

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

(Revised)

MINUTES OF JANUARY 23, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Tom Russell

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: Dian O'Neal, Gene Riotte

The meeting was called to order by George Eames, Chairman, at 7:30 p.m.

Mike Geremia was seated on the Commission in Dian O'Neal's place. Mark Laudano was seated on the Commission in Gene Riotte's place. Cathy Devaux was seated on the Commission in Frank DeFelice's place after the hearing opened and Frank DeFelice recused himself.

George Eames introduced staff: Brian Curtis, town engineer (with Nathan Jacobson); Bruce Hillson, traffic engineer; and Jan Melnik, recording secretary.

1. Approval of Agenda

Motion by Dave Foley, seconded by Mike Geremia, to approve the agenda of the January 23, 2008, special meeting as presented. Motion carried unanimously.

Motion by Mike Geremia, seconded by Ralph Chase, to recess the meeting for the public hearing at 8:00 p.m. 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: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Tom Russell

Town Engineer: Brian Curtis

Town's Traffic Consultant (through Nathan Jacobson Associates): Bruce Hillson

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

George Eames, Chairman, read the notice for the continued public hearing.

Mike Geremia was seated on the Commission in Dian O'Neal's place. Mark Laudano was seated on the Commission in Gene Riotte's place. Cathy Devaux was seated on the Commission in Frank DeFelice's place (Frank DeFelice had previously recused himself).

Jan Melnik handled several housekeeping matters. The first was advising those in attendance for the hearing that under the most recent legal advice that the Commission had received, it was determined that the best way to handle correspondence received over the past month on this application would be to read into the record the names of the authors of all correspondence received and the dates of that correspondence. Because the volume was so large, it was not practical to read into the record all letters received. Two residents who had specifically asked that their letters be read into the record verbally waived the reading of those letters in the interest of time.

It was recommended by Tom Hennick (Freedom of Information Commission) that copies of all letters received be made available at Town Hall—which would be done following the close of the evening's hearing. In addition, Jan Melnik stated that every Commission member would receive with the minutes of the January 23 hearing a copy of every letter received from members of the public to review and use in their deliberations.

Correspondence was received from the following individuals:

Author(s) of Letter	Date of Letter/E-mail
• Beth Atwood	no date
• Noel Higgins	no date
• Alma Hinman	no date
• Lewis Hinman	no date
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• Margery Stahl	no date
• Violet and Linda Coleman	December 1, 2007
• Resident State Trooper Peter Digioia	December 19, 2007
• Adam and Bridget Poturnicki	January 8, 2008

Author(s) of Letter	Date of Letter/E-mail
• Frank DeFelice	January 9, 2008
• Michael Good and Susan Possidente Good	January 10, 2008
• Thomas and Frances Halloran	January 10, 2008
• Middlesex Chamber of Commerce President Larry McHugh	January 10, 2008
• Amy and John Borenski	January 11, 2008
• Connie Brown	January 11, 2008
• Kristan Higgins	January 12, 2008
• Duncan Milne	January 12, 2008
• Lisa Larsen	January 13, 2008
• Diane Moore	January 13, 2008
• Jackie Hastings	January 14, 2008
• Gary and Nancy Johnson	January 14, 2008
• Stephanie Robiner and David Miner	January 14, 2008
• Thomas and Gifford Francis	January 15, 2008
• John and Jo-Ann Giaimo	January 15, 2008
• Michael and Sandra Thulis	January 15, 2008
• Mary and Brad Wilkinson	January 15, 2008
• Lieutenant Stephen Castagliuolo	January 16, 2008
• Marlene Clark	January 16, 2008
• Marianne Corona	January 16, 2008
• John and Kate Farnsworth	January 16, 2008
• Howard B. Field, III	January 16, 2008
• Richard C. Hanley	January 16, 2008
• Diana McCain	January 16, 2008
• Rosemarie and Kerry Querns	January 16, 2008
• Eleanor R.W. Seeton	January 16, 2008
• Margery E. Stahl	January 16, 2008 (2)
• Lillian N. White	January 16, 2008
• Rosemary Querns	January 21, 2008
• Carl Montagano	January 22, 2008
• Margery E. Stahl	January 22, 2008
• Laurie Stevens	January 23, 2008
• Ryan Ford	January 23, 2008
• Rebecca Good	January 23, 2008
• John and Betsey DuBois	January 23, 2008
• John DeNunzio	January 23, 2008
• Konrad and Deborah Kotrady	January 23, 2008

Included in the correspondence noted above was a letter dated January 9, 2008, received from Commissioner Frank DeFelice in his capacity as Chairman of the Public Safety Committee. For the record, Jan Melnik read this letter in its entirety; a copy is included as an exhibit in the official record. The salient points of this letter advised that “during the

Public Comment portion of the Public Safety Committee meeting held on January 8, 2008, several residents expressed their viewpoints on and posed questions to our Resident State Trooper, regarding the application from Silver Eagle ... I want to assure each member of the Planning & Zoning Commission that during all discussions which could reasonably be considered as related to this application, I recused myself and physically removed myself from the Public Safety Committee.”

Jan Melnik also stated that on Friday, January 18, a Freedom-of-Information request was filed at the Town Hall by the applicant’s attorney, John Corona, seeking copies of all correspondence, both paper and electronic, that had been received, exchanged, or transmitted to/from and between members of the Commission and the public relative to Silver Eagle. A letter passing along this request was sent to all Commission members on Saturday seeking their compliance; because of the holiday Monday, those letters were likely not received until Tuesday, January 22. Notification of this request was being made simply to place it on the record.

At the close of the public hearing, two Commissioner members, Ralph Chase and Frank DeFelice, presented copies of all *ex parte* communications received for the record. These documents were catalogued and included as exhibits available for public inspection at the Town Hall. All correspondence was copied and provided to all Commission members as part of their record.

The public hearing then was turned over to the applicant. Attorney John Corona addressed the Commission, explaining that as a result of working with the Town Engineer, Brian Curtis, there were reductions made in the parking—deferring 40 parking spaces. George Eames clarified that he believed Brian Curtis’s recommendation had been to defer 62 spaces. Attorney Corona indicated that the Commission would have the ability, as a condition of approval, to determine the number of parking spaces desired for elimination/to be deferred. He added that there are minimums required by the regulations, but not a maximum for parking spaces. The Commission can make a determination to reduce the proposed parking spaces further, if desired.

Attorney Corona advised that the Inland Wetlands hearing had been closed, but no decision has yet been rendered. He also stated that he had sent letters to all adjoining property owners, offering to meet to discuss specific landscaping plans and desires. Several neighbors accepted the offer and there have been subsequent modifications made to the landscaping plans to address these concerns. He noted that some neighbors did not take advantage of this opportunity.

Traffic data was discussed. The recounts taken by the applicant in January actually yielded numbers lower than those reported for the August test date.

Attorney Corona stated that in considering hours of operation, he had researched previous Commission decisions on retail businesses along Main Street and not discovered any specific hours imposed. Therefore, the applicant is proposing to be open to the public

between the hours of 6:00 a.m. and 11 p.m. daily; he noted that convenience stores in town operate on an unlimited basis. Trash collection is proposed to occur between the hours of 6 a.m. and 9 a.m. Monday through Friday and from 8:00 a.m. to 9:00 a.m. on holidays and weekends. Proposed truck deliveries will occur no earlier than 5:00 a.m. and no later than 12 p.m. He added that he would expect the Commission to establish hours for construction for the site. A proposed motion of approval with conditions was presented as a working draft for the convenience of the Commission; certain hours were left blank for the Commission to complete.

Pat Doherty, the project engineer, addressed the Commission. He described three areas of revision to the plans: lighting, landscaping, and parking spaces. Following feedback from the Commission at a previous hearing, the number of light poles was reduced by changing from 20-foot poles to 30-foot poles and using shoebox-style fixtures that are dark-sky compliant. He demonstrated on the plans that these can be installed using a grid that is 90 foot on center (versus 60 foot on center). In addition, when examining security lighting for the property during after-hours, the number of lights illuminated will be reduced to 12 during hours that the store is not open to the public.

Forty parking spaces are being deferred; the applicant believes that these parking spaces may ultimately be required, but is not seeking approval for them at this time. Grading and the underlying base will be installed; if needed in the future, the Commission can be reapproached for approval. These spots are located on the west end of the property behind the store and to the south of the store (directly north of the wetlands located adjacent to Route 147).

