

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

### MINUTES OF JANUARY 2, 2008, MEETING

#### Present

Members: Frank DeFelice, George Eames, Richard Eriksen, Dave Foley,  
Jim Kowolenko, Gene Riotte

Town Planner: Geoffrey Colegrove

Alternate: Cathy Devaux

#### Absent

Member: Ralph Chase, Dian O'Neal, Tom Russell

Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Cathy Devaux was seated on the Commission in Ralph Chase's place.

#### 1. Approval of Agenda

Motion by Dave Foley, seconded by Frank DeFelice, to approve the agenda of January 2, 2008, as amended to reflect deletion of item #9 (Tad and Jennifer Swierczynski, request for proposed two-lot subdivision, Hellgate Road). Motion carried unanimously.

#### 2. Public Session

Bryan Esparo, 36 Bailey Road, addressed the Commission. He wanted to clarify several items that had been discussed at the Commission's meeting on December 5. As a property owner, husband, and father he felt compelled to defend his family name. He stated that the sanders have been sold. A stipulation of the sale of one sander was that it

be cleaned; this required the dump truck to be used to transport it for power-washing to the front of his garage as there is no water at Ozick Drive.

A letter was submitted about several pick-up trucks in the driveway with commencement of the snowplowing business. He stated that he is at Ozick Drive and “happy there.” He has a truck with a sander and plow that is his personal truck that he keeps on the property. Also, there is an old Chevy pick-up truck still on the property pending receipt of a title so that the truck can be sold. He stated that he is a builder and knows his limitations—with or without permits—for moving the metal barn on his property. He dug the footings for the new barn well within the setbacks marked by Bascom & Benjamin—a 40-foot setback from the side (instead of the required 25) and several hundred feet from the rear. The building inspector was contacted at the time of the footings being poured and Mr. Esparo was advised to get a new permit, which he did. The permit was approved prior to December 5<sup>th</sup>.

Bryan Esparo stated that the way he interpreted what was written in the minutes was not exactly what had transpired; from the minutes, it would appear that he had attempted to change the location of his barn without a permit. He stated that this was not the case and he wished to have this clarified on the record. He further stated that there was no problem with Mr. Colegrove making unannounced visits to his property. He stated that he had appeared before the Commission numerous times with regard to 2,500+ pictures on seven disks and spreadsheets documenting the “comings and goings of the Esparo family” for the past three years; he finds this disturbing as a parent/husband. He stated that when he moved to Durham in January of 2005, he had moved in with a plow business; he has acknowledged that what he had done then was wrong and that he has apologized to the Commission and to his neighbors. He said that the total package presented against his family as evidence was disturbing, a bit obsessive, and consuming.

Bryan Esparo stated that during a site visit at his property at which his attorney and wife were present, along with several Commission members, Richard Eriksen responded to Mr. Esparo’s question (of how to get the photographing to stop) by pointing and saying, “That’s his job [attorney], it’s a civil issue.” Bryan Esparo stated that he took that advice and sued the Piotrowskis, the first time he has ever taken such legal action. He indicated that he is not suing for money, stating he’d pay “\$100,000 to make this go away.” He would like to respond to the “nastiness,” stating that while the Piotrowskis have stated that everyone on Bailey Road has suffered, he, too, has suffered. He indicated that he has been informed that he has been wasting the townspeople’s and Commission’s time, even abusing it; he stated that was never his intention and he apologized if it appeared to be the case.

In conclusion, Bryan Esparo stated that the matter would appear to be in the hands of Judge Auriemma in Middletown, who has called a 26-day truce. Both he and the Piotrowskis have meet with the judge. The pictures/documents of his property will stop and he will take his dogs in between 10 and 11, “try to keep it down to a low roar.” He apologized, he stated he never intended to waste people’s time and money and would be

willing to pay any fines applicable. He stated that because he is a taxpayer in town, he also has rights and privileges.

Diana Cruise stated that while the minutes hadn't been posted to verify, the *Town Times* recently reported that at the December 19 meeting, she had discussed Murphy Pools having a crusher; it was, in fact, Nosal. She was informed that the minutes did correctly attribute the crusher to Nosal. Geoffrey Colegrove stated that Nosal does not have a permit for crushing. Diana Cruise stated that crushing commenced at 6 a.m. on December 27 and 28 and continued until 4:45 p.m.

Geoffrey Colegrove stated that he has talked with someone in the office and sent a letter. He has visited the site twice (but the operation wasn't occurring). The letter indicates that no mention of crushing was mentioned during the hearing process and no permit was granted. A cease-and-desist order was then given for the crushing/processing of stone.

Diana Cruise also stated that there are spotlights at the back of some of the Ozick buildings, which are spilling in the direction of residences on Mountain Road. Geoffrey Colegrove stated the current building under construction features full cut-off lights toward Ozick Drive. The lights between the buildings are without full cut-off shields. The back of the buildings (toward Mountain Road) are full cut-offs. Because the doors are not on the second building yet, the light is shining through toward Mountain Road. Installation of doors should remedy this; Geoffrey Colegrove is following up on this matter.

Deborah Kotrady, 33 Weathervane Hill, addressed the Commission regarding the house on Haddam Quarter Road adjacent to the Goods. There continue to be significant erosion and sedimentation problems, including erosion to a depth of nearly six feet, exposing tree roots. The property has never been graded, seeded, etc. She presented pictures. No work has occurred since last spring.

George Eames suggested the Board of Selectmen be contacted regarding runoff to the roads. The Building Department will be contacted about the on-site erosion problems.

Geoffrey Colegrove stated \$1,000 was being held in the bond for the driveway and \$500 for erosion and sedimentation controls.

Motion by Richard Eriksen, seconded by Dave Foley, to issue a letter to Keene & Carlson, copying the Building Department, for 355 Haddam Quarter Road, stating that the erosion and sedimentation controls need to be in place within two weeks or the bond will be used for same. Motion carried unanimously.

Richard Eriksen also added that no certificate of occupancy would be issued until all erosion controls had been completed.

3. The Playground, Inc., Request for Zoning Text Amendment to Section 07.04.04.(18) of the Durham Zoning Regulations to Allow Dog Day Care and Grooming Facilities in the Industrial Zone

The public hearing for The Playground, Inc., request for zoning text amendment to Section 07.04.04.(18) of the Durham Zoning Regulations to allow Dog Day Care and Grooming Facilities in the industrial zone will be held on January 16 at 8:00 p.m. (first hearing).

Geoffrey Colegrove stated that Bill Milardo will be issuing a discharge permit for the use; if one unit takes up more than the other units, someone might be shortchanged with the septic system proving inadequate; he will follow up with Bill Milardo regarding the new information that the applicant, Bruna Verna, has provided.

4. The Playground, Inc., Request for Special Permit for a Dog Day Care and Grooming Facility, 45 Ozick Drive, Unit 21

The public hearing for The Playground, Inc., request for a special permit for a Dog Day Care and Grooming Facilities in the industrial zone will be held on January 16 at 8:00 p.m. (second hearing). A public hearing sign will need to be posted on Ozick Drive before this weekend to meet the 10-day requirement. (Ellen Mauro in the Building Department can provide details.)

