

EXECUTIVE SESSION

The Southington Planning & Zoning Commission entered executive session immediately preceding the Planning and Zoning Commission meeting with the following in attendance in order to discuss pending litigation, CGS 1-200-9c.

The following Commissioners were present, viz:

Kelly Kennedy DelDebbio	Francis Kenefick
Michael DelSanto	James Sinclair
Dawn Miceli	Zaya Oshana, Jr., Chairman

Alternates: Dennis Vachon
 Steve Kalkowski
 Lisa Conroy
 Paul Chaplinsky

Ex-officio members present were as follows, viz:

Mary F. Savage-Dunham, Town Planner
 Mark J. Sciota, Deputy Town Manager/Town Attorney
 John Weichsel, Town Manager
 Steven Byrne, Special Counsel

Absent: Patrick Saucier, Commissioner

No motions were made or votes taken during executive session.

Mr. Sinclair made a motion to adjourn from executive session.
 Mr. DelSanto seconded. Motion passed unanimously.

(Executive session was adjourned at 7:00 o'clock, p.m.)

Mark J. Sciota
 Acting Secretary

PLANNING & ZONING COMMISSION
 Regular Meeting
 October 20, 2009

The Planning & Zoning Commission held a regular meeting on Tuesday October 20, 2009. Chairman Zaya Oshana, Jr., called the meeting to order at 7:10 o'clock, p.m.

The following Councilpersons were present, viz:

Kelly Kennedy DelDebbio	Francis Kenefick
Michael DelSanto	James Sinclair
Dawn Miceli	Zaya Oshana, Jr., Chairman

Alternates: Dennis Vachon
 Steve Kalkowski
 Lisa Conroy
 Paul Chaplinsky

Ex-officio members present were as follows, viz:

Mary F. Savage-Dunham, Town Planner
 Anthony J. Tranquillo, Director of Public Works/Town Engineer
 Mark J. Sciota, Deputy Town Manager/Town Attorney
 Steven Byrne, Special Counsel

Absent: Patrick Saucier, Commissioner

The Chair seated Commissioner Vachon for Commissioner Saucier this evening. A quorum was determined.

The Pledge of Allegiance to the American Flag was recited by everyone in attendance.

STENOGRAPHER'S NOTE: The Minutes are now being prepared in summary style. You may refer to the audio or video tapes for more details.

ZAYA OSHANA, JR., Chair, presiding:

Approval of Minutes

A. Regular Meeting of October 6, 2009

Mr. Sinclair made a motion to approve and Mr. DelSanto seconded the motion. Motion passed unanimously on a voice vote.

5. Business Meeting

A. Zoning Regulations - 228 Main Street

The Chair introduced the item indicating that over the last several weeks this commission has been meeting in executive session and we have been discussing the item related to VIP. We have contracted with and been discussing with a couple of attorneys as well as amongst our staff. We have been in touch with and communicating with the Attorney General's Office. We have also met with town staff, Commissioner DelSanto and I with the applicant and his attorney in discussions about this particular application.

Tonight we have with us Attorney Byrne who is one of the attorneys that we have been talking with on this case. Where we are at this point is we mentioned at the last meeting the commission would be discussing tonight what our next steps would be.

Attorney Byrne is going to be discussing with us a couple of the items that we have talked about as a commission. I'll ask Attorney Byrne to go over with us and with what we have been talking about.

Attorney Steven Byrne introduced himself as an attorney with an office in Farmington and my practice is limited to zoning law specifically from the side of towns and cities. I do not represent developers. I strictly with local zoning commissions, zoning board of appeals and wetlands commissions. That's why I was asked in to come to help address an issue regarding a permit that was issued to a store that we call an adult entertainment business.

The store was issued a zoning permit. I was invited in to help the commission work through the process of where do we go from here and what options are available. The place to start is it's really the zoning regulations and state statutes which control what they can and can't do and you may have wishes and desires for them to take certain actions but they can only do what the law allows them to. They can only take actions which the Southington zoning regulations provide for.

The first question that came up was could we just revoke the permit that was issued. First thing I did is I turned to the state statutes and the zoning regulations and where is there authority to revoke the zoning permit issued. What I found in your regulations like pretty much other town in the state is in the zoning permitting process, it's basically a two step process.

The first step is go to the land use office to get your zoning permit and you present this is what I want to do. It's just a concept as to what I want to do with my land. If this is a permitted use listed, you get your zoning permit and proceed.

Then things get put in place, the project takes shape, something actually appears on the site, the property. At that point your regulations clearly provide that the zoning enforcement officer goes back and sees well is that use permitted. What you're going to do is permitted by the zoning regulations.