The applicant's representatives met with several abutters/neighbors, those who had responded to Attorney Corona's letter. The landscaping plan was revised to create an even denser green buffer on the western edge of the property closest to residential development. The 50-foot buffer is being enhanced. In addition, a berm will extend the grade to 4-6 feet higher and feature a six-foot stockade fence. Both sides of the buffer will be enhanced with evergreens and deciduous shrubs and trees. The southeast portion of the site, in front of retail building B, will have added landscaping, evergreens, and lower shrubs to screen the view of buildings from those properties to the east. The buffer along Winsome Drive features existing evergreens and will also be enhanced. Pat Doherty summarized that he believed all issues raised by the town engineer, Brian Curtis, had been addressed as well as correspondence received from the town's traffic engineer, Bruce Hillson.

The January traffic accounts were 10% lower than the counts performed in August; August is representative of a good average for the corridor. The traffic along Route 147 was calculated based on 15 miles per hour over the 35 mile per hour speed limit approaching Route 17. Sight lines were also reviewed; an easement will be required by the State Traffic Commission for grading along a section of Route 147 to ensure good sight lines.

Proposed signage was also presented for the project and entered as an exhibit.

The town's traffic consultant, Bruce Hillson, addressed the Commission. He stated that he had received just this evening copies of the site plan profile as well as off-site roadway improvements; he has not had an adequate opportunity to look at this information in complete detail. However, he referenced a series of 3-4 memoranda issued by him since commencing his review earlier in January. The first issue discussed was traffic counts and the possible query that August volume might not be reflective of average conditions on a year-round basis. The January counts were actually lower than the August volumes. Given both counts reflect summer and winter, it is possible that there are some months that could be a little higher (and some months a little lower), but he thought the volumes reflected were fairly representative of the traffic in the area.

The second issue spoke to traffic generation. Bruce Hillson advised that he was initially unaware, from the applicant's materials, that the big building was a grocery store (the traffic study simply indicated 'retail use'). Therefore, his initial report stated that, for retail use, the applicant's traffic generation data was appropriate. However, this is not the case for a grocery store; he requested that the applicant redo trip generation data and submit new information as well as capacity and queue analyses based on the new numbers. That work was performed by the applicant and submitted to the Commission (and Mr. Hillson) on January 23.

The third issue discussed background growth factor. Bruce Hillson stated that the factor used by the applicant was within the engineering standards that traffic engineers use; it was found to be acceptable.

The fourth issue discussed trip distribution. While his analysis revealed minor differences, the numbers were essentially the same.

The fifth issue was distribution of traffic when leaving the site; the applicant's data appropriately assigned traffic to the roadway system.

The sixth issue discussed approaches to the site—Route 17 has adequate sight lines approaching the project from the north. Route 147 is also adequate for speeds of up to 50 miles per hour (15 miles over the posted limit). Route 147 requires the grading changes previously mentioned in order to provide adequate sight line distances on the approach to the Route 17 intersection and to accommodate a slight peak in the road to ensure "cars are not lost in the dip" (to visibility). It has been suggested that the applicant approach the adjacent property owner to seek permission for providing a sight line easement and grading rights. According to Bruce Hillson's review of the record, there has been no indication provided from the abutting property owner as to the acceptability of this proposal.

The seventh issue relates to the improvements proposed on Route 17. These are consistent with the recommendations of the Route 17 corridor study. The proposed alignment (uncertain timeframe) for Haddam Quarter Road with Routes 17 and 147 is desirable to create a four-way intersection—as would be widening of the side streets to create two-lane approaches from all four directions. The proposal to widen Route 17 from the north coming into the intersection at Route 147 is sound and it is likely that the Department of Transportation will ask that the widening continue further south to allow vehicles going through the signals to merge before the transition back to one lane heading south.

The eighth point discussed was capacity analyses and queuing/stacking at traffic lights while waiting to turn green. Various tables were referenced depicting signalized intersection capacity analysis and vehicle queue summary. Bruce Hillson recommended that the Commission carefully review this information while deliberating to understand the implications of traffic associated with this development on queue lengths without improvements and queue lengths with the proposed improvements. He wanted to insure that the Commission understood the implications *if* there were approval *without* the requirement for off-site improvements.

Bruce Hillson proposed to the Commission that he attend subsequent Commission meetings as staff consultant during which deliberations relative to traffic were being debated.

In terms of traffic level of service at the intersection of Routes 68 and 17, with the addition of traffic from the project during afternoon peak travel time, the LOS will be an F. The applicant is attempting to examine timing revisions to the signal to help ameliorate this problem. In its current state, queues are already lengthy in that area (several hundred feet back on Route 68 during peak hours). The intersection of Routes 147 and 17 along with Haddam Quarter Road also would operate at level of service F during afternoon peak times. The proposal to widen Route 17 will improve its level of service to a C.

In terms of comments from the public about addressing other local roadways (i.e., Maple Avenue, Haddam Quarter Road, Brick Lane, etc.), Bruce Hillson stated that it is not up to a developer or applicant who is proposing specific site development to address all of the area-wide traffic concerns. What must be addressed is the immediate area traffic impact to major roadways from proposed development, which the developer has done. Input from the corridor study of 12 years ago has been taken into account. Bruce Hillson acknowledged that there are concerns and many side streets in the area that are probably going to be impacted. He added that it would be prudent if there are issues related to access or capacity that the Route 17 corridor study be revisited and involvement with the state occur in order to implement some of the previous traffic recommendations to keep the flow of traffic on Route 17 and not the side streets.

George Eames explained that by statute, the public hearing would have to close at the conclusion of the evening's meeting. However, the Commission could still accept input from its professional staff, Geoffrey Colegrove, Midstate Regional Planning; town engineer Brian Curtis; traffic consultant Bruce Hillson; and recording secretary Jan Melnik. No additional information or comment could be accepted (after the close of the hearing) from the public or from the applicant.

Bruce Hillson indicated that he would review the newest material submitted by the applicant relative to traffic and then provide a review/report of anything new to the Commission.

George Eames stated that he had talked with Representative Ray Kalinowski about the possible changes to the Haddam Quarter Road intersection; there are no plans in the immediate future for the state to address this intersection. It is unknown when that might occur. It seemingly is not a priority for the state right now.

Dave Foley commented that it would be more conservative for the traffic count analysis to use the August numbers, which were subsequently determined to be higher than the January traffic counts. Bruce Hillson stated that although the applicant did submit the January count data, the August numbers were used in all the reports.

Pat Doherty clarified for the record that the intersection of Route 68 and Route 17 would degrade from an E to an unacceptable F with build conditions as proposed *without improvements*. He reiterated that there is sufficient room within the state highway right-of-way to perform mitigation (widening); however, at the first public hearing of this application, proposed lane widening at the intersection of Routes 68 and 17 was not well-received and it was determined that signal timing adjustments and minor lane widening configuration changes would be more palatable. The applicant will do what it can to mitigate the level of service degradation at the intersection, but will by necessity defer to the State Traffic Commission, Department of Transportation, and the town of Durham on what exactly will be done there.

Attorney John Corona concluded this portion of his presentation; George Eames opened the public hearing to members of the public in attendance.

Dr. Michael Good first addressed the Commission, introducing himself as a representative of a small group and noting that he would be introducing different speakers with a variety of expertise to talk to specific aspects of the application. He thanked members of the Commission for the many hours of volunteer work undertaken on behalf of trying to uphold the rules and regulations of the Planning and Zoning Commission in order to protect the well-being of Durham's citizens. He reflected on the larger-than-usual attendance (estimated at about 600), venturing to say that the vast majority of those present were opposed to the current application; this comment, along with others throughout the night, was met with considerable applause. He stated that the

proposed application would result in “potentially irreversible damage to the fabric of life in Durham.”

Dr. Good then described scenarios where, as a family physician in Middletown, instances of elderly patients receiving extensions on expired prescriptions from Wally Douglass at Durham Pharmacy are handled over the weekends with subsequent phone calls for clarification; he stated this isn't likely to occur with a larger chain pharmacy.