5. Approval of Minutes

Dave Foley suggested holding off on approval of minutes until more Commission members were present. George Eames stated that because a quorum was present, they could be approved.

Motion by Richard Eriksen, seconded by Gene Riotte, to approve the minutes of the December 19, 2007, meeting. Motion carried unanimously.

Motion by Frank DeFelice, seconded by Jim Kowolenko, to recess the regular meeting for the public hearing. Motion carried unanimously.

**PUBLIC HEARING**

1. Applicant/Owner: Silver Eagle Development Trust, LLC  
Application: Request for Special Permit for the Construction of  
3 Retail Buildings, Main Street

Members: Frank DeFelice, George Eames, Richard Eriksen, Dave Foley,  
Jim Kowolenko, Gene Riotte

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Town Planner: Geoffrey Colegrove

Alternate: Cathy Devaux

George Eames, Chairman, read the notice for the continued public hearing. Cathy Devaux was seated on the Commission in Ralph Chase's place. Both Frank DeFelice and Gene Riotte recused themselves. Seated members were: George Eames, Richard Eriksen, Dave Foley, Jim Kowolenko, and Cathy Devaux.

George Eames stated that he received a letter from Brian Curtis stating that Bruce Hillson, P.E., of the firm of Traffic Engineering Solutions had been retained for the traffic engineering study. His review will be complete and he will attend the meeting of January 16, which is the last night that the public hearing can be kept open. The maximum number of extensions has been granted to keep the public hearing open.

Attorney John Corona addressed the Commission and introduced the project engineer, Pat Doherty. He provided several updates. The town health officer, Bill Milardo, has been provided with information on the soil testing. A preliminary design for the septic system has also been presented. Attorney Corona anticipates that the Commission will have a memo from Bill Milardo indicating suitability of the septic system at the next meeting.

Attorney Corona has corresponded with the adjoining property owners concerning buffering. Some responses have been received with meetings planned for the following week.

Attorney Corona asked Pat Doherty to address some of the issues regarding the stormwater system raised at the previous hearing.

Pat Doherty, P.E., addressed the Commission. He reviewed the project. He stated that design goals include complying with state and local guidelines; this includes stormwater quality guidelines and best management practices (BMPs) from the State of Connecticut (issued in 2004). The first goal is to control the peak rate of runoff from the site. The second is to renovate the stormwater so that pollutants do not discharge from the site. The third goal is to replicate the recharge that is going into the ground under existing (pre-development) conditions. The stormwater management system was developed under these guidelines.

In reviewing the stormwater management report, Pat Doherty stated that both treatment approach and source control are included. Source control measures include keeping sediments off the parking lot or being removed before they can enter the drainage system. Regular parking lot sweeping is prescribed along with proper application of de-icing salts and landscape-maintenance chemicals, pesticides, and fertilizers. Source control is the first step at preventing pollutants from entering the drainage system.

The second step is designing proper BMPs within the stormwater collection system so that all goals are achieved. Three BMPs from the Connecticut manual were selected: deep sumps within catch basins, hydrodynamic separator, and underground infiltration. A fourth BMP will be a filtration device just upstream of the underground infiltration. Stormwater will land on the site and the entire site is curved so that the water is not directly running off. The stormwater is collected in either the deep catch basins or the drains on the roof. Next, water passes through a hydrodynamic separator, then onto the filtration, and finally into the underground infiltration system for the detention system. According to the 2004 manual, these measures will achieve all of the stormwater renovation objectives prior to discharge.

With regard to the comments offered that the system, as proposed, is “experimental or innovative,” Pat Doherty indicated that the system is not that “big of a change” from the standard practice that has been used for a number of years—infiltration trenches. The infiltration system takes the trench idea and rather than filling completely with stone, there is an internal chamber that enables a greater volume of storage with less footprint disturbance. While called innovative, it is based on age-old technology. Pat Doherty then described the mechanics of how the chamber functions. He stated that 90% of whatever is on the pavement comes off in the initial drainage (first flush) at the start of a storm and enters the chamber with one foot of stone. He noted that 100-year storms (five inches) and 10-year storms (three inches) are very infrequent.

Pat Doherty also discussed maintenance requirements. He indicated that while a comment might have been made about inspecting the system after a half-inch rainstorm, this was not accurate. During construction, temporary erosion and sedimentation measures do require that inspections occur following half-inch storm events. The maintenance schedule is outlined in the submitted report. An inspection is required twice a year—verifying amount of sediment collected by viewing through a manhole. If there is a substantial amount of sediment, it is then vacuumed out. Actual practice has found that many of these systems can actually go three to five years without need for vacuuming. The chamber itself was described as having isolator rows wrapped with fabric to trap small particles that aren’t captured in earlier upstream BMPs. A 24-inch manhole provides access to the isolator rows. A pressure nozzle on a hose is used to maintain the isolator rows.

George Eames asked who would be responsible for maintaining the stormwater system. Attorney John Corona stated that the property owner has this responsibility. While the proposed stormwater management plan does not include notification requirements (i.e., advising the town at regular intervals that the maintenance has occurred), this could be a requirement of either the Inland Wetlands Commission or the Planning and Zoning Commission. Because of the size of the system, it will fall under the purview of the Department of Environmental Protection. The permit with the state requires the property owner to maintain a log with a designee appointed to handle the maintenance. George Eames stated that he would want to see that the town engineer receives documentation of the ongoing maintenance.

With regard to the lifespan of these systems, testimony has stated that these systems can last anywhere from five to 20 years. Properly maintained systems should last more than 20 years. It can be compared to a septic system.

Attorney John Corona stated that the Commission is very familiar with basin stormwater systems. The proposed underground system requires maintenance just as the traditional basin systems do. The town has often had responsibility for maintaining basins; like the underground system, a traditional basin will not last indefinitely without proper maintenance.

Attorney Corona referenced requirements for stormwater control, including “When required measures for the detention and controlled release of stormwater runoff shall meet the following standards ... this may be accomplished by detention basins, roof or parking lot storage, or other acceptable means.” Another section states that one of the goals of stormwater is to provide maximum infiltration to the ground water. Attorney Corona pointed out that at a previous meeting, Bob Melvin had stated that the proposed system would move water into the groundwater table—that is actually what is directed of applicants vis a vis the requirements for infiltration in the regulations. Language in the subdivision regulations also speaks to this same topic, including the statement, “Maximum infiltration to groundwater is encouraged,” both for residential and commercial development. A photograph of the mechanism inside the system was presented to the Commission; it resembles a septic system, but larger in scale.

Attorney Corona discussed the Big Y grocery store in North Branford that was mentioned at the previous hearing by Brenda Eddy. That store is 65,196 square feet in size and it uses a system just like the one being proposed for the Silver Eagle project. Attorney Corona referenced the minutes of a North Branford Planning and Zoning Commission meeting at which requirements of the stormwater management system were discussed. The same principles are used—to remove as many suspended solids as possible before the water enters the infiltration system with the balance of sediment trapped and then cleaned out (just like removal of accumulated sediment in open basins).