In essence what I told the zoning commission is that with this two step process, you really have two opportunities to look at a use of a particular piece of property. The first step when the zoning permit comes in the door, conceptual. And, you take them at their word. What is the use of the land going to be? Not who is going to do it but what is the use of the land going to be.

Then when that person has pulled their building permit and they've work done and inventory is coming to store, they're ready to move forward and now you have that second opportunity to come in and say, well I see now what you're going to do with the place. Is it still permitted? That's the process. That what I have explained to the commission.

I think where they are right now is that the store in question can now be looked at again and is that store as it's now been built out, is that permitted by the zoning regulations. If not, if they find it's not permitted, if what was presented is not the same as what's there, or even if this was issued in error and the guy did what he said, if he doesn't comply with the zoning regulations, then you cannot give a certificate of occupancy and then the store cannot be used. That applies to everyone in town. You need a certificate of occupancy to occupy a structure and you don't get the CO until you get a sign off from the land use office that that use complies with zoning.

This is certainly not done. The case still has a few steps to take before it is done.

Another reason I counsel this direction and not just revoking the permit is because there is something called the doctrine of municipal estoppels and it's long been accepted in the state. Basically what it is it doesn't just apply to land use, it really applies to any activity that is regulated by the state or local government. If you have to get a permit to do something (building, zoning), if you go in and you go to the proper person in local government or in state government that has the authority to issue that permit, if you tell the truth and you go in and you present your plan and they give you a permit and then you take steps, spend money maybe to fix up the store, that permit at that point cannot be revoked.

The protection is called vested rights and it protects all of us. That's again why I counsel that we just can't revoke a permit and we have to let it go to the next step which is when a CO is requested by the property owner, then zoning gets to take another look at it to see if it is a permitted use.

In essence, there are two bites of the apple here. One bite when they take it out and the second process.

Now, if the CO is issued or isn't issued, that's not the end of it. The ZBA has the authority if a proper appeal is taken, to review that decision, whether the permit was issued or not. Another level of local zoning land use control.

It's actually three bites of the apple: (1) the initial permit comes in (2) then they take steps to put it in place and have it inspected for the CO and (3) then whether the permit is issued or not issued, appeal can be taken of that decision to the ZBA where it may be heard by local town officials. Only then would it get to court after the final step is taken.

In conjunction with that advice was, I drafted a letter that will be sent out to the property owner and his attorney so that they will be made aware of what I've said tonight. Outlining the remaining administrative process in the town regarding the Queen Street property.

Mr. Kenefick asked Attorney Byrne to explain to the people, if there's a motion to revoke the permit, what reason would there be to make the motion to revoke the permit?

Attorney Byrne responded a motion to revoke the permit; again, I don't see a mechanism in the local zoning regulations for that. But if that choice was made, again they would have to address the doctrine of municipal estoppels and try to say some how the permit was perhaps issued under false pretenses. But again because a permit is more of a conceptual plan, I feel the regulations address the issue that mirror revocation of the permit. I would counsel again, wait for the second step, the CO. If it doesn't comply with zoning, you can't open the store. It's basically the same thing. You have procedural steps in place and it's just a more prudent way to go, a well established way to go, very clear. To me as a land use attorney, I would be able to fully support that position. If a CO is not issued, then it goes to the ZBA, perhaps, if the owner wants to take an appeal or he may try again for a new zoning permit but the process is clear for everyone. That's what the courts are going to review. Fairness, procedural process.

If you just revoke the permit, then it kind of puts me in and our property owner under a little bit of uncertainty, a cloud as to what to do now. Was he denied his due process? Your regulations do provide another avenue.

Mr. Kenefick reiterated, basically, what you're telling us do not make a motion to revoke the permit. You, and how many other lawyers have said this? Attorney Byrne responded that certainly the Town

Attorney, we're in agreement on that. And, also just looking at case law, I cannot find cases --- that's not the way these cases get to court. Permits are not revoked. It goes to the next step which is the certificate of occupancy.

Mr. Kenefick asked Attorney Sciota to go on the record as saying the same thing. Attorney Sciota stated he agreed with Attorney Byrne 100 percent, as well as the other lawyers who spoke with you.

The next step was discussed further --- certificate of occupancy. That's your next opportunity which is your vehicle to not to revoke the permit, but just not approve the CO, but the effect is the same in that the store cannot open. Then there are clear procedural guidelines to go to the ZBA or they can start over and try for another zoning permit.

Discussion.

I am just more comfortable and I would recommend that you follow the more commonly accepted practice which would be allow your regulatory scheme to work as written. The two step process. And, then the ZBA.

Discussion.

Attorney Byrne reiterated he would recommend that avenue.