He pointed out that when people come on hard times, many regular customers of Durham Market can place their grocery purchases on a tab and that Chet Mounts and his sons won't refer the matter to a collection agencies; he added that the Durham Market writes off some \$4K in groceries each year from people who cannot afford to pay. He suspected this wouldn't happen with a large supermarket.

He also used for illustration the fact that local businesses help one another—even so-called competitors—citing a fire that occurred recently at Durham Market. Lino Aparo provided assistance by feeding Durham Market personnel and offering services of his store to help the Durham Market survive. Again, he characterized this as something not likely to occur with a large supermarket in town that could threaten the continued existence of smaller, independently owned businesses.

Dr. Good referenced the Planning and Zoning Regulations as well as Plan of Conservation and Development—acknowledging the rural nature of the town, requirement for buildings to conform, and stipulating the orderly development of the town and its neighborhoods. He described the small-town character and beauty but recognized the need for an *appropriate scale* of development to satisfy the needs of the residents. Deemed unacceptable would be development that exacerbates traffic congestion, harms the attractive community appearance, and infringes upon the protected residential neighborhoods. He stated his impression that the impact of a large, “big box” grocery store would be the closing of the town's locally owned businesses: Durham Market, Lino's, Durham Pharmacy, and others. He added that his stance is not to ask the Commission to be anti-competitive or protectionist, but to recognize that the decisions made can affect the business climate and environment in town.

Dr. Good pointed out that there are no independent pharmacies remaining in Middletown—conditions in the city changed so that such ventures could no longer survive against the influx of chain pharmacies.

He urged the Commission to make a judgment of the rules and regulations that are designed to protect the health, safety, and welfare of residents and preserve the rural character of the town that residents currently cherish. He added that the town is depending on its elected officials to conform to the regulations and town's Plan of Conservation and Development. He believed a number of specific areas of the application were out of compliance with the Zoning Regulations.

Dr. Good then introduced speakers with varying professional and personal experience to talk to various points of the application.

Diana McCain, Skeet Club Road, next addressed the Commission. She stated that she was an historian by profession and had written the “Historic Walking Tour of Durham.” As such, she was very familiar with the streets of town and had spent considerable time studying the regulations. She thanked the Commission for its patience, forbearance, and attention and noted that she had provided a written document detailing how the application fails to meet several Zoning Regulations, primarily because of traffic. She stated that the analyses done using the August 2007 data was actually lower (by 15%) than the May 2004 DOT data. Additionally, peak traffic from the corridor study would certainly be lower than occurs present-day. She believed the applicant’s traffic counts conducted in August and January do not reflect the typical heavy traffic when school is in session—and the many after-school events and activities that require frequent trips through town.

Diana McCain further expressed concern that the applicant’s traffic study referenced only retail development and not a grocery store, which has significantly greater numbers of trips. This would substantially alter the numbers presented for peak afternoon flows. She also noted that the applicant has not provided any data about the numbers and types of trucks that would be servicing the project from Route 147. This will significantly impact traffic. She referenced the Plan of Conservation and Development and asked the Commission to carefully consider the evidence, speakers from the public hearing, letters to the Commission, letters to the editor of area newspapers, signatures on petitions—all of which she described as overwhelming evidence that the subject application is not compatible with the fulfillment of the POCD vision statement and Durham’s rural, small-town character. She closed with a quote from Oscar Wilde about a “cynic who knows the price of everything, but the value of nothing.”

Sgt. Joanne Schaller of 77 Sand Hill Road addressed the Commission. With 19 years of law enforcement experience, she has been a career police officer with the New Haven Police, ten years in the detective division and currently a supervisor in that division. She spoke to issues of public safety—referencing Section 13.05.04(8) of the Planning and Zoning Regulations wherein a “special exception shall not constitute a hazard to public health, safety, or welfare—on or off the property.” She also noted Section 06.06(11) in terms of criteria to consider in determining appropriateness of location and use within commercial zones and subsection (9) relative to extent and demand for police/fire protection. She suggested that most people in attendance at the hearing would agree that one police officer in Durham is not adequate for our needs.

Sgt. Schaller stated that she has lived in Durham ten years and that the proposed project will require additional police resources that the town just does not have. She researched the demands on police services by grocery stores in surrounding towns and presented the following information, all data for the last calendar year:

Madison – 59 calls to Roberts and 116 calls to Stop & Shop

Guilford – 61 calls to Big Y

North Branford – 31 calls to IGA

North Haven – 77 calls to Big Y

Clinton – 315 calls to Stop & Shop and 157 calls to Shaws

These calls for service comprise robberies, thefts, shoplifting, theft from persons or vehicles in the parking lots, medical calls, accidents, forgeries, disturbances, suspicious persons, damaged property, and alarms. She stated that this does not include time an officer might spend patrolling the property, looking for suspicious activity, deterring crime, or discouraging loitering. It also does not reflect the drain on town fire and ambulance resources. Many of these stores are smaller than the one proposed and virtually all of the towns have full-time police departments to handle calls for service.

She stated that while it would be impossible to predict future calls for police service at the Durham Price Chopper, these facts, as she presented, represent typical police demands generated by grocery stores in surrounding towns. If our one resident trooper or the on-call backup from Westbrook is at the grocery store handling a call, that trooper can't respond to resident calls about burglaries, patrolling neighborhoods, etc. It would represent a public safety burden.

Sgt. Schaller added that Pete Digioia spoke at the January 7, 2008, Public Safety Committee meeting and noted concerns about the proposed Price Chopper; if it were to become a 24-hour operation, those safety concerns would deepen. She stated of the eight Price Choppers in Connecticut, every one is open 24 hours. Our resident trooper only covers one out of three daily shifts. No matter how good one trooper is, he/she would fail to meet community demands for service.

She also reflected on the presentation by Attorney Corona at a previous public hearing—filling a water pitcher up, then overflowing it with the addition of the grocery store. Roads are already to capacity—incremental traffic would add to an already overtaxed area of roadway. She suggested the logic behind the demonstration was imperfect—using a flood as an analogy: If there is a flood and there's water at the door, who would pray for more rain?

In terms of the \$125,000 revenue that the project might be expected to generate, she suggested that when the need for police resources is subtracted, it would not add up to a gain for the town. She said even with fire and ambulance services being volunteer, there is a cost every time a vehicle or piece of equipment is “rolled out of the barn.” This doesn't even begin to account for damage being done to the town's character. She thanked the Commission for their efforts, not envying their position. But in light of the facts, she suggested that their decision would not be a difficult one. She noted that Attorney Corona at the earlier hearing in January said that the Commission should not

rely on public sentiment in formulating a decision; she stated that the Commission would not have to—that the project could and should be turned down on the basis of being a detriment to public safety.

Dr. Steve Levy addressed the Commission regarding public safety. He indicated that no one had spoken about public safety emergency services. Buildings being constructed today feature sprinkler systems that can extinguish some 95% of fires. However, there is still a need for response vehicles. With the anticipated exacerbation of traffic problems on the state highways throughout town, how difficult would it be for a responder getting to an incident? Further, the intersection of Haddam Quarter Road with Route 17 has one of the highest rates of accidents in town. There is also concern for emergency vehicles reaching residents' homes because of increased traffic problems.

Katharine Conroy, 304 Johnson Lane and a recent Coginchaug graduate and Mt. Holyoke College student, addressed the Commission. She studies and writes about environmental issues. She suggested that the rural character of Durham is threatened by the proposed application as is the open space, aesthetics, natural environment, and well-being of the town's citizens. She referenced three areas of environmental concern: light pollution, noise pollution, and water quality preservation concerns. Light pollution has been shown to negatively impact mental and physical health; she hoped this would be taken into consideration through a thorough review before any decision is reached on the special permit.

Noise pollution yields similar negative effects—arising from customer traffic, truck delivery traffic, trash pickup, garbage disposals, compactors, compressors, etc., associated with a 24/7 facility. She stated that all noise levels from the project should be within compliance with town standards.

With regard to water quality preservation, her studies have demonstrated that the projected output for the business—4,200 gallons of water per day for all three buildings—is a low number. Lino's Market, a roughly 2,000 square foot store, generates 225 gallons per day and another grocery store of similar size open only 13 hours a day reported 4,358 gallons per day. She believes the numbers presented for the Price Chopper and the two ancillary buildings are significantly understated. The Department of Environment Protection requires any discharge greater than 5,000 gallons be reviewed/approved by them; she encouraged the Commission to investigate this. She expressed confidence in the Commission's ability to use its discretion and wise judgment before voting on this application.

