at the March meeting.

Chair Parkins asked the Commissioners to keep in mind when reviewing the application that this Commission is limited to its control of this industrial zoned area. Their jurisdiction really is to the site plan itself. There have been some changes to the site plans. She believes there were some minor modifications to the site plan since it was last approved by this Commission. It warrants them coming back to the table and explaining the modifications.

Comm. Flannery commented that they have ordinances saying that you can't bring material outside of Shelton to be recycled.

Chair Parkins responded that does not apply to this. They had Corporation Counsel look into that. It was a precursor to the transfer station. It does not apply to recycling.

Mr. Schultz added that the Aldermen need to repeal that, they haven't, but it's not applicable.

Chair Parkins commented that they will not be holding a public hearing. If there's a public hearing held, it will be on the DEP application and up to the DEP.

Mr. Schultz indicated that the next special meeting will be held on March 24 at 7 p.m. to continue the public hearing for the Crabtree dealership property.

ADJOURNMENT

On a motion made by Joan Flannery seconded by Virginia Harger, it was unanimously voted to adjourn at 8:20 p.m.

Respectfully submitted,

Karin Tuke
Recording Secretary, Planning & Zoning Commission