Attorney Byrne added you have to wait and you really can't speculate about what might go in there. The courts have been very clear lately with a lot of zoning and wetlands cases that you can't speculate, you have to have facts in place. We really do have to wait to see what is in that store and then go in and see if it complies with the zoning regulations.

Just because they have the zoning permit, they are not done with the process. The commission still has jurisdiction over this issue to see if this use complies with the zoning regulations.

Mr. Chaplinsky asked Attorney Sciota to comment about the other attorneys involved and whether they have similar recommendations, on the record? Attorney Sciota said he didn't think he was breaching any confidentiality at this point. We all concur that this is the best route to go.

Ms. Miceli asked Attorney Byrne: In waiting to issue or not issue the CO what're we talking about? What's the precedent then with regard to then stopping a business at that point? Has that happened before? I feel like once they're here, they're here. Can you speak to that a little bit?

Attorney Byrne reiterated without the CO, he can't open his doors for business. In practice he's going to want to use that store and make money so he's going to try to bring that store into compliance

with the zoning regulations. If he can't get a CO, he can't open for business. He is in the same position as if the zoning permit was never issued or revoked. He can't open the store for business.

Ms. Miceli pointed out there is harm on that end, too. We spoke about harm with regard to revocation of the permit but there is harm on your end, too, with what you're telling us to wait and do. You know what I mean? It's harmful to the business.

Attorney Bryne said what he recommends is that we need to show that we followed the proper administrative guidelines and also provided due process and that we followed accepted rules and practices that are well established throughout the state. The accepted way is basically and your regulations are not unique in that they provide a two step review of this.

Revoking the permit is not just done. In doing so, you would enter into basically a murky, unclear area. Ms. Miceli asked: Couldn't we set our own case precedent though in this town. Couldn't we lead the way for the State of Connecticut, with the Attorney General on our side? I apologize, I'm passionate.

Discussion.

Mr. Sinclair further asked: You said if we revoke the permit, we'd go into murky water. Has there ever been a situation that you can tell us where a commission felt that their staff had misinterpreted the regulation and revoked a permit and went to court one way or the other with any kind of outcome?

Attorney Byrne stated the problem with this permit is there's a 30-day appeal period when the permit has been issued and that boat has sailed. We're way past that appeal period. Where it's totally a bungled permit? Again, they wouldn't be able to get the CO as it wouldn't comply with zoning. It's set up to catch those situations.

Discussion.

Attorney Byrne brought up enforcement actions and situations under which they could be brought.

The Chair asked Attorney Byrne to explain if a motion was taken and a vote taken to withdraw or revoke the permit, can you take us through what the results of that would be, what the consequences are?

Attorney Byrne said his best guess is that if the permit were revoked, because there is nothing in here that addresses that administratively, you have no redress locally to address that revocation - you couldn't go to the ZBA because it is not a decision of the land use officer, your decisions don't go to ZBA for review.

What you would do is you would find yourself in federal court. What he would allege is you deprived him of a property right, that

zoning permit was a property right to use that property in the way he deems he should have the right to do.

He went to the proper officer, got a permit, expended a lot of money, there would be money damages against the town if they're successful. Quite frankly, since I brought up municipal estoppels, it wouldn't be a frivolous case on his part to pursue that route. Just giving legal advice, I want to steer clear of that when you can get what you want going another route.

The 1984 case based on the Civil Rights Act was brought up. It's a 1983 statute. Money damages would not be limited to his true economic cost which would be the money he spent to fix up the store, every day he's not open for business you would have data he would draw from other stores to show how much he's losing each day, attorney's fees I'm sure would be astronomical. You'd be on the hook for those. And, it's just a place we really don't need to go because there is another avenue.

The Chair brought up the doctrine of municipal estoppels. If the facts were not clearly laid out at the time of the permit, information wasn't clearly defined and a permit was issued. If the commission defines what would be or would not be a covered item to meet the definition of a sexually oriented business, if this commission defines differently than what the applicant in their application defines as to what would be or would not be covered. That's what lead to the definition of this retail establishment. As to the percentages of stock material, there is some uncertainty as to what those numbers mean stock material versus the entire store inventory. That could be a vast difference in numbers.

The section of the regulation that talks about 10 percent of presentation times wasn't even addressed in the permit. From your legal perspective, when you look at municipal estoppels which says you've got to rely on factual information going back and forth and the permit was granted based on the truth of the information, full information going back and forth. If there was unclear information going back and forth, not fully disclosed, not full information going back and forth, do you see that as an issue?

Attorney Byrne answered that doctrine has four parts:

- An authorize of the municipality was the person that issued the permit. That was done here.