Elsie Patton, 435 Coleman Road, Middletown, addressed the Commission. She is a hydrologist with 26 years of experience working for the Connecticut Department of Environmental Protection; she was formerly a Durham resident. She had previously handled a number of projects relative to water quality along Main Street in Durham for the DEP. She expressed her concerns about the Commission having appropriate

information to assess the planned infiltration of groundwater at the subject site. She stated that her experience involves many cases of groundwater contamination.

She added that the town is still dealing with issues at the superfund site on Route 17. The resolution for correcting contamination has not yet been settled. She suggested it was important to think carefully before approving development that would impact groundwater quality where people rely on groundwater for drinking. She stated that stormwater collected from heavily used parking lots has higher concentrations of pollutants (petroleum hydrocarbons plus soluble/volatile organic compounds). The proposed infiltration process will not treat these compounds, resulting in a direct pathway for these pollutants to travel into the groundwater. Once there is a groundwater pollution problem, it is difficult to correct.

The DEP has a stormwater quality manual that details best methods for handling stormwater generated by development. Large commercial facilities, including grocery stores, are specifically listed as posing risks to groundwater. The DEP recommends that stormwater from such uses be put into infiltration galleys with proper pretreatment that removes the pollutants. However, she stated that there is no adequate pretreatment for removing carcinogenic hydrocarbons or reducing concentrations to appropriate levels.

Pasqualino Aparo, the owner of Lino's Market and resident of Parmelee Hill Road, addressed the Commission concerning the business climate in Durham. He stated that even though the Middlesex County Chamber of Commerce gave their support for this application, he believes a store like the Price Chopper (or any other large supermarket) will "blow away this town's character." He described the town as being made up of little shops and businesses and that the Planning and Zoning Commission has worked hard to preserve the country setting in Durham. If the proposed project goes through, many if not all businesses, including his, will be forced to close or move out of the area. There will be a further economic impact, a trickle down that may affect other businesses: local farmers that sell produce to the existing markets, purveyors of prepared meals, pizza, deli, bakery goods, produce, floral arrangements, health and beauty aids, coffee, juice, pet food and supplies, beer, etc.—all things that would be available at a Price Chopper under one roof.

Lino Aparo further stated that the only thing a Price Chopper will do is force a monopoly with all the little shops gone. This could even affect gas stations if coupons or discounts are given to just one brand in town. He pointed out that the Shop-Rite in Middletown is still empty and that a Big Y in Waterford was forced to close. These were both located in communities larger than Durham.

Even if the existing businesses are paying less in taxes to the town, as Attorney Corona noted in an earlier presentation, Lino Aparo stated that these businesses have been paying taxes for many years. There is a history of success with local residents; he has been in business for 14 years.

In terms of safety, a 39,000 square foot building cannot be compared with Durham Manufacturing, which is about 65,000 square feet in size. But this is a manufacturer—no retail business, no children, no handicapped, and no elderly. There are less people in the building at a time than would be expected in a Price Chopper. Additionally, the developer has represented that there will be two to three trucks making deliveries per day. He stated that even his small business has many more deliveries than that before noon on any given day from direct vendors (soda, bread, chip, etc.).

Lino Aparo also questioned the impact of traffic. He suggested that on one given weekday, 3,000 volunteers were needed to all drive through Durham on different roads—along with school buses driving their routes—to demonstrate the traffic problems that will result if the project goes forward. He thanked the Commission for considering these facts and thanked the public for supporting his business.

Dr. Brad Wilkinson spoke on the topic of public health. He has been in family practice in Durham for 11 years and also serves as the town's health director. He said that he takes the topic of overall health of the town very seriously. He cited his opposition to the project, noting concern for the negative affects on the health of all residents. He stated that despite ever-changing medical reports and studies, one thing is constant: the need for exercise. Studies have proven that people who "live a life of exercise and vigorous fresh air and walking live healthier and longer." He stated that he was fortunate to live where he can walk to/from work every day.

Dr. Wilkinson noted another concern, safety for teens and children. Many people do not pay attention to the painted cross-walks intersecting Main Street. Many people exceed the speed limit, and many try to use the town's roads for walking, running, and other recreational pursuits. He questioned the wisdom of adding to the already heavy traffic with a project guaranteed to produce more cars. He urged the Commission to carefully consider the regulations, noting that the proposed project clearly impacts health negatively and would constitute a hazard to public health and safety.

Attorney Campbell Barrett, 220 Main Street, addressed the Commission and presented a legal brief prepared by himself with Attorneys Ryan and Markovits. He stated that it was a fundamental misstatement, Attorney Corona's remarks about the commercial property in question being the developer's right to develop. He added that the Planning and Zoning Commission has the discretion to ensure that its standards are met. The brief cites several cases, including one with the town of Middlefield that denied a special permit application because the proposed use was not harmonious with the town and because of traffic; this was upheld by both the appellate court and the superior court of the state of Connecticut. A similar decision was upheld for Rocky Hill.

In terms of traffic concerns, Attorney Barrett noted that in a recent *Middletown Press* article, Chairman Eames was quoted as saying that traffic issues are beyond the jurisdiction of the Planning and Zoning Commission. He stated his belief that this was a misstatement—that the superior court has determined that it is not only permissible but a

duty of a planning and zoning commission to consider traffic congestion on state highways that can be negatively impacted by proposed developments that are subject to special permit.

He referenced instances in East Hartford and New Milford where special permits were denied based solely on traffic on state highways. Here, Routes 17, 68, and 147 are negatively affected. According to what has been presented by the applicant, the intersection of Routes 68 and 17 will fail if the project is built out. He stated that upon review of the brief he presented, there is no question but what the Commission should deny the application for the special permit.

Dr. Michael Good thanked the Commission for its patience in hearing the speakers he had brought forward.

Sharon McCormick, 297 Main Street (with a business at 40 Main Street), addressed the Commission. She stated that she is constantly traveling to/from work via Maple Avenue and Cherry Lane, simply because of the traffic on Main Street. She is heavily involved in the National Trust Foundation for Historic Preservation. She stated that according to her research, if the cost to taxpayers is greater than the public benefit, there is a responsibility to reject a project. She then discussed the impairment of appraised property values of the existing retail stores that might be driven out of business by the proposed project, adding rhetorically that there might be no one (vendors) present at the Taste of Durham event. Devaluation will affect commercial properties as well as adjacent residential properties. Residents will end up paying more in taxes when costs are redistributed.

Sharon McCormick noted that the presented economic data came from the applicant; she suggested that the town needs to calculate the economic benefits and detriment. A similar application in Lake Placid, New York was successfully denied because of the impact to community character. She suggested a similar case could be made for Durham—noting the countryside, the small town atmosphere, the Durham Fair, and the registered historic district. She stated that a decision should be based on what the residents and business owners want.

Jim Rossi, Higganum Road, addressed the Commission. He is a member of the Public Safety Committee. He commended Sgt. Schaller for an excellent presentation. He has concerns about vehicular traffic and pedestrian traffic, particularly when traffic is diverted down Maple Avenue. The increased traffic will make an already dangerous intersection that much worse. He asked why 2007 DOT traffic counts weren't used. He also stated that while the town has managed not to have an additional state trooper, despite increased crime and a lot of pressure, there is no question but what the town will need another state trooper at a cost of at least \$100K.

Jim Rossi also pointed out that the application does not provide for sidewalks to the store, whereas there are sidewalks all the way up Main Street to the bank and crosswalks painted on Main Street.

Brenda Shapiro, 395 Main Street, addressed the Commission. She commended others on excellent points made, but stated that there is residential impact from the project as well as that to businesses. There are seven houses along Main Street for sale that have not moved for months. People are moving out of town because of a loss of integrity. She moved to Durham, even with the increases in traffic over the years. She is directly across from the entrance to the proposed project, yet she never received a letter from Attorney Corona regarding landscaping.

Brenda Shapiro stated that she worked in law enforcement and is up every morning at 5:00 a.m. The number of 18-wheelers at that hour “is unbelievable.” She said seeing a Price Chopper and outside propane tanks is “not what Durham is about.” Nor does she want to see the small local businesses put out of business. She noted that she grew up in the Vernon-Manchester area and those towns are nothing like what they used to be; she asked the Commission to find it in their hearts to deny the application.