Jim Kowolenko queried the guarantee that ensures maintenance of the system, which is absolutely essential to keep the system working properly. Pat Doherty pointed out that the DEP issues stringent fines where proper maintenance is not conducted and records not maintained; random inspections are conducted. Attorney Corona stated that it is an obligation of the property owner, which must be adhered to. He suggested that this be a condition of approval.

Dave Foley stated that the Commission wants to be proactive and have a mechanism that will require the property owner to maintain the system. He recommended that the property owner be required to notify the town when the maintenance is being conducted so that a town representative can observe the process and verify completion of work. Attorney Corona agreed that this can be done and also noted that there does need to be

trust in mechanisms—as with monitoring at gas stations. He stated that a copy of the maintenance log can be filed with the town on a regular basis.

In terms of site lighting, Attorney Corona asked Pat Doherty to address the Commission. A photometrics plan was submitted showing lighting levels on the ground and at the perimeter that show no direct off-site spillage. The design is based on mounting decorative fixtures on top of 20-foot poles on top of concrete bases. A depiction of the style of proposed lighting was presented. Many developments use the shoebox fixtures featuring full cut-offs. The light spread of a shoebox fixture at the 20-foot level is about the same as for the decorative fixture; the applicant is proposing the decorative fixtures.

Richard Eriksen pointed out a problem with the horizontal light spill from decorative fixtures as opposed to the shoebox lighting. In particular, driving down Main Street, lateral light is what is visible to drivers. He pointed out that one of the churches in town uses a decorative light that is very intrusive.

Pat Doherty stated that light poles positioned 60 feet apart is necessary because of the lower wattage being used in 20-foot poles (taller poles would require greater wattage). The goal was to use shorter, more decorative lighting; if the Commission prefers, taller shoebox lighting can be substituted. A 33-foot fixture is not out of the realm of consideration. Pat Doherty stated that opaque lenses could also be used.

George Eames queried the hours that the lights would be illuminated; Pat Doherty stated that the hours of usage would match hours that the businesses are open, plus one hour additional. Attorney Corona stated that it is likely that someone would be at the site at all hours of day and night. It is customary for grocery stores to have stocking during evening hours. It is possible that the store will choose to be open throughout the night because people will be on the site anyway. Not a lot of business is transacted after 9 or 10 p.m. in town. Some convenience stores do stay open throughout the night. The applicant would like to leave open the possibility that they might be open throughout the course of the night since employees are on the site anyway.

Dave Foley asked if hours of operation are included in the application. Attorney Corona stated that the lighting will not be going off at night and that there is also significant screening between the road and the site. Dave Foley stated that even though it is isolated, the site is very high and recalled the glare from the initial lighting at Valero's. The lighting here will be some 30 feet higher than the Valero site. Attorney Corona indicated that any business open at night must have light and some quantity of light will need to be on throughout the night. The applicant can also investigate the possibility of restricting the parking and the lighting during certain hours.

Richard Eriksen stated he would like to see a demonstration of lighting from the standpoint of height and fixture. Attorney Corona indicated that there would be no problem with the Commission reserving ultimate judgment about the extent of lighting on

the site. Until it is on the site with the buildings, the plantings, etc., it will be difficult to measure. Attorney Corona will get back to the Commission with a proposed fixture.

Dave Foley stated it is not realistic to think that the entire parking lot would be in darkness during “off-hours”—this would be a disaster waiting to happen. He asked for elevations (similar to a roadway profile) of lighting relative to Route 17.

Attorney Corona stated that unnecessary lighting will not be constructed and aesthetics will be respected.

Parking spaces for the site were then discussed. Attorney Corona stated that the developer has to plan for the ultimate build-out of the site. The stormwater system must be constructed for a “worst-case” situation for when the site is entirely built out. In terms of reducing the amount of impervious surface, the application is within the stipulated numbers in the regulations. Alternative options have been considered, but attention has been paid to carefully designing parking that enables the stormwater system, particle separators, etc. to work properly. He noted the irony of being asked to downsize parking in this case where, in other instances throughout town, parking is inadequate.

George Eames stated that his own review of the parking lot appears excessive for the three proposed buildings. Attorney Corona stated that it is not possible to know the tenants/uses at this point; therefore, it makes sense to construct what *could* be needed. If the applicant were to build too little parking, it then leaves open the possibility of unsafe parking as presently occurs in town at businesses where insufficient parking requires parking on both sides of Main Street. The applicant will comply with the requirements of the Commission.

Dave Foley asked if popcorn asphalt had been considered as a more porous surface that could help reduce runoff. Attorney Corona noted that all of the requirements for drainage are met with the proposed plan. However, pervious surfaces would not allow water to go through the treatments proposed.

Attorney Corona then addressed comments made at the previous hearing regarding economic benefits—i.e., \$50 (income) per household is not enough to justify the project. Don Klepper-Smith provided economic data to the Commission in an earlier hearing that pointed to a net tax revenue to the town; his calculation was \$51.46 per household. While it is not possible to know what the net tax benefit of other businesses would be, two were mentioned by attendees at hearings—Lino’s Market and Durham Market. To conduct the same analysis on a gross basis, not subtracting the expense of operating that business in town, the Lino’s Market gross is \$2.55 and Durham Market is \$2.18. If it is just a dollars-and-cents comparison of the economic benefit to the town, this puts the present application in a different perspective. The optimal outcome would be that all three businesses continue to operate in town and all three continue to pay taxes and employ people.

Attorney Corona stated that the proposed grocery store will not have a pharmacy; there is insufficient space for a pharmacy in the store. He stated his belief that he had addressed issues from the previous hearing.

Dave Foley noted that a letter was received from Brian Curtis relative to meetings with the fire department. He asked if the town has a piece of equipment appropriate to address a fire on this property if the sprinkler system is inadequate. He referenced referral to other stations; however, would it be possible that the Durham Fire Department would say in the future that they needed an aerial fire-fighting truck. Attorney Corona noted that while he couldn't speak to the apparatus of the company, Durham Manufacturing is about 65,000 square feet in size and there are other large buildings in town, most of which do not have sprinkler systems to his knowledge. This is not a multi-story building. Harry Hall has never raised this issue as a concern. George Eames stated that he did not believe height of the building would be an issue.

Geoffrey Colegrove asked for clarification that the grocery store would be sprinklered, to which Attorney Corona agreed. Geoffrey Colegrove indicated that this requires a substantial generator connected to the system and access to storage tanks, etc. Attorney Corona stated that these types of details are addressed by other codes and through other agencies. A sprinkler system will be installed. Pat Doherty stated that it is a code requirement because of the size of the building and type of use/occupancy.

The applicant will return to the next Inland Wetlands meeting (extended to allow the town engineer an opportunity to review the materials).

Diana McCain, Skeet Club Road, addressed the Commission. She raised the issue of tax revenue at the previous meeting. Her point was that for all of the change and possible difficulties that the project would produce, the return was relatively small. Comparing the grocery store to Lino's is like comparing a grapefruit to a walnut. She also expressed satisfaction that the Commission had retained a traffic engineer, but noted that she hadn't been able to verify this from the minutes as those from the December 19, 2007, meeting were not posted on the website as of 5:00 p.m. on January 2.

Geoffrey Colegrove stated that the Commission requested that an independent consultant review the traffic study submitted by the applicant. The results will be presented at the January 16, 2008, meeting.