- The applicant exercised due diligence to ascertain the truth and also part of that is that he also did not mislead the officer.

- Then they changed their position based on getting a permit. So he spends money to remodel, build a building, that sort of thing.

- If you revoke the permit, they would be subjected to substantial loss. Which in this case, they've already spent a lot of money and then if they can't get the permit, they can't open the store.

We have all those parts. You're basically dealing with that second part where you would need that what he applied for was fair and accurate. Truthful. He did not try to mislead. Then he would not be allowed to raise this defense.

In the revocation of the permit, again I just find in the zoning regulations, I don't see where the commission has the authority to revoke a permit. You clearly have oversight before the permit is issued. You delegated that but the ZEO is your agent. Once the permit is issued I just couldn't find where you have any authority to revoke. And, the court will look to your local regulations and I couldn't find a case law decision that would provide for a PZC to revoke a permit. Again, let me highlight the two step process.

Discussion.

I think your argument is valid whether he could raise that municipal estoppels and that's what he'll probably try to raise no matter what you would do if his permit is taken in any way or he doesn't get to open the store, he is going to raise that argument no matter what. It is a very valid argument. My problem is just the mechanics, how we did get there. And, that's why I counsel that second avenue with the CO. I'm just much more comfortable going that route.

Mr. Chaplinsky asked Attorney Byrne: You have reviewed this quite extensively yourself and with the commission. If you're going to make a recommendation, we want to act in the best interest of the Town of Southington, what is your recommendation for the highest probability of success based on what we've talked about if the end goal is to ensure that their compliance with our regulations and if they're not, not allowing them to operate. What is the highest probability of success?

Attorney Byrne said the highest chance of success is where I have no questions in my mind about how we're doing something, why we're able to do something. And, with revoking the permit, there are some questions in my mind. I'm not quite sure how I could find the authority for that. It may exist, but I am not quite sure; therefore, I am much more in favor of the other option which is when the proprietor comes in for the certificate of occupancy, then there is a clear administrative process set out and a lot of case law that I can turn to for guidance and support any decision the commission makes. I'm much more comfortable with that. There is a lot more certainty which is what I like. Uncertainty leads to a lot of litigation which leads to huge legal expenses and you now, making law is a nice thing but there is a way we can proceed here, I think and I recommend the

way we proceed we don't have to make law, have the commission be comfortable with its action and do what's right for the town.

Mr. Chaplinsky brought up the issue of interpretation of the regulations. If we go with your recommendation, it still allows the commission to interpret its regulations and provide the interpretation to the applicant prior to them opening. Attorney Byrne agreed that is correct. Mr. Chaplinsky pointed out that is, I believe, what everybody is asking for.

Ms. Miceli said that in your last comment now you sort of --- I'm back to - you sort of left it unsure. You said I'm not positive, I can't be positive. Are you opening the door a little bit with regard to defending this in revocation of permit? Your last statement was not emphatic to me. Are you emphatic that you cannot, that we cannot revoke this permit?

Attorney Byrne reiterated: emphatic? You know, I am almost to that point because you do have another option I believe and it's the one that I recommend professionally. I wouldn't recommend taking a route that has a lot of risk when I view there is another route open that I think has a lot less risk and it'll get you to where you want to go.

Ms. Miceli said: that we are going to be able to shut this business down. Attorney Byrne said we have to see. We cannot prejudge. We have to see what's presented and what is actually in that store. We can't speculate.

Ms. Miceli made the statement that it is frustrating to sit up here as an elected official and feel like we have no recourse for something that I think we all feel strongly about. I know I do. It's not within the spirit of the regulation as it sits on the book in my mind. I was not able to interpret the regulation which I thought was my job on this PZC! Attorney Byrne reminded her that she will still have that opportunity when it comes in for the CO. Your frustration is well deserved because unfortunately our Supreme Court in its wisdom has deemed the product that might be carried in this store as constitutionally protected speech. This type of business has extra protections. Ms. Miceli asked about her protection then as a citizen who doesn't think that this should be there in that location within proximity to residences, things that we've delineated in our regulations, why is the onus on us and not on him, frankly?

The Chair said at this point, there has been a lot of talk about this issue. A lot of discussion. We had an open forum several meetings ago. A lot of discussion in executive session. A lot of emotion. What we need to do as a board is strip away the emotion and strip away the politics, we need to strip away everything other than the facts and we need to look at the facts.

We've heard from our attorney, we've heard from the commission and the commission has some very strong opinions on this. A couple of facts:

(1) This board did not get an opportunity to interpret the regulation in advance of the approval. There are some that are saying that all of us sitting up at this table let this happen, were asleep at the switch and we don't know what our regulations are doing, that we have weak regulations.