Bill O’Neal, 271 Main Street, addressed the Commission. He stated that it was appalling what the traffic will do to his property values. He asked if the historic corridor of Main Street was protected from expansion of Route 17. He further asked what day it was in January that the traffic count was performed (i.e., perhaps a holiday, such as Martin Luther King day).

Richard Parmelee, Jr., addressed the Commission. He said that he was not in attendance to speak against the proposal. He expressed his love for his hometown, noting that he never wanted to live anywhere else. In referencing the comments of Sgt. Schaller, he said there was a time in Durham when doors didn’t have locks or keys. Eventually, locks had to be obtained—and then a resident state trooper. He indicated that studies show that as population increases, the need for law enforcement increases.

Referencing change in town, Richard Parmelee said that there were once many dairy farms in town—now, there are many residences; there used to be nine gas stations in town, now there are four. Groundwater pollution problems occurred many years ago because there were no regulations at the time. He discussed his confidence in the engineering professionals and the town’s extremely competent professional engineer—as well as a voting member of the Planning and Zoning Commission who is also a P.E. He added that he “couldn’t say enough good about Bill Milardo, the town sanitarian.” He pointed out the uses of businesses like Durham Market and Lino’s on much smaller parcels than the 11 acres the proposed 39,000 square foot grocery store would be on and suggested the proposal is for a use much safer environmentally than anything we have in town right now (not that these current uses have done anything wrong—he stated they were preexisting uses).

Richard Parmelee also stated that protectionism doesn’t work—businesses in Durham will survive if they are patronized. Traffic patterns have changed significantly in town

over the years—from many years ago (before Route 9 and 91) when Route 17 was the main thoroughfare from the shore to Hartford to the present.

He commended the chairman of the Commission, George Eames, in allocating time to the public, citing it was unusual to recognize one individual (Dr. Good) and allow him to present a number of speakers. He commended Jan Melnik for being able to keep up with the information presented and provide detailed minutes.

Richard Parmelee also stated that he supports the businesses in town as well as the right of people to build houses in town. He commented on Main Street crosswalks, noting that in many cases you can't get from the edge of the road to the sidewalk (there are barriers that should be addressed). In terms of the subject application, he stated that he didn't believe it was necessary for the owners to identify the prospective tenants—yet they did anyway. He said that with regard to the parking spaces, most applicants try to get by with a minimum amount. Here is an applicant trying to not get away with the minimum.

Richard Parmelee stated that he hoped the application would be given a fair review by the Commission. The application was endorsed by the Middlesex County Chamber of Commerce. Over the years, there has been continued development and increased traffic—yet the town has and will survive. He expressed confidence in the Department of Transportation's ability to evaluate the traffic situation in an impartial and fair way that would assure safety.

Mindy Ludecke, Sand Hill Road, addressed the Commission. She stated that she found the results of the traffic study very poorly presented. She works as a state employee with the Department of Administrative Services and handles financial interests for a number of agencies, including the Department of Agriculture. She mentioned the availability of programs for towns wishing to preserve farmland. There is a present bill before the legislature that could change how towns can have state help with purchasing farmland. She suggested that if this application is approved, a "landslide" will occur, similar to her former hometown of North Haven.

She also mentioned concern for safety and use of the town's smaller roads (including Sand Hill Road) as bypasses for trucks. She suggested that the 11 acres on Main Street might be more appropriately used for a YMCA or a senior center. She thought that most of the traffic to the Price Chopper would be coming from out of town. She noted safety concerns and mentioned how unsafe it is for children to walk along Main Street, referencing the tragic death of Jonathan Howe. She also expressed concern for local businesses, citing the help she had received from Wally Douglass when her son had major heart surgery and needed pain medication after-hours and then following a fall—she asked if the Price Chopper would be able to provide similar help.

Brenda Eddy, 385 Main Street (with a business at 58 Main Street), addressed the Commission. She questioned the traffic study—not only from the standpoint of there being a grocery store, but possible uses by the two front buildings that are proposed for

such things as a bank, restaurant, Chinese takeout, etc. She believed the data as presented was inconclusive without knowing the other two uses.

She cited 06.06.01 in the regulations with regard to appropriateness of location and overall affect on property values—both of concern and in jeopardy.

Joseph Pasquale, Parmelee Hill Road, addressed the Commission about what he believes are the many negative effects and areas of noncompliance with this application. He suggested that they are counterproductive to the town achieving the goals of its Plan of Conservation and Development. At the last public hearing, Joseph Pasquale stated that the applicant's attorney told the Commission that the application meets all of the Zoning Regulations of the Town and complies with the Plan of Conservation and Development. He believes that the application as originally filed was incomplete and is still noncompliant. He stated that he brought this to the attention of the Commission at the first public hearing.

The issues he described that made the application incomplete are as follows:

- The documents making up the August 31, 2007, material submitted do not contain the names of abutting property owners (required in Section 13.3.4).
- The site plan did not show any advertising signs for the proposed site (Sections 6.6.5 and 13.3.4[3]). This evening is the first time signage has been discussed; there is nothing on the plan. Given this is the last public hearing, there can be no review or public comment on the proposed signage.
- Section 06.07 requires that all items set forth must be included in the site plan submitted by the applicant at the time of the special permit application.

Joseph Pasquale stated that the Commission should have the ability to return the application to the applicant for not having been filed in complete form.

The Plan of Conservation and Development describes sensitive and appropriate commercial transition zones at the ends of Main Street, serving as the gateways into and out of the Main Street Historic District. This parcel is in one of those zones and adjacent residential neighborhoods. The size and scope of the project along with related issues clearly do not fit into the plans for a residential neighborhood. The category of big box stores is described in the POCD as being undesirable development for the community—and the Commission even enacted a reduction in square footage from 40,000 to 30,000—with the applicant filing just under a 40,000 square foot application on the very afternoon the Commission discussed such a reduction (and later passed it). Even the fact that what is applied for on the basis of size was allowed does not make it appropriate for the site.

Joseph Pasquale described the traffic issues as overwhelming and suggested that the Board of Selectmen be consulted. They might require modifications to improve the condition of town roads—an expense tax payers should not have to bear. He stated that the economic development impact as presented was one-sided—no mention was made of

tax abatement nor were the impacts to current businesses considered. The proposed building and size is not in harmony with development in town.

Joseph Pasquale also stated that there is more testing required by the town sanitarian. A determination should be made as to what represents appropriate uses for the two smaller buildings, due to limited hydrology and septic. There are also impacts to the nearby residential neighborhood and their property values. Wells in the area could also be affected. There are concerns by surrounding neighbors regarding lighting and noise as well as traffic.

Referencing 06.06.1 of the regulations, Joseph Pasquale reviewed 11 criteria to consider, noting that the application does not meet at least seven of these criteria. Section 13.03.03 also notes five additional criteria. He stated that residents are right to expect that special exceptions should meet all or the vast majority of criteria. He suggested that the applicant rushed to submit this application in the eleventh hour (to get in while the regulations still permitted up to 40,000 square feet). He stated that the applicant's attorney has laid the groundwork for an appeal—asking one Commissioner to recuse himself to pave way for that appeal. He stated that the applicant knew the application would be a hard sell but that through the appeal process, this tactic might work toward securing an approval.

Joseph Pasquale summarized, stating that the proposed design exploits the land, does not conform to the Plan of Conservation and Development, does not meet the criteria for a special exception in the regulations and does not serve the best interests of the town of Durham or its residents. A petition with 400 signatures opposing the project was presented for the record. He added that he knows Commissioners volunteer to do the jobs that they are elected to—and that some members were recently reelected on platforms to protect and preserve the character of the community. He hoped all elected Commissioners would reject the application unanimously, adding that the community is behind the Commission fully should the applicant issue an appeal.

Karen Cheyney, Guire Road, asked if the Commission has a choice on what businesses can operate in town. She stated that because of cross-country and track and field, her son would not be seeking employment—and she guessed that the grocery store would not have many local employees. She said profits would go back to shareholders—not help pay for additional police—and that taxes would go up. Many of the school's athletic teams use the roads in the area, including Brick Lane, Maiden Lane, and Haddam Quarter Road, for running. She also stated that the small businesses in town regularly support local organizations, the schools, and community events. She stated that she is pro-business, but that does not mean accepting just any business that wants to come to town.