Diana McCain suggested that the traffic study is flawed and lacking in several respects. She does not think it accurately predicts what will happen with a large grocery store in Durham. The study of existing traffic conditions/volumes was done in early August—when the number of vehicles on Durham roads is significantly lower than most of the rest of the year (school not in session, commuters on vacation even though there is traffic to/from the shore). Anyone studying traffic in Durham on Main Street must consider the after-school activities—from 4 to 6 on a typical day with many games, practices, and other after-school traffic. She also felt the geographic scope of the study was

unrealistically narrow—north of Route 17 from the 147 intersection to south of Route 68, Haddam Quarter Road, and Route 147. She believes the traffic that will be generated will be far beyond that (Brick Lane, Pickett Lane, Maple Avenue, and Talcott Lane) as residents and commuters attempt to avoid congestion.

Diana McCain stated that current intersections are already hazardous and will be worsened. The final issue relates to the kind and number of delivery trucks using the Route 147 entrance on a daily basis. The November 7<sup>th</sup> meeting mentioned three to four tractor-trailer truck deliveries would be expected daily with smaller box trucks making additional deliveries. At that hearing, Mr. Aparo of Lino's disputed the likelihood of those numbers. She asked that her concerns be addressed by the traffic engineer when reviewing the applicant's study at the January 16<sup>th</sup> meeting.

Deborah Kotrady, Weathervane Hill, addressed the Commission relative to traffic and safety. She stated that she is a mother and former flight nurse and her husband is a family physician. She is very concerned about pedestrian safety, especially with children after school. There are numerous cars, bikes, and walkers along Maiden Lane and Haddam Quarter Road (all without sidewalks). She would hate to see an auto-pedestrian accident.

Mayn Liss, 21 Main Street, addressed the Commission. She asked the criteria the Commission would be considering in evaluating the request for a special exception, given the impact on the character of the town. She stated that it is a large development, really inconsistent with the nature of the town. She stated the mix of residential and business uses and the historic district are what make Durham unique. She thinks this draws residents to the town and is a chief reason for choosing to live in Durham. She asked the Commission to consider the detrimental impact of such a development.

Steve Comen, 230 Cherry Lane, spoke regarding the extended hours of operation (24/7). He noted that the Home Depot in Wallingford, for instance, is open until perhaps 10, 11, or even midnight—but that there is a staff there 24/7 stocking the shelves (going to the representation that if there is staff in a store, then the store might just as well be open 24/7). He suggested this be closely examined.

Nancy McKenzie, Maiden Lane, stated that the public hearing process is useful to help avoid "waking up and finding a nightmare." She stated the 24/7 hours of operation and lighting are a significant issue to consider. She is alarmed because she doesn't see that the town will have much control if the application is approved. She asked the Commission to absolutely verify whether or not the application will be 24/7. She also asked about the height of the light poles.

Rebecca Good, Haddam Quarter Road, addressed the Commission. She stated that she frequently runs on Main Street, Haddam Quarter Road, and Johnson Lane. She said that traffic currently exceeds the posted speed limits and endangers her safety. The increase of traffic on Durham's back roads would only serve to increase dangers to pedestrians. The cross-country and track teams at Coginchaug are very well-known and established; most

of the running occurs on these streets between the hours of 3 and 5 p.m. (prime-time for other commuting traffic). There are groups of 20-30 people running on these back roads. Families also use the roadways for walking. Quality of family life can also be impacted by increased traffic. She noted that she doesn't experience this away at college in Worcester, but enjoys returning to Durham for this experience.

Fran Halloran, 400R Maiden Lane, addressed the Commission. Concerning the lighting, she is worried about the impact on the night sky. She stated that Durham doesn't want to have the "orange glow" in the sky apparent over Middletown. She noted concern with excess trash and waste from a building of this size. Police protection was another area of concern—this area will be much more welcoming to people not from Durham; the town might need to increase protection. In addition, with regard to traffic, more and more people have learned the back road short-cuts through Durham as a result of rerouted traffic during the Durham Fair; this includes many people from out of town. She stated her impression that when you don't live in a town, you don't value the lives of people in that town. Traffic speeds are also excessive.

Duncan Milne, Main Street, spoke regarding traffic, the threats to the character of town, lack of local ownership, and any economic "plus" to the project.

John Biddiscombe, Haddam Quarter Road, addressed the Commission. He talked about impacts to quality of living—i.e., the running and biking he does at 10 a.m. on a Saturday, for instance. He often sees many residents of the community doing those same activities. He believes the traffic information presented with the application is understated, but even so would produce unsafe conditions. He also noted concern with runoff. He stated his involvement with similar projects and those much larger where the numbers of parking spaces were significantly less; accommodations for water runoff were significantly more severe than what is proposed. He cited concern for the Coginchaug river shed and the fact that the proposal provides only for planning for a ten-year storm.

Lee Seeton, Talcott Lane, asked if there was a deadline by which residents could submit letters concerning the project.

George Eames stated that these would need to be received by the next meeting on January 16, 2008, to be part of the official record. The hearing will be closed that night, after which correspondence could not become part of the record.

Lee Seeton stated that filtration systems have failed in New Hampshire. He suggested contact be made with people in Concord regarding their experiences. The failure occurred five years ago. It has cost the state significantly to make repairs. The onus always comes back to the taxpayer. He stated that one never knows the future ownership of a parcel (citing instances with Wal-Mart, bankruptcy, etc.). He described the site location as being on an important aquifer in Durham and adjacent to another aquifer in town. The town already has problems with groundwater—ongoing for the past 30 years. There have been

numerous promises from the DEP, but no action, and problems continue for the residents of Main Street. There are the beginnings of a water system—will this be capable to supply the volume necessary for this project and is that in the plans?

Lee Seeton also concurred with the remarks from Fran Halloran about dark horizons— with few exceptions, it is one of the few areas in the state when you can look to every ridge line and, after 9 p.m., see darkness. If developed, residents in all areas will see light in the sky from this project. Hours of operation should be carefully considered, especially with regard to the noise from waste removal. The town of Guilford has banned waste collection between the hours of 7 p.m. and 7 a.m. He recommended this for Durham as well. This type of project is much more appropriate for a mall in North Haven or Wallingford; it is not acceptable, in his opinion, for Durham.

Gerry Lipchus, James Road East, addressed the Commission. He suggested viewing the application from both sides. The current site is an eyesore. It is commercial property and should generate some income. The tax base is roughly 6% business and 94% residential. The average in Connecticut is 18.6%, but the taxpayers do need some relief. While some people have stated that \$150,000 isn't much income to the town from the tax revenues of the project annually, this compares with perhaps 15 new homes generating the same amount; however, if each of those houses brought two children, there would be a deficit to education of \$300,000. He also stated that the project will generate about 140 jobs; he believes that many people in town will be interested in part-time jobs, including students. The two additional buildings proposed might bring other jobs as well. He also thinks that this project will actually help some business. He thinks Lino's will benefit from additional traffic.