The Town Attorney almost two years ago in conjunction with a lawsuit going on similar to this, in Berlin, took the Southington regulation, applied it to that case to see how Southington would stand in the event something happened. He came back as our expert; staff is the expert, go forward and see how that work. He came back reported that our regulation is strong and could handle a situation should something like this come up.

We also had a bipartisan subcommittee working on all of our zoning regulations. This was reviewed. We have been looking at our regulations. We have good regulations but a regulation is only as good as it is applied.

The commission and the staff have been proactive on this issue. How we got here today? I think we need to look at the interpretation of this which we need an opportunity to do in advance and not afterwards.

We had the Attorney General take a look at this regulation. That office on the phone with some of the folks sitting at this table said they thought this regulation was strong and wished that they had this regulation for some other cases they were working on. But again, the regulation is only as good as it is applied.

We have a very tough decision to make. We've heard from our Attorney what the consequences of revoking the permit are and we've heard what the consequences of letting it go forward are. We need to look at what our next steps are. It is a commission decision at this point.

Mr. Kenefick asked: This zoning permit was issued without being brought to this board, this commission. Say it was brought before this commission and we denied it. Would we be in the same hot water as we are right now? Attorney Byrne responded: As I read your regulations, and as the state law provides, you have the enforcement power under your zoning regulations and part of that power is whether to issue zoning permits. You appoint a zoning enforcement officer. You delegate that authority to that person. You still have the authority to review and advise. In your situation that could've been brought to you for your comment, guidance and perhaps an order, if you

will, to issue or not issue the permit. Then the ZEO would either issue the permit or not. It's still his/her decision.

Discussion.

When you appoint that person, you have supervisory authority only because you've delegated that authority.

Mr. Kenefick said then, why are we here? Attorney Byrne said if you wanted to have full authority, then you could be your own zoning enforcement officer. You'd have every zoning permit coming to you which is something you probably don't want, pointed out Attorney Sciota. Attorney Byrne said you can give guidance, give your opinion, which as your agent, you would like to follow, otherwise you might look for a new agent, I suppose. That's how it works. It's agency law. It's not just for zoning. It's for any governing body where you appoint an agent to do your enforcement work and the regulations guide them in issuing the permits. In a situation like this, the regulation could have been a clearer and you might want to tighten up the regulation.

Further discussion on there being no mechanism to revoke the permit and the consequences of doing that resulting in court.

Rules and regulations were discussed in relation to actions taken.

Reckless ruling was discussed. You don't want to go there.

Again, Attorney Byrne, counseled on the route he would take.

Ms. DelDebbio made a statement: I feel what we need to do is to follow the oath that we took when we started as planning & zoning commissioners to uphold our rules and regulations despite our own personal feelings which may be completely different from how we vote.

On this commission, we don't have the luxury to make decisions on this board based on our own personal feelings. If we don't make the unpopular decisions based on our own regulations, there are legal ramifications and consequences just as the attorneys have told us about.

Mr. DelSanto added we could set a precedent, but where does it end? Dollar signs? With the economy, tax dollars being spent on a fight which we don't have a dog in. Is that fiscally responsible right now?

Mr. Chaplinsky said we have an avenue to move forward on. We have a very strong avenue to interpret our regulations and to prevent this business from opening if they don't meet our regulations. We have a very solid avenue. This is what we wanted from the very beginning. We want to do what is best for the town. We want to interpret the regulations prior to submission or during submission ---

we still have the opportunity. We can still win this fight. We have a very good option here and I think we need to pursue it very strongly.

The Chair said now it's time to see what direction this commission would like to go in. Discussion of the options (1) going through the process or (2) revocation of the permit at this time.

(Pause)

Mr. DelSanto made a motion to pursue the avenue that before this business opens; we make certain that their inventory is in compliance with what we stipulated upon them. Following our legal advice in this matter. We stipulated items in this matter and we need to make sure they respect the letter and spirit of those stipulations. Ms. DelDebbio seconded.

Mr. Sinclair felt the Attorney has done a good job writing this letter; however he disagreed with his opinion about revocation. I think that we could revoke it. I'll be voting no because I think we have a legal leg to stand on in revocation. I think that should be our first line.

Ms. Miceli agreed with Mr. Sinclair in voting no. I still go along with revocation, too. I feel Attorney Byrne I was not as convinced when you spoke in front of this audience. Thank you for your input but I will vote no.

