

**TOWN OF EAST WINDSOR  
PLANNING AND ZONING COMMISSION**

**Public Hearing #1597  
August 9, 2011**

**\*\*\*\*\* Draft Document – Subject to Commission Review \*\*\*\*\***

The Meeting was called to order in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT. at 7:00 P. M. by Chairman Ouellette.

**ESTABLISHMENT OF QUORUM:**

A quorum was established as five Regular Members (Devanney, Gowdy, Ouellette, Thurz, and Wentworth) and one Alternate Member (Zhigailo) were present. Chairman Ouellette noted all Regular Members would sit in, and vote, on all Items of Business this evening. Following in accordance with the service rotation schedule Alternate Member Zhigailo would also join the Board regarding discussion and action on all Items of Business this evening as well

Also present was Town Planner Whitten.

**GUESTS:** Selectmen Richard Pippin; Kathy Pippin, Board of Finance.

**ADDED AGENDA ITEMS:**

Town Planner Whitten noted the Commission has received an AMENDED AGENDA which includes an item under **NEW BUSINESS for Gerald Wilcox**. Mr. Wilcox received approval in 1988 for a building but only completed construction on a portion of the building. That approval has expired. Mr. Wilcox would now like to build an additional portion of the building; that Application is before the Commission under **NEW BUSINESS**.

Chairman Ouellette questioned the requirements for amending the Agenda to include this Application? Town Planner Whitten reported the Meeting Agenda was amended 24 hours previous to the Meeting this evening; that Amended Agenda was sent to the Town Clerk for posting. The Amended Agenda item was posted to the Town's website; however, the actual Amended Agenda did not appear. Town Planner Whitten indicated the posting was achieved within the Statutory guidelines.

Chairman Ouellette indicated his displeasure with the lack of material to review prior to this Meeting; Town Planner Whitten suggested the point was well taken. She will review the material with the Commission during the Application presentation.

**PUBLIC PARTICIPATION:** No one requested to speak.

**APPROVAL OF MINUTES/July 26, 2011:**

**MOTION:** To APPROVE the Minutes of Public Hearing #1595 dated July 26, 2011 as written.

**Devanney moved/Wentworth seconded/VOTE: In Favor: Unanimous**

**RECEIPT OF APPLICATIONS:** No new applications received prior to this Meeting.

**LEGAL NOTICE:**

The following Legal Notice, which appeared in the Journal Inquirer, Thursday, July 28, 2011, and Thursday, August 4, 2011, was read by Chairman Ouellette:

1. Application of Newberry Village, LLC for Renewal of Special Use Permit and request for Site Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry Road and Winkler Road, owned by Newberry Village LLC and LTP Realty, Inc. [Zoned ARHD; Map 104, Block 17, Lots 19-6 & 19]

**OTHER BUSINESS: East Windsor Democratic Town Committee** – Temporary Liquor Permit for wine and beer fundraiser to be held outdoors on Wednesday, September 7, 2011 from 5:00 p.m. to 9:00 p.m. at the Connecticut Trolley Museum, d/b/a CERA, Inc., at 58 North Road. [A-1 Zone; Map 113, Blk 17, Lot 007]

Chairman Ouellette read the description of this Item of Business. Appearing to discuss the Application was Joe Sauerhoefer, representing the Democratic Town Committee.

Chairman Ouellette referenced Town Planner Whitten's memo dated August 3, 2011, which raised the following questions:

**Location of overflow parking, and how patrons will be directed to the location:**

Mr. Sauerhoefer suggested the existing gravel parking lot is rather large; overflow parking will be provided behind the building. Due to the gravel surface there are no designated spaces.

**How will the area be designated in the field:** Mr. Sauerhoefer indicated they will be providing food and drink in the lawn area in front of the building. There will be only 2 people serving the drinks, one of which will be himself. Commissioner Zhigailo questioned if the area will be roped off, and if any precautions will be taken to deter underage drinking? Mr. Sauerhoefer suggested the event area can be roped off if the Commission prefers. They will also have off duty police on site.

Mr. Sauerhoefer suggested they were looking for an alternate venue for the event, which will include light food; they felt the Trolley Museum was a good option.