Laurel Appel, Hemlock Court, spoke about impact to her north end of town (and ability to get on and off Route 17). She asked for clarification of the timeline of the next meeting and ability for public comment, especially since that meeting will be the first time that the traffic engineering analysis will be presented. George Eames indicated that that evening is the last time for the public to comment; he added that the Commission would be unlikely to make a decision that night. Laurel Appel indicated that it seems wrong if the public gets to see the traffic study information the same date that the hearing is closed.

George Eames explained the process, noting that the traffic study was only recently requested. Geoffrey Colegrove noted that state statutes require the closing of the public hearing following all allowable extensions.

Diana McCain asked for the legal grounds for an extension. Geoffrey Colegrove clarified that all extensions that could be permitted have been allowed. Richard Eriksen stated that the Commission will then have a timeline to consider and vote on the application after the close of the hearing. George Eames stated that the Commission would be reviewing that report with its experts after receipt of the study; the public and the applicant cannot speak after the hearing has been closed.

Laurel Appel stated that people don't come to Durham for the low taxes; they come for quality of life, the character of the town, walking on Main Street, viewing the stars, etc. She characterized \$50 a house as "way too cheap to sell that."

John Zajac, South Woods Lane, stated he had recently moved to Durham from Meriden for the character and small township. He was born in Middlefield, Jackson Hill Road, and he has many relatives throughout the area. He stated that growth for the sake of growth only is disastrous. He served in the state legislature for Meriden for 20 years (senate and house). He also stated he's very familiar with Price Chopper (Southington); he doesn't think it's the "best" grocery store. The population of Durham, at 7,200, he believes is infinitesimal compared to Meriden; what is the need for a large supermarket like this in Durham? He cited problems with traffic, lighting, and drainage. He has traffic issues now on Maiden Lane with pulling out from South Woods Lane during rush-hour traffic. Traffic study analysis should be done during those peak hours. He also suggested that the state highway department conduct an impact study.

Michael Good, Haddam Quarter Road, addressed the Commission. He discussed the effects of traffic on the neighborhoods and the ability of the Commission to consider these collateral effects when evaluating an application. Residents of surrounding neighborhoods know that even with the low levels of increase presented by the applicant for traffic, there will be a severe impact on quality of life in those neighborhoods. Residents walk, push strollers, run, and jog and the track team runs those narrow roads that do not have sidewalks. A traffic study does not closely examine the people who live in those neighborhoods. He stated that he keeps hearing that unless laws are broken, the "Commission's hands are tied." He has been worried about this, but has learned from legal friends that the Commission can actually take into account the affect of traffic on neighborhoods and the quality and safety of life.

Michael Good stated that the key is to look at the zoning regulations for the town with regard to special exceptions. Indeed, he found such tools within the regulations—i.e., 13.05 special exceptions, which cites detrimental outcomes and impact of uses on surrounding areas as being a factor in considering a special exception. In 13.05(4), "the streets serving the proposed use are adequate to carry prospective traffic, that provision is made for entering and leaving the property in such a manner that it is not an undue traffic hazard or congestion will be created." Also, 13.05, paragraph 8, "this special exception shall not constitute a hazard to public health and safety, either on or off the subject property." He summarized that the regulations do give the Commission power to take these considerations into account. To the matter that commissions might be sued for denying such applications, Michael Good stated that his legal friends pointed out scenarios before the state supreme court where towns have looked at traffic and impacts on neighborhoods—the supreme court has upheld planning and zoning decisions.

Michael Good then cited several examples (Barberino Realty & Development Corporation vs the Town of Farmington Planning and Zoning Commission):  
"Accordingly, before the Planning and Zoning Commission can determine whether the

specially permitted use is compatible with the uses permitted as of right in the particular zoning district, it is required to judge whether any concerns, such as parking or traffic congestion, would adversely impact the surrounding neighborhood.” And later in that decision it said, “Although a presumption arises that permitted use does not adversely affect traffic within the zone, an examination into special traffic consequences of a given site is permissible when the zoning regulations permit it.” He encouraged the Commission, as residents of Durham, to listen to constituents and those who have voted them into office.

Kerry Querns, Route 147, asked about the impact of the water supply for this project affecting surrounding wells. He specifically worried about the impact on his own well, citing concerns with similar scenarios in other regions of the country.

Nancy McKenzie spoke regarding traffic concerns on Maiden Lane to avoid the problems with traffic on Route 17 from this project. She stated that the traffic is already a bottleneck, particularly when trying to access Route 17 from Maiden Lane. She is worried about the deadline of January 16<sup>th</sup>. She asked what else could be done (letters can be written to the Commission).

Richard Eriksen stated that on the 16<sup>th</sup>, the public will again have the same opportunity as this evening for input.

Geoffrey Colegrove noted that Commission members are not supposed to receive any kind of comment outside of the public hearing process—this would jeopardize the process as it is considered *ex parte* communication. The applicant cannot talk to Commission members, the public cannot talk to Commission members—it must be in public.

Nancy McKenzie asked if the town permits petitions or a referendum, noting that many residents are concerned and upset.

Geoffrey Colegrove stated that the public hearing process is the legal process for the Commission to hear the sentiment of residents.

Susan Good asked the Board of Selectman for a special town meeting; a question had to be reviewed by the town attorney. However, there are problems in terms of carrying this out (i.e., five-day notice period, etc.). She is waiting to hear if the question for a petition for a special town meeting has been accepted and can move forward.

First Selectman Laura Francis stated that one problem with a petition to a special town meeting is that the subject matter must legally be allowed to be determined by a town meeting. The town meeting is a legislative body. The petition was worded in such a way as to talk about a venue for discussing the subject and an opportunity to pass a resolution. The legislative body—town meeting—would then submit this to the Planning and Zoning Commission. The question before the town attorney is whether or not that subject matter

is binding—and it would not be binding, it would merely be an opinion. The second question is if it is an opinion on a subject matter that the Board of Selectmen has jurisdiction over. Clearly, it does not (Planning and Zoning does). She is awaiting a final response from the town attorney. She described an earlier opinion on a special town meeting for a subject matter that *was* within the jurisdiction of the Board of Selectmen (to form a committee about the building of the town hall); in that case, it was appropriate and a resolution could be formed. In this case, the Board of Selectmen does not have jurisdiction; it is the purview of the Planning and Zoning Commission with its own statutory authority.

Laura Francis further stated that even if a resolution were possible, it would have no greater standing before the Commission than what residents are doing before the Commission during the public hearing. The Planning and Zoning Commission is ruled by its regulations and the state statutes.

Steve Comen asked the Commission about how it allowed the dates to run such that the traffic study analysis is going to be coming in so late (January 16) without the ability of anyone in town to comment.

George Eames stated that the report will be provided to the Commission on January 16 (if it is completed in time; the traffic engineer has written that “he expects to have the report to the Commission on the 16<sup>th</sup> of January”); the public hearing that night will be the forum for presentation of that report and the public can comment at that time. Anyone attending the public hearing on the 16<sup>th</sup> will have an opportunity to speak.

Steve Comen stated that the independent traffic report had been requested four weeks earlier and that the public is being short-changed. George Eames acknowledged this fact, noting that while it is not a requirement to secure such an evaluation, the Commission felt it was important to the town.

To a resident’s query about what happens if the report comes in after the 16<sup>th</sup>, George Eames explained that the report would be accepted as it is provided by its own consulting staff, but the public would not be able to comment after the 16<sup>th</sup>.