(End of Tape #1, Side A)

(Beginning of Tape #1, Side B)

Mr. Weichsel said he was heavily involved in the financial aspects of the running of the town. Recent times we were asked to be careful in buying stationery and pencils and pens and most certainly not to have any major expenditures and we have complied with that. So the question of making precedent sounds terrific but the question of probability is very important. We've had four attorneys say you can't revoke the permit. No one up here including myself, likes the idea of this entity coming in but there is a legal way to be concerned. You can have a subcommittee go out with Mary and inspect it when we come to it. So you are not without remedy. I sense the commission might have in mind actually voting to pull the permit and that's very unwise.

I don't know if any of you have had experience with Section 1983. It is a devastating statute if you lose. Tremendous in loss of business, attorney's fees, you might even get punitive damages that might be viewed if your actions are indeed reckless. So, I respectfully request that you approve the commissioner's motion and certainly not vote to revoke.

Hold your fire until we come to the CO. Then we'll have a lot of inspectors.

Ms. DelDebbio brought up the BOE's past budget and how tight it is.

Explained.

Mr. Chaplinsky added we need to follow the advice of the four attorneys to do this. Do it in an appropriate manner and we have a chance to win. If we don't, we lose. We lose. Zero percent chance.

Mr. DelSanto said this is fiscally irresponsible to try to fight this right now. Explained the budget's tightness right now. I can't even believe this conversation is even happening. Four attorneys tell us that we are not going to win and there is no vehicle to even revoke the permit. If we vote to revoke the permit, then what're we going to do about it? Nothing!

Discussion about the regulations being not strong enough by Mr. Chaplinsky. We need to take this with calm heads, we need to interpret our regulations, take a step back and do this in an appropriate manner. I really do.

The Chair said the reason we are doing this today is because this commission did not have the opportunity to do it in advance. We're reviewing it after the fact. Putting the cart after the horse and that's unfortunate.

Ms. Miceli brought up listing the aid of other communities that have similar ordinances as us. (Listed the towns) Is there something we can do regionally with regard to this matter?

Mr. Sinclair said when they were putting in condos on Meriden Waterbury Road, and attorneys said we were rolling a ball up a hill, I didn't hear anybody say: well what about the money?

I think this is the right fight. It's a fight we can win added Mr. Sinclair.

The motion and second is to move forward with keeping the permit as it and moving forward to the certificate of occupancy and applying the commission's interpretation of the regulations at the time of certificate of occupancy.

Roll Call:	DelDebbio;	Yes
	DelSanto:	Yes
	Kenefick:	Yes
	Miceli:	No
	Sinclair:	No
	Vachon:	Yes
	Oshana:	No

(Motion passes 4 to 3)

(Whereupon, the meeting was recessed at 8:05 o'clock, p.m.)

(Whereupon, the meeting was resumed at 8:16 o'clock, p.m.)

Zaya Oshana, Jr., resuming the Chair:

B. Mackiewicz Custom Homes, LLC, earth excavation application for the removal of approximately 178,000 yards of material for a residential development, West Pines Drive (Assessor's Map 154, Parcels 2,5,9,10,11,12,13,14,15,16,17,18,19,20, EE #128.

Withdrawn.

C. Northstar Centers, site plan modification to the previously approved North Plaza site plan and approval of elevations for Buildings A,B &C, modification includes reconfiguration of the mixed retail buildings decreasing the Phase 3 square footage from 75,800 sf to 59,450 sf Executive Boulevard South, SPR #1461.6.

Withdrawn.

D. Biodiesel One, LTD, flood plain filling and site plan application for existing Biodiesel production, 102 West Center Street FF #219 / SPR #1559.

Mr. Chaplinsky recused himself and left the bench.

Michael Early, Jones Engineering, presented the application in reference to FF #219; it is for a portion of property located within the parcel known as 102 West Center Street. Last month we were here with an existing conditions survey of the operations. The conclusion of the meeting is that it was determined that there were a few concrete slabs and some containment walls constructed entirely within the 100-year floodplain of the Quinnipiac River as shown on the FEMA map.

Since then, we've come up with a plan to remediate the areas of floodplain that were displaced by the concrete slabs (three). After the calculations were done it was determined there was 18.4 cy of floodplain displaced due to the slab construction. To remediate, there is a small grassy area within a gravel turnaround in front of the operation here. Explained it would be a good area to remove fill from.

If we remove 5 inches of fill from an envelope that's approximately 1600 sf, we will gain 29.3 cy of floodplain. The reason for the additional floodplain is that it was recommended by town staff to compensate at 1.5 to 1.0 ratio.

That being said, we received comments from the town and they've been addressed and this afternoon we resubmitted a revised plan, spoke with Mary and I believe town staff is all set in the accepting of this plan.