**MOTION TO APPROVE the Application of Democratic Town Committee and owner CT Trolley Museum, requesting a temporary liquor permit per Section 805, for a fundraiser to be held at property located at 58 North Road, Map 113, Block 17, Lot 007, in the A-1 Zone. Fundraiser will be held Wednesday, September 7, 2011, from 5:00 p.m. – 9:00 p.m.**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**Opposed: No one**

**Abstained: No one**

**PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD**

**ACCEPTANCE: Mansions at Canyon Ridge:** Request to release Phase 2, Landscaping Bond for \$60,000 at North Road:

Chairman Ouellette read the description of this Item of Business.

The Planning Office had received a letter dated August 3, 2011 from J. R. Russo & Associates, LLC requesting release of the current landscaping bond, with the exception of \$6,000 to be retained for an additional year.

Town Planner Whitten noted over \$100,000 was originally held for this project; approximately \$60,000 currently remains under the landscaping bond. Staff has inspected the site and found it in very good condition; only minor issues remain to be resolved. Under his memo dated August 8, 2011 Town Engineer Norton has recommended the retention of \$6,000 to cover minor outstanding issues as appropriate.

**MOTION: To REDUCE the Landscaping Bond for Phase 2 to \$6,000 to cover minor landscaping plantings.**

**Devanney moved/Wentworth seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**Opposed: No one**

**Abstained: No one**

**PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD**

**ACCEPTANCE: Metro North** – Final release of the erosion control bond for the parking lot expansion at Metro North, One Corporate Road, Enfield (2.2 acres in East Windsor):

Chairman Ouellette read the description of this Item of Business.

Town Planner Whitten reported the actual development is located in Enfield, only a small portion of the parking lot and landscaping is located in East Windsor. The item had been on the Commission's Agenda five or six times, but the area had not been stabilized.

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Wetlands Agent Newton and Town Engineer Norton have visited the site; both recommend release of the bond, which was only \$2500 due to the minor work required in East Windsor.

**MOTION: To APPROVE THE RELEASE OF THE \$2500 Erosion Control Bond posted by White Diamond, LLC for parking lot expansion at Metro North, One Corporate Road, Enfield, CT.**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**Opposed: No one**

**Abstained: No one**

**NEW HEARING: Newberry Village, LLC** – Renewal of Special Use Permit and request for Site Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry Road and Winkler Road, owned by Newberry Village LLC and LTP Realty, Inc. [Zoned ARHD; Map 104, Block 17, Lots 19-6 and 19] (*Deadline to close hearing 9/13/2011*):

Chairman Ouellette read the Hearing description. Appearing to discuss this Application was Jay Ussery, of J. R. Russo & Associates, LLC, representing the Applicant. Jim Giorgio, developer of the project, was present as well.

Mr. Ussery submitted two affidavits, one each for Public Hearing signs posted on Winkler and Newberry Road. Mr. Ussery also submitted a petition of every resident presently living in the complex, all of whom are in favor of elimination of sidewalks currently required within the project.

Mr. Ussery reported the Application is to renew the existing Special Use Permit for an Active Adult Community proposed for 92 units to be located on the north side of Newberry Road and the west side of Winkler Road. Mr. Ussery referenced a site map reflecting the following: Phase IV – brown buildings are currently built, only one duplex unit remains to be built; Phase I – 9 units shown in brown are buildings currently built, (12 units remain to be built); Phase III (Mallard Court) – 7 units have not yet been started.

Mr. Ussery reported the project was originally approved to include sidewalks within the complex, and a “connection” between Phase II and Phase III at Blue Heron Way and Mallard Court. That “connection” was originally shown as a road, which was eliminated; the “connection” later became a walking trail. Another internal connection was shown between two sections of Mourning Dove Trail.

Mr. Ussery reported Mr. Giorgio is in favor of eliminating the sidewalks. He has submitted a petition containing signatures of all residents who are in favor of eliminating the sidewalks as well. Mr. Ussery gave an example that he and his wife walk in the

evening; they cannot walk side-by-side on a 4' sidewalk but are able to do so when they come within a development where they walk in the road (where there are no sidewalks). Mr. Ussery felt people walk the same way in this development. Mr. Ussery noted the Inland Wetlands Commission is in favor of the elimination as well; this is a sensitive site containing vernal pools.