Donia Viola spoke, identifying herself as a long-time resident of Durham. She stated that she was “not going to say” that she is totally against the proposition. She respected the viewpoints presented and expressed confidence in the scrutiny of the Commissioners in reviewing the application. She stated that the beautiful community of Durham has expanded rapidly. She noted that because of continued increases in educational costs, the

Economic Development Commission must come forward with revenue from somewhere and relieve the tax burden. Even at a projected \$48 per year “benefit” to residents because of this grocery store, it’s a benefit that will inure year after year and shouldn’t be minimized. She stated her opinion that competition is healthy and that she would like to be able to do her shopping in town, without having to travel to Middletown or Wallingford. She cited concern with the appearance that residents “don’t give anyone a chance unless it’s to our liking”—and that this is why there are elected Commissioners to review an application under the purview of the regulations and statutes. She expressed confidence that whatever the outcome was, it would be favorable to the community.

Susan Good, Haddam Quarter Road, addressed the Commission, reading into the record a letter from Ellen Patterson (who indicated she was so angry she couldn’t risk a stroke by being in attendance at the hearing). She stated that she has lived in Durham a long time and is increasingly distressed over the direction of development in the community. She believes the subject application will degrade the entrance into town from the north. She cited the Commission’s responsibility and obligation to protect the distinctive character and rural charm. She hoped that the Commission would have the foresight and courage to deny the application.

John Hayes, Cesca Lane, presented a petition signed by more than 800 people, collected from six different small businesses on Main Street.

Kerry Querns, Middlefield Road, expressed concern with the number of accidents that occur at the intersection of Route 147 and Maple Avenue each year—at least a dozen in the last year alone. This will only worsen if the project is approved. He also questioned the data about direction of traffic leaving the project site. He noted having visited a Price Chopper in a Connecticut town and the other tenants of adjacent buildings (a chicken wings place had 75 cars parked in front).

Mr. Aparo, Lino Aparo’s father, addressed the Commission, noting that if the project is approved, it could likely “destroy the Durham Fair and his business.”

Attorney John Corona then addressed the Commission, responding to issues of concern raised. He stated that the letter from Peter Digioia was composed by him and addressed the need for additional police protection—something the applicant does not argue with, but that is not directly triggered by the proposed development (there is currently the need for additional police protection). He asked Bruce Hillson to respond to the question, were there any defects in methodology identified in his review of the traffic study; Bruce Hillson stated that other than the one discrepancy in the type of land use (retail versus grocery store mentioned), once that was resolved, he did not see any errors in methodology used.

Attorney Corona stated that he had filed a complaint about the Public Safety Committee—he did not receive a notice about discussion of the Silver Eagle project that was held at one of the Committee’s meetings.

In reflecting on the demonstration he made with the pitcher of water at a previous hearing, he stated that the point was missed—that there has been ongoing commercial development up and down Main Street and that with the addition of each, the traffic situation had progressively worsened. He stated that it is unfair to “charge the last person standing with the problem” and not fair or reasonable to turn down an applicant and state the envelope on commercial development is closed. The subject property is zoned commercial and will generate traffic. It is also possible to manage the traffic, mitigating some of the problems, and improving levels of service in some locations.

Attorney Corona referenced the comments made by Katharine Conroy, where threat to open space was made. He pointed out that this property is not open space, it is a privately held piece of commercial property that cost the developer a great deal of money; the developer has a right to make reasonable use of his property.

Attorney Corona stated that he has confidence in the town sanitarian and town engineer and their findings; he took exception to Katharine Conroy’s presentation—stating that the numbers in the application are actual, not speculative.

To the remarks presented by Elsie Patton regarding stormwater, Attorney Corona stated that the methodology used by the applicant in the plans was derived from the DEP’s stormwater manual and the Commission’s regulations.

Attorney Corona, in responding to comments from Dr. Wilkinson, stated that one of the measures to eliminate pollution would be for local residents to shop at this proposed store—instead of driving out of town to Middletown or Wallingford.

Attorney Corona found Attorney Campbell Barrett’s remarks most shocking of all—that the developer has “no right to do anything on the site or to develop it.” He recognizes that the Commission has discretion, but people who purchase property zoned in a certain manner are entitled to certain expectations. This property is no different and it has nothing to do with the number of people signing petitions or the concerns of protecting existing business. Even if 100% of the population of Durham attended the hearing, it does not have any bearing on the decision of the Commission. No matter how unpopular an application might be, the applicant is required to follow the criteria in the regulations and the Commission is obligated to consider an application and approve it if all criteria is met.

Attorney Corona stated that sidewalks had been discussed previously and if the Commission is so inclined to pursue this, a decision would need to be secured from the Department of Transportation. As a practical matter, the town does not have a functional sidewalk network at the north—the Royal Oak sidewalks, for instance, “go no where.”

Attorney Corona stated that the possibility of a town purchasing land often comes up, particularly if a development proposal is deemed to be undesirable. He urged the Commission to think carefully about this point. The town of North Branford faced a significant defeat when it used its zoning powers to depress the value of land and attempted to subsequently purchase a piece of property to avoid development. The land that is subject of the current application is not for sale. Comments were also raised about the desirability of making the site a YMCA or senior citizen center. Again, this is commercially owned property, the developer has a right to make money on the project. YMCAs and senior citizens centers are generally not revenue-generating businesses; rather, they are usually developed by municipalities or private, not-for-profit organizations.

To concerns about traffic considerations, the traffic study did take into account all traffic, including delivery trucks.

Attorney Corona stated that this property is the largest commercial site left in town—the Commission understood the value of zoning it commercial when this action was taken some years ago and recognized the future impact. With buffering, landscaping, and other measures, it can work cohesively with its surrounding area. Most of the neighbors across the street came into town with the knowledge that this site was zoned commercial. Like Mountain Road, there may always be some conflict between the two zones. The developer has taken every step to provide a large green belt at the front of the project and to keep development as far back from Main Street as possible.

In response to concerns noted by Joseph Pasquale, Attorney Corona indicated that signs were included in the project plans and abutters are referenced on the site plans. In terms of “laying the groundwork for an appeal,” he stated that the developer would consider an appeal if there were a reasonable basis for one—any property owner is entitled to this action.

To the allegation that the proposal exploits the land and limits of the regulations, under the coverage requirements, the developer could build in excess of 100,000 square feet of building (albeit no one building greater than, now, 30,000 square feet). At the time of the application, something less than 40,000 was what the Commission had determined was appropriate for an upper limit on a big box store. That is what this application provides for. More than a year ago, the Commission was approached with a query to consider increasing above 40,000 square feet and the Commission said no. If this application is determined not to be what the Commission wants and it is rejected, the applicant will present applications for other buildings. The site will not sit idle.

There have been comments that the “application doesn’t offer much,” yet there are residents at meetings that frequently complain about increases in taxes. The town has little to offer and cannot attract significant industrial uses because of little public water and no public sewer. The use proposed by the applicant—a grocery store—is at the core of what a community wants and needs. The applicant did not choose a VIP center that

people wouldn't want. The applicant also chose to disclose the possible tenant—Price Chopper. No lease has yet been signed. In terms of jobs, while there won't be executives making \$500K a year, the company will employ many, offering jobs and tax revenues. For some, jobs are a scarce commodity and difficult to come by. Attorney Corona stated that to "speculate wildly that the cost of operating the site will eclipse revenues" is to discount completely the economic impact presentation developed by Economist Don Kleppersmith.

Residents have a right to "vote with their dollars"—no one is required to patronize this Price Chopper; they can continue to drive to Middletown or Wallingford.

Attorney Corona stated that he found Ellen Patterson's letter ironic—she is affiliated with a business, Durham Manufacturing, that represents 100,000 square feet of industrial development in the middle of a residential zone in the Historic District of Main Street—but she considers this project an "aesthetic disaster." He pointed out that this Commission allowed Durham Manufacturing to expand to its current size, valued the tax revenues, opportunity for jobs, and revenue to the town—the same analysis should apply to the subject application. The applicant is proposing to build a fraction of what Durham Manufacturing has done—and the application is for a commercially zoned piece of property, not residential like Durham Manufacturing.