Mr. DelSanto asked about the amount of flood plain being added and its appropriateness for this area. Ms. Savage-Dunham said the mitigation is appropriate. The Conservation Commission thoroughly reviewed the plan and recommends the planning commission approve this flood plain filling element of the application with the condition that the property owner provides written consent for the proposed mitigation. Bio Diesel leases this area.

Mr. Kenefick made a motion to approve the flood plain filling with the stipulation. Mr. DelSanto seconded. Motion passed 7 to 0 on a roll call vote.

Mr. Kenefick made a motion to approve the site plan. Mr. Vachon seconded. Motion passed 7 to 0 on a roll call vote.

E. Vennie L. Mangiaracina, site plan modification to display boats for sale in front yard, Fishin' Factory, 1426 Meriden Waterbury Road SPR #1261.1.

The Town Planner explained the application as the applicant was not present. The information was provided in the packet about the request. She reviewed the regulation regarding display in the front yard.

The application is for approval of storage of boats in the front yard for display. Section 4-00.11 A thru I is pertinent and she reiterated.

She then oriented the commissioners to the map with the application.

The request is to display boats on both sides of the entrance. This is purely within your discretion. You can approve this whole, modify it or deny it. If you were to deny, it would be based on criteria within Section 4-00.11 which talks about congestion and aesthetics.

Staff is not supportive of the area where you see the three boats sketched in. Our position was it was between the parking and the entrance and it creates a tunnel of boats lined up there.

The Town Planner noted they may be asking to do something that's been going on. There has been some violations issues and concerns and complaints from the neighbors about the way it looks and it came to the zoning office.

The stipulation: Just boats and boat accessories in the area designated on the map.

After discussion, Mr. Sinclair made a motion to approve with the above noted stipulation. Ms. DelDebbio seconded. Motion passed 7 to 0 on a roll call vote.

F. Mandatory referral under 8-24 for improvements to the former drive in property, 999 Meriden Waterbury Road MR#447.

Attorney Sciota explained the 8-24 referral. We have a 200,000 grant and we plan on building a pavilion in this location, ladies and men's rooms here and an all purpose field using that grant money.

Mr. Sinclair made a motion to send an 8-24 referral, favorable. Ms. Miceli seconded. Motion passed 7 to 0 on a roll call vote.

G. Ridgeview Estates, request for reduction of bond from \$135,000 to a new amount of \$83,000 to complete remaining items, 1985 West Street SPR #1360.1.

The Town Planner noted staff's revised bonding requirement based on inspection has been provided in the packet. It indicates the work on the punch list that was bonding and bonding items that have been completed. I have an updated report as of today to the status. The permit for the retaining wall has been issued. The work is starting on the wall. The area is being secured around the retaining wall and staff is working closely with Jim Grappone in the engineering department.

We expect the physical part of the wall will begin next week. The work is continuing to continue nicely out there. We're still satisfied with the progress.

Staff is supportive of the release. These items have been completed and the money can't be used for anything else.

Mr. DelSanto made a motion to reduce the bond to a new amount of \$83,000. Ms. DelDebbio seconded.

Mr. Kenefick asked if there was a town ordinance for open foundations. Attorney Sciota responded there is a time frame for a building permit. One year. Explained it is not necessary for a foundation but once you pull the permit you have one year to complete

whatever building project and you can get extensions. Foundation permits are available and Ms. Savage-Dunham explained some people get foundation permits and then building permits. Mr. Kenefick brought up fencing around foundations and compared that to swimming pools.

Discussion.

Motion passed 6 to 1 with Mr. Sinclair opposed.

H. Walmart, request for release of \$5,000 performance bond for temporary trailers, 235 Queen Street, SPR #1210.5.

Staff supports this. The trailers have all been removed. Mr. Sinclair made a motion to approve. Mr. DelSanto seconded. Motion passed unanimously on a voice vote.

I. Stop & Shop, request for release of \$36,000 earth excavation bond, 505 North Main Street EE #125.

Staff supports this. Mr. Sinclair moved to approve. Mr. DelSanto seconded. Motion passed unanimously on a voice vote.

ADMINISTRATIVE REPORTS

Ms. Savage-Dunham briefed the commission about a violation she just became aware of and is going to be sending out a notice on it. It's on Marion Avenue. There's some lots that have been cleared. I typically bring these violations to your attention. I don't have anything written up.

Briefly, this is just a project where the site has been cleared. They had received subdivision approval, the bonds were never posted, the mylar was never filed. Basically, the subdivision is null and void. There was no preconstruction meeting. There was no contact with staff. There's no E & S measures. Yet, the entire site has been cleared and left open like this.

That's all I have to say to the commission. I just wanted to bring it to your attention because I will be writing the letter up this week and we don't meet for two weeks.

Attorney Sciota said there is also a violation not to market non approved building lots so you can add that to your list.