Geoffrey Colegrove stated that the Commission is counting on the traffic report by January 16<sup>th</sup> for not only the public to respond to and comment on, but for the applicant to respond to as well. He stated that it would be filed immediately at the Town Hall upon receipt; he is not sure if the report could be posted on the website, but at least notice of its receipt could be noted on the website and that it is available for inspection. He will review this with the town engineer, Brian Curtis. The report would be with the town clerk’s office as well as with the Building Department. The Commission must render a decision 65 days after the close of the public hearing.

A resident stated that a grocery store of this size seems excessive for a town of 7,200; therefore, it would appear that consumers from outside Durham are expected to use the business.

Diana McCain stated that if, at all possible, the traffic assessment could be made available to the public before the public hearing, that would be desirable. At the November 7 public hearing, she suggested that an independent traffic study be done. This is an issue that has been kicked around and was not authorized until December. This is as far from her backyard as one could get, yet she appreciates the rural character and quality of life of Haddam Quarter Road, Maiden Lane, etc. The issues of quality of life are not just for those living directly on those roads, but for those living throughout town.

George Eames stated that the study being done by the independent traffic engineer could render an opinion that completely concurs with what was presented by the applicant; it is a check and double-check.

Geoffrey Colegrove noted that Senator Zajac raised a good point; going back several meetings, there was extensive discussion with the State of Connecticut State Traffic Commission. It will not be possible for the project to proceed *without* the approval of the State Traffic Commission. The purpose of the STC review is to determine what the impact of the project is, what improvements are necessary. The applicant is not allowed to decrease the level of service on existing state highways. They have to maintain or improve levels of service. The analysis done by STC is done exclusively in terms of their roads: Routes 17, 147, and 68. To queries about why weren't areas below Route 68 studies, the STC has criteria used to determine how far there is measurable impact. That is ultimately an impact study on the highway system, not environmental or local roadways. Without that permit, no local building permit can be issued.

A Haddam Quarter Road resident addressed the Commission, expressing opposition to anything that increases traffic on Haddam Quarter Road. Living near Miller's Pond, for those in the area, represents a problem because of the increases in speeding traffic in the summer. He had a specific question about why Gene Riotte and Frank DeFelice recused themselves.

Gene Riotte stated that they recused themselves because of apparent conflict of interest with either one or both of the parties. They will further not be part of discussions with the board, nor will they vote on the application.

Brenda Eddy asked about the retaining wall at the previous hearing. Attorney Corona stated that the applicants had attempted to consider her concerns about light being refracted from the wall. She clarified that because of the 14-foot height, light can bounce off the wall instead of shoebox lighting being used. She also asked about the safety of the wall and proximity to Winsome Drive as well as fencing. She asked the Commission to carefully consider the parking and believes it to be extensive. The town is made up of many old businesses; she herself has been in three locations along Main Street, from the

Lino's location to near the Durham Pharmacy, to her current location. She stated that all had limited parking. However, in a large development like this, she didn't think there would be parking on the grass. Lighting was corrected at Valero's and she is confident that will be addressed here as well.

Another resident noted concern if this project is installed with asphalt over one or two aquifers.

A resident asked if the state is responsible for studying impacts on state roads, is the town responsible for all other/town roads; First Selectman Laura Francis responded in the affirmative. If there is a traffic issue, the resident then asked if the Board of Selectmen wouldn't be interested in these traffic issues. She concurred that the Board of Selectmen would be interested

Jim McLaughlin, Main Street resident and member of the Board of Selectmen, which is the local traffic authority, spoke. He asked the Planning and Zoning Commission to ask the first selectman, following protocol, to ensure that the town attorney is looking at appropriate questions that the Board of Selectmen take into consideration relative to public safety and traffic on the roads. The first selectman should be asked to pass that along to the town attorney; George Eames confirmed that Laura Francis, First Selectman, would be doing this.

Susan Good cited disagreement with owners properly maintaining property once it has been sold to a developer. She pointed to the issue at 355 Haddam Quarter Road that has had problems for three continuous years—it should not continue to be the town's problem or the town's expense. The neighbors' should not have to have responsibility for the problem or expense either. She said it was the same type of problem—an application before the Commission can look just fine, but then problems can occur.

Richard Eriksen said that the Haddam Quarter Road situation had come to the attention of the Commission just recently and action is now going to be taken.

Susan Good stated that the traffic is the most important issue in considering the application.

Al Gilman, 490 Main Street, addressed the Commission. He stated traffic was his biggest concern. He said the study should have been done during commuter times and when school is in session. He asked that the Commission try to assure that these points would be examined by the independent traffic review.

A Haddam Quarter Road resident addressed the Commission with regard to traffic concerns. Her son was injured on that road from summer traffic. She asked that the Commission carefully consider this from the standpoint of children, adults, walkers, horses, etc. She also thanked the Commission for their efforts and implored them to listen to the residents of the community.

Lee Seeton stated that he was aware other commissions were engaged in reviewing this application. Richard Eriksen stated that there would be a public hearing of the Inland Wetlands Commission on this application on January 14.

Geoffrey Colegrove stated that the only applications before the town were the continuation of the Inland Wetlands Commission public hearing on January 14 and Planning and Zoning January 16. The public is welcome at both. Both Commissions can receive written documentation or testimony up to the close of the hearings. After the close of the hearing, the Commission can only receive staff input/clarification of items presented during the application process (i.e., town engineer, town planner, traffic consultant).

Lee Seeton also asked about the State Traffic Commission's actions. Geoffrey Colegrove stated that if the application is not approved by the Planning and Zoning Commission, then the STC will not get involved. If the application is approved, then the STC will review and issue a permit. Lee Seeton also asked about the Department of Environmental Protection. Geoffrey Colegrove responded that there are no federal wetlands, so just the stormwater management plan is reviewed at that level, despite the fact that there is discharge to the Cuginchaug River (state-owned land). There is no permitting requirement. Geoffrey Colegrove stated his experience with DEP is that they are understaffed and over-occupied with dealing with actual permits before that group.

Attorney Corona wished to clarify that the hearing before the Inland Wetlands Commission is expressly for the limited purpose of addressing wetland concerns.

First Selectman Laura Francis asked the Commission to explain the scope of the study being commissioned, the independent traffic study. She stated that a new study is not being conducted. George Eames concurred; the consultant is independently reviewing the study submitted by the applicant.

Nancy McKenzie stated that she understands the town needs to grow and that commercial possibilities must be considered, but characterized Price Chopper as a store "where people go to load up, not to do their grocery-shopping." She suggested there were other ways of having grocery stores and commercial interests than something that is a destination for people who are not residents of the town.

Diana McCain wanted to clarify the issue of the traffic consultant; she asked if the questions that she presented in the hearing would be presented for the consultant to address as well as possible. She felt that the applicant's study was incomplete, inaccurate, and flawed. Geoffrey Colegrove will follow up with Brian Curtis to assure that he has all issues raised in the hearings relative to the traffic study and provides these to the independent consultant.