Don Orlando, Vice President of Development & Construction for Price Chopper, was in attendance from New York and addressed the Commission. He stated that while he knew many in attendance were expecting a "fire-breathing, three-headed monster," Price Chopper was a good corporate citizen. It is not a large international conglomerate like many of its competitors; it is a family-owned, privately held business. They operate in the Northeast in six states; eight stores are in operation in Connecticut. The most recently opened stores are in Windsor and Putnam. The plans before the Commission are for the smallest of the company's stores. The company would have liked 45,000 square feet or larger, but was willing to comply with the town's regulations.

He wanted to clarify that they are not planning a business to put other companies out of business—they are not a 200,000 square foot Super Wal-Mart like that in Wallingford, nor are they a 75,000 square foot Super Stop & Shop as exists in area towns. They are a much smaller operation, very community-oriented, that gives back significantly to the community. He cited some of the organizations and activities supported by Price Chopper in various Connecticut communities:

- local sports teams
- American Cancer Society
- Red Cross
- Bristol Hospital
- Connecticut Food Bank
- Litchfield Association for the Retarded
- Prevention of Child Abuse

- Salvation Army
- Special Olympics
- United Way
- YMCA
- Southington Apple Festival
- Other local organizations

Don Orlando cited an instance in New York state, a “small, blue-collar town,” where for the first time, in 2005, the school’s football team won their state’s class championship. This meant a lot to the small town; the Price Chopper there opened the store to the team and public, providing cake, awards, and pictures to celebrate the town’s achievement. They do this type of thing in all their communities. He noted that the benefit of a Price Chopper in Durham would be a “very dedicated citizen of the community.”

With regard to impact on small businesses in town, Don Orlando suggested that the town fathers in Putnam be contacted—he thought residents would be very surprised at the good that the Price Chopper had done for that community’s downtown area.

The goal of Price Chopper is to keep Durham’s dollars in Durham. Their plan is to draw the traffic that is already in town—he didn’t believe that traffic would be drawn out of Middletown or Wallingford to shop in a 40,000 square foot store when so many other, larger options exist already in those towns.

Payroll dollars are estimated at \$2.3 million a year. Despite the comment from someone that there would be no job there for her son, he stated that Price Chopper employs a great number of part-timers; teens are hired all the time (his own daughter was a grocery bagger at a Price Chopper). He clarified that the Durham Price Chopper would not have a pharmacy—they are no threat to the Durham Pharmacy. They don’t have a 10,000 square foot restaurant in their store. He itemized what the store would have: fresh seafood, fresh meat, an expanded produce department, a large natural/organic foods department. He indicated that if residents don’t mind driving to Wallingford and Middletown to shop, they can continue to do that; but if people want to do their shopping in Durham, this will be an excellent alternative—they will be a good corporate neighbor. The company is energy- and environmentally conscious, using EPA-superior portfolio-wide energy efficiency standards across all their stores. They have reduced overall carbon dioxide emissions associated with electrical usage by 75% across their six-state area through the use of energy management systems, energy-efficient lighting, energy-efficient fans in refrigeration units, and other green conservation measures.

In conclusion, Don Orlando cited the Price Chopper corporate promise/mission statement, reiterating the organization’s commitment to the community services.

Attorney John Corona referenced traffic studies and stated that the Price Chopper has statistical methods of determining actual visits by customers on a weekly basis. He presented for the record a list of nine stores that are all in small towns, ranging in size

from 37,000 square feet to 45,000 square feet. The largest weekly customer count last week was 11,535—or 1,647 people a day on average. This is considerably less than the 3,000 projected as a maximum in Durham. The lowest weekly customer count was 6,000 people, or 881 people a day. If the traffic numbers of 3,000 are attained, this store could be the best-performing store of all time. The reality is that the traffic numbers can't predict the number of people who actually enter a store.

Attorney Corona also reminded the Commission that they are at the end of a very long process that has extended over the past few decades. The Commission has been assigned with the “impossible task” of balancing the need for economic development with residential development and open space. The Plan of Conservation and Development is “not a thing, but a process.” He pointed out that many of the town's boards and commissions are tasked with balancing these competing interests. He noted that Brian Ameche, formerly of the Planning and Zoning Commission and present chair of the Conservation Commission, accurately described the dumbbell theory when speaking of the ends of Main Street that have been reserved for commercial development. This has been the bedrock of the Planning and Zoning Commission for a long time. The two ends of town—including the Dahlmeyer and former Arrigoni parcels—were spec'd out for this type of development. Now the application before the Commission is positioning this property for exactly what was anticipated some 20, 25 years ago. The Commission had the wisdom to place into the commercial zone this parcel of land.

There are now exactly two sites in town that could sustain a 40,000 or 30,000 square foot building—the subject parcel and possibly Dahlmeyer's land. There will not be a cascade effect, like the Berlin Turnpike, with a proliferation of Best Buy, Circuit City, and other big box stores. The subject property is unique—at the corner of two state highways with frontage on both—and with the advantage of allowing it to be built into the hillside rather than at the bottom of a fishbowl where it would be more conspicuous.

Attorney Corona described the parcel as an old gravel pit, previously disturbed, that has grown up into something of a wasteland with many invasive species, but no mature trees. As part of the landscaping plan, hundreds of trees and shrubs will be planted on the site, making the project as invisible as possible from Routes 17 and 147. He stated that every use in the commercial zone is by special permit—but that this use is not unique or special. However, there is nothing a commercial property owner can do as a matter of right without a special permit.

Attorney Corona stated that when the parcel was zoned commercial, the Commission had to have anticipated that there would be an increase in traffic. Yet there seems to be resistance to accepting any additional traffic. If that is the case, this could bring about other casualties. He noted the large property holdings of Commissioner Ralph Chase if it is determined that Haddam Quarter Road can accept no additional traffic. Such logic could be extended to a number of other things. Traffic will continue to increase at a fixed percentage every year—whether or not this project is built. The developer can be asked to make improvements on Main Street along with approval of this application. That wasn't

true with the Carolyn Adams, Grippo, and DiNatale projects where the developers were not required to make Main Street improvements.

Repairs are needed to Route 68 right now—and with increasing traffic, it is likely the state will do something in that vicinity. If the Commission chooses, it can take advantage of using someone else's money (the developer's) to enact improvements.

Attorney Corona noted a strong flavor of protectionism running through many of the arguments presented. The Price Chopper is not out "to hurt other business," but, rather, to capture the business already going out of town. It is not an appropriate aim of the Commission to favor certain businesses over others. For instance, Perk on Main was not "protected" from the advent of two Dunkin' Donuts franchises coming to town. Competition exists and can improve overall services and choices.

Attorney Corona stated that there wasn't always a Lino's or Durham Pharmacy or Durham Market in town. All came to town at some point and have had to compete with one another. There is evidence that competition has worked to favorably increase choice. All of these businesses have had a chance to grow into larger businesses—i.e., Durham Market to the former Cousins' site or the Carolyn Adams building or even to purchase the subject site; Lino's has taken steps to expand its business in the current location, which is a good thing.

In turning his attention to "looking over the horizon," Attorney Corona stated that it is possible some Commissioners may have in mind a rejection of this application. If it is turned down, the land is not going to go away—it will still be 11 acres of commercially zoned property. The applicant has tried to propose a use that conforms with the regulations and meets a community need, but if that isn't approved, what would come next? Attorney Corona stated that Commissioner Dave Foley accurately stated that the lot could certainly accommodate a great deal more of building coverage than what has been proposed. The Durham Village at the south end of town has a high vacancy rate, in part because businesses can't grow into larger businesses with no room for expansion. There is really no retail market at 30,000 square feet and a grocery store can struggle at 40,000 square feet. It seems neither economically viable nor aesthetically desirable to create large 30,000 square foot buildings on Main Street. However, whatever is constructed will generate additional traffic.

It is possible that affordable housing could be pursued. The property owner has made contact with Carabetta, the largest residential developer of condominiums and affordable housing projects in the state. If a viable project cannot be pursued, the applicant might consider affordable housing for this site. Attorney Corona pointed out for those uninformed, in the case of affordable housing, the statutes overrule Zoning Regulations and, based on septic capacity, can significantly exceed normal density constraints that would exist for single-family residential development. Many residential units can be placed on a site using the HOD provisions. Attorney Corona stated that this is not

something the applicant wants—nor would the town want. It is not nearly as economically advantageous (in addition to generating less tax revenue, there is the impact of children attending schools that comes at a significantly increased cost, which would not be present with a grocery store).