The Town Planner added the subdivision that was approved required the preservation of some trees and natural features. Upon inspection,

those have all been completely wiped out. So the developer essentially went in, cleared everything and now will come back and say, oh, sorry, we can't preserve those.

Staff will be looking for some stabilization and restoration at this point and the applicant will have to come back to the commission for approval.

Discussion.

MISCELLANEOUS / OTHER BUSINESS

The Chair noted a request or some questions regarding the Apple Gate Development. I sent that along to Mary to look at. Can you update us on the earth excavation process?

Ms. Savage-Dunham informed the commission she did review the email that was sent. I want to refresh the commission's memory. This project was approved many years ago and the regulations were different then. The cut work that's being done out there is substantial, however I went out and inspected the site with the engineering department. And, the cuts that are being done now are the very cuts that this commission approved. The applicant is meeting the approved grading plan as approved by the PZC way back when.

The regulations have changed since this project was approved. Now we don't let you have an earth excavation at the same time you're building houses. The commission has tightened down on the amount of excavation and trucks, that kind of thing because you are more cognizant of the impact on the neighbors.

This was approved a while back. The applicant is not doing more cutting than they were approved to do. They actually have a very clean site going on. They approached DOT a couple of weeks for a temporary access --- they're hauling excess material to the BJ site. And, they had excessive complaints from residents on Flanders Road about the trucks going down there --- trucks permitted by the approval.

They approached DOT for a temporary access on to Queen Street so they could take the dirt directly to the BJs pad site. DOT contacted the town and in our opinion this is a temporary construction action. I discussed with Mr. Tranquillo and Mr. Grappone and Mr. Lavallee. The intent is not to have a permanent full access or even an access for all construction. It's a temporary access to allow the removal of excess material from the site to the BJs site.

The applicant chose to pave it up to Queen Street and then behind the paving they have some gravel which gets filled in and then they

top dress the gravel. They have a bond with DOT. When they're done using it, they will pull out the pavement, and loam and seed it. It will go away.

Discussion.

Mr. Kenefick thought it was a good idea and whoever had the guts to issue whatever they needed to do, I think it was a great idea.

The Town Planner added the developer did put in a fence, a gated opening. And, as soon as there is the first hard frost and they can't run trucks to BJs any more, they'll gate it. It's not going to remain open. It is very closely monitored. And, it will go away.

Mr. Chaplinski also thought it was a good idea. Is there any liability because we may allow it? The Town Planner said it is a state road and DOT did it.

RECEIPT OF NEW APPLICATIONS

Ms. Savage-Dunham explained three new applications:

- Fishing Factory application which you acted on tonight.
- Site plan application for the drive in property SPR 1560 which is not before you tonight.
- FF application from the Southington Water Department to install 200 feet of 12-inch iron water main along Welch Road. FF 220.

The Chair stated this is the last meeting of this commission. I just want to say thank you to the entire commission. I think we've done a lot of work over the last two years. Regulation work. Economic development in this town. And, for 7 members, 4 alternates, I think everybody has put their heart and soul into this commission and one of the nice things about this commission is that everybody comes here with their opinions and their views and everybody focuses on what is right for the Town of Southington. We may not always agree, but everybody is here for one reason and one reason only. To do what is right for the Town of Southington.

I know some people are running for re-election and some are running for election on other boards and I want to wish everybody good luck.

Best of luck to everyone! From the Town of Southington, I just want to say on the town's behalf, thank you for all the work you've done. Thank you to the staff. Thank you for all the work staff has done also because they are the experts and help guide us. This is a lay board. They're the ones that give us our guidance and our direction.

Thank you.

Mr. Kenefick thanked Chairman Oshana because I think you've done an exceptional job over the last two years and you've had some real tough issues and you've handled yourself like a gentleman and a very professional person. I hope to see you in the same seat for the next four years.

Mr. Chaplinski brought up West Street & Churchill Road. I don't know the history on it but there is a commercial property, I believe on the corner of the south side of it. Is it industrial? It looks not good. It does not look appealing. I was hoping we could look at it again and just see if everything that's going on there is appropriate.

The Town Planner said that is Mr. Keegan's property. It's a light industrial building. It's been reviewed by staff. He's building it in phases. DOT made him realign his driveway entrance. He's been doing some clearing and planting. I will send staff out again this week.

I will tell you that we're out there quite regularly with him. It's a difficult site to design and there is a lot of approval going on there. It's I-2 zone, but it's a light industrial use going on there, so it could be much worse. We'll reinspect it.

Mr. DelSanto made a motion to adjourn. Mr. Sinclair seconded. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 8:52 o'clock, p.m.)