Attorney Corona asked if the Commission would like responses to issues raised this evening. He stated that he was aware the Commission understands that the criteria for evaluating the application is not whether the majority of people in town “like it.” If that were the rule, most of the people in the room wouldn’t be here. He has represented many applicants over the years and rarely do members of the public speak in support of applications. The reason there is traffic is because of previously approved applications. What determines the approval of the application are the regulations, statutes, and the law under an orderly and prescribed process. The regulations provide language for making consideration. The property was zoned by the Commission for a specific reason: It is the single largest undeveloped commercial site in town. The use that is proposed is one that is allowed by the regulations. He believes that everything that is required of the applicants by the regulations has been done. The objective criteria in the regulations for site plan review have been considered and incorporated into the application. The process is not intended to be a popularity contest. He stated that he was troubled that the public would like to leverage the Commission with a vote that expresses the public sentiment. That is not a criteria in judging the application.

Attorney Corona added that the site is a large site. The Commission recently addressed the size of buildings in that zone when a 40,000 square foot maximum was enacted. The applicant “took that to heart” as a criteria to be considered. When he approached the Commission for permission to construct a larger building, he was denied. The applicant then developed plans that are completely within the regulations and their criteria, as established by the Commission. He added that if the Commission did not want a 40,000 square foot building, a lower maximum would have been established. He stated that if there is any place in town within which to build a building of this size, it would be on the single largest commercial site in town. The Plan of Development establishes expectations, it guides implementation of regulations. That is what the applicant has used. Every single use in the commercial zone is a special permit and this is the type of use specified by the Commission for this zone. The applicant has the right to use the property within the parameters of the regulations.

Attorney Corona indicated that there is nothing that would be developed on the site that will not generate traffic. There will be lighting on the site. The applicant is now newly aware that the proposed lighting is not exactly what the Commission had in mind and this will be adjusted. There will always be an increase in traffic, noise, lights, etc.—when a vacant lot is commercially developed. The Commission has the ultimate say in determining many detailed factors about the project—i.e., hours of operation. The Commission can manipulate the application to fit within the criteria of the regulations—everything from parking and lighting to hours of operation.

Pat Doherty then responded to some of the technical queries. Traffic issues will not be addressed at this point. In terms of site planning, with regard to lighting, a second photometrics plan will be developed using the larger shoebox-style lights and the circuitry to determine which lights remain on in the off-hours. In terms of the lighting being dark-sky compliant, the building code now requires that any fixture attached to a

building surface be dark-sky compliant—full cut-off. This criteria must be and will be met. He thought that the issue of police protection was addressed by Attorney Corona in an earlier meeting. Regarding the infiltration system failing in New Hampshire, he is unaware of the specifics in that case. As to the site sitting on an aquifer, he did not believe that they were in an aquifer-protection district that would prohibit any of the uses proposed. Trash collection hours were addressed in a previous hearing.

Pat Doherty discussed stormwater and the requirements to capture and treat 100% of the water volume, the one-inch rainfall, because that represents 90+% of solids and other pollutants. The actual system is designed so that the pipes would not flow more than full during a ten-year design storm and that it would not cause any flooding downstream during a 100-year design storm. The criteria that the DEP and the DOT have established are reflected in this application. There are no requirements in any regulations that he is aware of for a 500-year design storm except perhaps for a bridge on a major river. Water quality and peak attenuation has been provided.

In terms of the retaining wall, Pat Doherty stated that a 14-foot wall is proposed with a split-face concrete block. It is an integral system that reinforces the earth behind the retaining wall that is very stable. With regard to reflection, he has never had this come up as an issue before. It is not a smooth finish, it is not painted. It is an earth tone and should diffuse any light. It is also located further from any homes and would not reach any of the neighbors. George Eames stated that the Commission could require on the site plan that there is to be no reflection of light from the retaining wall.

Pat Doherty then described the location of the wall and its proximity to Winsome Drive. There are from 10 to 15 feet of trees between the pavement on Winsome Drive and their property line and nearly 30 feet from the pavement to the retaining wall. There will be a guardrail installed on top of the wall. It is the applicant's intent to meet with abutters who have expressed interest to discuss fencing and buffering options. These would eventually be on the plans. Existing vegetation, including a large stand of evergreens, plus evergreen plantings leading down to the new retaining wall, will help to screen the site. There would be a four-foot high chain link fence on top of the wall.

Geoffrey Colegrove stated that on a previous application, the Commission requested completion of all buffering prior to site work. This has proven to be quite successful. Attorney Corona stated that this had been discussed with Brian Curtis and could be the first order of business. Along the westerly property line, in particular, this would make sense. Richard Eriksen suggested a six- or eight-foot high fence would be better. Pat Doherty explained that the purpose of the fence is to keep someone from inadvertently falling over the retaining wall; if someone is going to climb over the fence, a four-foot fence is safer. Pat Doherty indicated a six-foot fence could be installed.

Attorney Corona spoke regarding the economic impacts of the project. He stated that it was important to remember that no one project can reverse the town's economic fortunes. The consequences of residential development are fairly well understood. Approving this

project will not halt the rise in taxes or educational costs for the town. He stated that \$150,000 may not sound like a lot—unless an expenditure such as a fire truck is being considered. When that amount of money is considered as an expenditure, it feels like a lot more money.

Speaking to the characterization of the Price Chopper as not a “good” grocery store, Attorney Corona indicated that the expectations of the residents are relatively high and for the business to survive it will need to be good. He reminded the Commission that the application is for a particular allowed use and not a specific chain or grocery store. While it has been disclosed that Price Chopper is interested in coming to the site, they are not the only party interested in the site. The application is for a grocery store.

While traffic will be discussed at the next meeting, he disagreed with Michael Good’s statement that the traffic will affect the people’s ability on Haddam Quarter Road “to have normal lives, that they’ll be trapped in their houses.” He recognizes that every new development—commercial or residential—adds more traffic to the roads. There are more and more people passing through town and while this project will add to that traffic, Attorney Corona described the addition as being a marginal one. He also urged that the Commission not “listen to constituents” because this is a determination based on rules and not just people’s sentiments. He asked if there were any specific issues the Commission would like the applicant to address. At the meeting on the 16<sup>th</sup>, the traffic engineer, landscape person, and architect will all be present. Proposed signage will be presented. In addition, proposed conditions of approval will be presented at the meeting—not to be presumptuous, but as a good way to focus discussion.

George Eames stated that with regard to traffic—about the extension of Route 17 heading south past Route 147—he asked how far south it would actually extend. Attorney Corona stated that the applicant proposed a rough design to the DOT; until the application is approved by the Planning and Zoning Commission, the DOT won’t seriously be reviewing and analyzing the application. The town’s input will be part of the DOT’s process. He cannot say where the two-lane roadway will stop at this point. That is up to the DOT.

Richard Eriksen asked about a sidewalk. Attorney Corona indicated that there would not be room within the existing right-of-way; either additional land would have to be taken or another creative solution. If the DOT decides against road widening, then there is probably ample room for a sidewalk on Route 17. The DOT’s decision must be received first. Attorney Corona stated that the applicant has been very candid and honest about the future likelihood of additional enhancements to the state highways in Durham—with or without this project (i.e., future widening of Route 68).