Any new housing generates a net loss that taxpayers have to pick up, an affordable housing project even more so.

In weighing the decision, Attorney Corona reminded the Commission that the property owner and the site will not disappear, following the investment already made of several million dollars. He stated that the Commission has a responsibility to “ignore the mob,” people that may not be looking at the best interests of the entire town. There is virtually no possibility that the site will not get developed.

Attorney Corona indicated that the Commission has the ability to modify the proposal—and that the Commission can use conditions approval to make the project fit its interpretation of the regulations, including hours of operations, etc. He respectfully urged the Commission to consider modifying the application rather than flatly turning it down.

Attorney Corona also noted that it is a responsibility of the Commission, as “it sits as jury on this application,” to assure the applicant a level playing field, something to which it is entitled. With the blitz of information—posters, large signs, e-mails, posters, and letters addressed individually to Commission members—there has been all manner of appeal. However, it is not a referendum. The application of personal pressure on Commission members does not help achieve objective decisions.

Attorney Corona stated that if members of the Commission received communication outside the public hearing process, information from the Goods or people involved with the presentations this evening outside of the application, it was their responsibility to make these facts known and provide that communication to the Commission as a whole, for the record, and to the applicant. If there have been private conversations or any participation in communications, it is equally important that this be made known on the record. If members of the Commission received e-mail or physical mail from the project opponents, they must disclose this before the hearing closes. He also noted that perhaps some members feel uncomfortable because of personal relationships with neighbors, friends, or relatives. There is an organization that includes some people’s spouses—if members find themselves in such a situation or where they believe they cannot be impartial, it is important to the applicant that they make this fact known. If there are already strong feelings about the application on the part of a Commission member from either a personal relationship or property in proximity that could be affected by traffic, etc., this must be made known for the record. Attorney Corona stated, “All of these things can be cured by making them known.”

Attorney Corona summarized, stating that for more than a year, he has tried his very best to present an application that is responsible, that attempts to anticipate what the

community needs—a food store being at the core of what a community requires—and that they have done their best with proposed lighting and landscaping. He stated that some members of the Commission might not agree with these assertions and might not think it is a very good idea. But if the application meets the criteria established, even if a Commission member thinks it is not a good idea or is uncomfortable, there is still a responsibility to grant the application.

Finally, Attorney Corona submitted a number of documents into the record (enumerated at the conclusion of the minutes). His parting thought concerned what he described as a “great deal of the tyranny of the majority—a group of people choosing not to respect the Plan of Development.”

Attorney Corona presented a quotation from *On Liberty* by John Stuart Mill:

There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism.

For the record, Dave Foley noted that he had received a letter addressed to his home from Lisa Larsen of Main Street with regard to the application as well as two letters from Michael and Susan Good; other Commissioners noted that they had received the same letters (all of which are part of the official exhibit record).

Motion by Richard Eriksen, seconded by Mike Geremia, to close the public hearing of Silver Eagle Development Trust, LLC, request for a special permit for the construction of three retail buildings, Main Street, at 12:25 a.m (Jan. 24). Motion carried unanimously.

Motion by Richard Eriksen, seconded by Dave Foley, to adjourn the meeting at 12:30 a.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
Jan. 30, 2008

Addenda:

- 1) Listing of All Exhibits follows on subsequent pages
- 2) Copies of All Correspondence Received

**Listing of Exhibits Submitted at January 23, 2008
Silver Eagle Development Trust Public Hearing
Durham Planning & Zoning Commission**

Exhibit No.	Brief Description
• 1-23 a	1/23/2008 Letter from Vanasse Hangen Brustlin, Inc.*
• 1-23 b	1/22/2008 Memo from Vanasse Hangen Brustlin, Inc.*
• 1-23 c	Traffic Queuing Data*
• 1-23 d	Trip Generation Summary*
• 1-23 e	1/14/2008 Letter from Vanasse Hangen Brustlin, Inc.*
• 1-23 f	1/14/2008 Letter from Vanasse Hangen Brustlin, Inc.*
• 1-23 g	1/16/2008 Letter from Vanasse Hangen Brustlin, Inc.*
• 1-23 h	Stormwater Planning Schematics*
• 1-23 i	ITE Trip Generation Worksheet*
• 1-23 j	1/23/2008 Letter from Vanasse Hangen Brustlin, Inc.*
• 1-23 k	Conceptual Off-Site Roadway Improvements*
• 1-23 l	Sight Line Plan & Profile*
• 1-23 m	1/7/2008 Letter from Bruce Hillson, Traffic Engineering Solutions
• 1-23 n	1/16/2008 Letter from Bruce Hillson, Traffic Engineering Solutions
• 1-23 o	1/21/2008 Letter from Bruce Hillson, Traffic Engineering Solutions
• 1-23 p	1/23/2008 Letter from Bruce Hillson, Traffic Engineering Solutions
• 1-23 q	1/23/2008 Report from Town Engineer Brian Curtis
• 1-23 r	Presentation by Sgt. Joanne Schaller
• 1-23 s	1/23/2008 Brief from Attys. Barrett, Ryan, and Markovits
• 1-23 t	Signed Petition
• 1-23 u	Presentation by Joseph Pasquale
• 1-23 v	1/15/2008 Letter from Ellen Patterson (read into record by S. Good)
• 1-23 w	Signed Petition
• 1-23 x	Proposed Motion for Conditional Approval*
• 1-23 y	Weekly Price Shopper Customer Counts by Location*
• 1-23 z	Statement of Waste Disposal Method/Estimated Max. Flow*
• 1-23 aa	Proposed Grocery Store Sign*
• 1-23 bb	Ad Appearing in 1/16/2008 <i>Middletown Press</i> *
• 1-23 cc	Zoning History of Site*
• 1-23 dd	Special Permit Standards from Regulations*

- 1-23 ee 1/16/2008 Letter from Lt. Stephen Castagliuolo*
- 1-23 ff Site Plan Standards from Regulations*
- 1-23 gg Aerial Topography of Haddam Quarter Rd./Johnson Lane*
- 1-23 hh Affordable Housing Land Use Appeals Procedure from Statutes*
- 1-23 ii Flyer: Durham Neighborhood P&Z Alert*
- 1-23 jj Quotation of John Stuart Mills on Liberty/Independence*
- 1-23 kk *Ex Parte* Correspondence Received by Commissioner Ralph Chase
(identified by author/date on cover sheet of exhibit)
- 1-23 ll 1/15/2008 Memorandum from Town Sanitarian Bill Milardo
- 1-23 mm 10/12/2007 Memorandum from Town Engineer Brian Curtis
- 1-23 nn All Correspondence Received from Members of the Public
(identified by author/date on cover sheet of exhibit)
- 1-23 oo *Ex Parte* Correspondence Received by Commissioner Frank DeFelice
- 1-23 pp Site Plan Documents identified as “Latest Issue:
January 16, 2007 [sic]”*
- 1-23 qq Conceptual Off-Site Roadway Improvements OS-1*
- 1-23 rr Photometrics Plan Ph-1 (60-foot grid)*
- 1-23 ss Photometrics Plan Ph-1 (90-foot grid)*
- 1-23 tt Cross-Section at Grocery Store*
- 1-23 uu Site Plan Exhibit*
- 1-23 vv Color Architectural Rendering*
- 1-23 ww Site Plan with All Identified Surrounding Neighbors*
- 1-23 xx Cross-Section at Route 17 Entrance*
- 1-23 yy Site Layout and Lighting*
- 1-23 zz North and East Elevations – South Building*
- 1-23 aaa Conceptual Off-Site Roadway Improvements OS-2*
- 1-23 bbb South, East, and North Elevations – South Building*
- 1-23 ccc Second Color Architectural Rendering*

*submitted by applicant

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

AMENDMENT TO MINUTES OF JANUARY 23, 2008, MEETING

Please note that copies of all correspondence received as part of the official record of the Silver Eagle Development Trust, LLC application, itemized in these minutes on pages 2 and 3, are on file at the Town Hall and available for public inspection through the Town Clerk's office. An additional physical set of copies of this correspondence is not attached to these minutes because of the voluminous quantity of material.

Respectfully submitted,

Jan Melnik
Jan. 31, 2008