Jim Kowolenko asked if the project is approved and the DOT then proposed some major changes, does the Commission have any voice in the matter and do those changes have to be accepted? Attorney Corona stated that the answer is no, the Planning and Zoning Commission does not have jurisdiction over traffic improvements to state highways. If

something is required to be changed on the site, however, then the Commission does have a say (i.e., moving the entrance 100 feet to the north).

Diana McCain stated that she wished to correct Attorney Corona's numbers—Don Klepper-Smith stated that the net tax revenue from the project would be \$112,000 per year, not \$150,000. It will decline every year after that. Attorney Corona stated that he would provide Ms. McCain with his calculations.

Pat Doherty responded to Kerry Querns' question about impact to well systems in the area. Use of the new buildings for retail purposes does not represent high consumption of water. Based on the septic design, 4,000 gallons of water a day can be accommodated. This equates to nine three-bedroom single-family homes on 11 acres. It is very similar to a residential use. Depth of the well will be until proper water supply is achieved.

Lee Seeton asked the recourse for residents if there is a well problem, which can run \$20,000 to \$30,000. Richard Eriksen noted that under current zoning regulations, on an 11-acre parcel, conceivably five houses could be situated—each with a well. The request from the developer for their well is not unreasonable and the project is probably less intensive than an industrial or restaurant use. Lee Seeton asked what would happen if a restaurant went into the project and created a well problem. Geoffrey Colegrove explained that this project exceeds 2,000 gallons a day, which requires a review and recommendation from the State Department of Public Health. Ultimately, the local health officer issues the permit. As part of that process, the well must be drilled prior to getting a building permit. That protects the person putting the well into the ground. But there is a discharge permit as well as part of the state review of the septic; 12,000 gallons of discharge cannot be put into a system sized to 4,000 gallons. Well yield is tied to septic capacity. If more than 4,000 gallons cannot be discharged, it doesn't matter that 12,000 gallons can be pumped—it exceeds the discharge capacity. The discharge permit limits this.

Lee Seeton pointed out that the site, with the gravel bed in there, is a big source of water. He asked if the town engineer has reviewed this. There are at least four free-flowing wells that he can walk to that produce a tremendous outflow of water within 200 yards of that hill. Geoffrey Colegrove stated that the test results show bedrock fairly close the surface. Overflowing wells are the result of artesian wells, which are found in sedimentary type rock. The town engineer has been on the site during all testing. Lee Seeton asked that the engineer be asked if he has talked with anyone about 4,000 gallons of water being pulled out of the site and its impact on neighborhood wells. Geoffrey Colegrove stated that he would pass this along to the town engineer.

Joseph Pasquale, Parmelee Hill Road, stated that at the last public hearing, he asked about the Conservation Commission's recommendations for the application. Attorney Corona indicated at that time that he had not received anything from the Conservation Commission. Joseph Pasquale asked if anything has since been received. Attorney Corona accessed the minutes of the Conservation Commission on the website and found

two comments. The first is the recommendation for a reduction in parking and the second is to encourage the Commission to consider alternate treatment of stormwater based on Bob Melvin's comments.

George Eames stated that the Planning and Zoning Commission had not received anything from the Conservation Commission. Geoffrey Colegrove stated that the Commission provides an opportunity to the Conservation Commission to comment on an application; the Conservation Commission is not obligated to respond.

Motion by Dave Foley, seconded by Richard Eriksen, to continue the public hearing on the request for a special permit for the construction of three retail buildings, Main Street. Applicant/Owner: Silver Eagle Development Trust, LLC, to January 16, 2008. Motion carried unanimously.

Motion by Dave Foley, seconded by Richard Eriksen, to reconvene the regular meeting at 10:51 p.m. Motion carried unanimously.

#### 6. Election of Officers

Motion by Dave Foley, seconded by Frank DeFelice, to elect the following slate of officers for 2008:

- Chairman George Eames
- Vice Chairman Richard Eriksen
- Secretary/Treasurer Gene Riotte

Motion carried unanimously.

#### 7. Payment of Bills

Motion by Dave Foley, seconded by Gene Riotte, to pay the following bill:

- Attorney Thomas Byrne — \$1,650 (Esparo case)

Motion carried unanimously.

#### 8. Town Planner's Report

Geoffrey Colegrove distributed a proposed draft to change the signage regulations. Once the Commission has reviewed and approved in theory the changes, a public hearing will need to be scheduled. Proposed for prohibition are internally illuminated signs, LED illuminated signs, and message board types of signs. There is a question as to the billboards for Little League/school games, some of which may be illuminated. Richard Eriksen suggested including this language and then allowing the schools to make a special application.

Frank DeFelice stated that signs are discussed in section 6.06.05 (colors and materials of signs). There should be a footnote referring to the new language in section 11. In terms of the animated issue of a sign—this should be separate from the internally illuminated aspect. He suggested that someone seeking approval for a sign for the school athletic fields should be asked to conform to the regulations crafted for the rest of signs in the town. In section 11.01, there is mention of a real estate sign; he wanted to ensure that this wouldn't provide a loophole.

The Commission discussed whether or not to remove the prohibition of message (score) boards from the language. A decision was not yet reached.

George Eames indicated that he had received a letter from Wendy Manemeit, town treasurer, on December 23 to Pat DiNatale regarding a short-term bond for 6 Main Street. Ellen Mauro requested that a bond in the amount of \$6,000 be released. The only bond on record is for \$2,800. Therefore, \$2,800 is the amount officially noted by the Building and Health Department records. Wendy Manemeit indicated that she had created a detailed coversheet for bond records to prevent similar confusion in the future.

A cease-and-desist order was issued on January 2 to the wrestling organization at the former Parsons' site. Another letter was sent to the landowners of the property in question. A letter was also issued on January 2, 2008, regarding the crushing activity by Nosal on Ozick Drive.

Geoffrey Colegrove spent three-and-a-half hours in court earlier in the week relative to the Esparo/Piotrowski feud.

George Eames then discussed trash pickup that can occur as early as 3 or 4 a.m. He would like to see some kind of regulations regarding hours of collection that are within reason (i.e., perhaps beginning no earlier than 6 a.m.). Richard Eriksen recalled that with the Adams project, trash pickup could not begin prior to 7 a.m.

Frank DeFelice stated that under 6.04, the Commission can stipulate certain conditions. Under 6.04(4), noise is addressed. However, this relates only to a new application as opposed to implementing a townwide ordinance or trash pickup regulation. Frank DeFelice described how monitoring of sound occurs and is weighted on the basis of emission and time.

There are currently early trash pickups in town (Durham Pharmacy, Durham Manufacturing, etc.). These would need to be addressed through an ordinance. Richard Eriksen indicated that many towns have ordinances restricting trash collection to the hours of 7 a.m. to 7 p.m. First Selectman Laura Francis pointed out that any ordinance would need to be defensible and enforceable.

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Gene Riotte asked if the Commission would like him to attend the next meeting of the Zoning Board of Appeals in the matter of a 120-foot variance request for Tad and Jennifer Swierczynski, Hellgate Road. The Commission asked Gene Riotte to attend.

Motion by Dave Foley, seconded by Gene Riotte, to adjourn the meeting at 11:13 p.m.  
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

Jan. 9, 2008