Chairman Ouellette questioned if the Inland Wetlands Commission had approved the sidewalks originally? Mr. Ussery replied that they had, but the Applicant appeared before the Inland Wetlands Commission last week; they are recommending elimination of the sidewalks. Town Planner Whitten READ FOR THE RECORD Condition #24 of the Wetlands Permit renewed August 3, 2011; the condition recommends elimination of sidewalks due to negative impact on an environmentally sensitive site and its vernal pools. Commissioner Devanney questioned how residents living on Red Fox Trail would get to the main project? Mr. Ussery suggested there is an existing farm road off Blue Heron Road which would become a walking trail.

Chairman Ouellette referenced Town Planner Whitten's memo to the Commission dated August 3<sup>rd</sup> and revised August 9<sup>th</sup>, noting the revision appears to involve the fee-in-lieu of sidewalks when sidewalks are eliminated. Mr. Giorgio advised the Commission he is NOT in favor of offering a fee-in-lieu of installation of sidewalks, but would agree to put the money saved back into the project. Speaking from the audience Attorney Thomas Fahey indicated he represents the Applicant, and has done some research regarding the legality of offering such a fee. Town Planner Whitten reported the fee-in-lieu option appears in the Subdivision Regulations; other options have been discussed.

Commissioner Gowdy indicated he is against installation of the sidewalks but doesn't buy Mr. Ussery's argument presented earlier. Commissioner Gowdy felt sidewalks are a safety issue; he would rather see people walk on sidewalks than walking four abreast on the road.

Commissioner Thurz suggested this proposal is for a 92 unit project, yet only 16 residents have the option to support the sidewalk removal. He suggested there will be a lot more people buying into the project who will not have a say regarding sidewalk installation. Commissioner Wentworth reported he spoke to one resident last night who was in favor of no sidewalks. Commissioner Zhigailo reported she visited the site today and spoke to people she found walking, and they were in favor of no sidewalks. Commissioner Zhigailo suggested the project is nestled in the woods; she is concerned with room for emergency vehicles, especially in Phase IV which doesn't contain cul-de-sacs and the site is very tight. Commissioner Zhigailo suggested she would rather see more room on the roads. She felt if police and an ambulance were called to the site, especially in Phase IV, the area would be gridlocked. People must share someone's driveway to back around, especially if people park on the street.

Mr. Giorgio responded that a plane crash occurred on the site several weeks ago; multiple news reporters reported from the site without problems. Garbage pick-up occurs weekly

without problems. Commissioner Zhigailo suggested that event occurred in the Spring/Summer; people didn't have snow banks to contend with. She reiterated she didn't see a lot of leeway in the road layout.

Commissioner Devanney favored sidewalks. This is a 55 and over community; as people get older they may need wheelchairs or walkers for which they would need the sidewalks. Commissioner Wentworth suggested those older people would have to shovel sidewalks; Mr. Giorgio reported the sidewalks are maintained by the homeowners association

Mr. Giorgio countered that many of the sidewalks are not on level ground; they are on an angle near the pools. These are not flat sidewalks. Mr. Giorgio felt it didn't make sense to put a 5' wide sidewalk right next to the woods. Commissioner Thurz suggested usually sidewalks aren't an issue; they are laid out from the beginning. Attorney Fahey indicated he wasn't the Attorney of Record at the project's approval but he was at the Planning and Zoning Commission (PZC) and Inland Wetlands Commission Meetings. The project underwent a lengthy wetlands review because of the sensitivity of the area; the roads were laid out and sidewalks were located by placing them around the wetlands and considering the wetlands setbacks. Mr. Ussery concurred, noting the wetlands and vernal pools were considered during the design; they were trying to keep the setbacks and minimize the impact to the vernal pools. He indicated this was a difficult site from day one.

Commissioner Devanney questioned if the sidewalk locations could be switched? Mr. Ussery felt some locations might be switched but the wetlands and vernal pools were considered when locating the sidewalks. He reiterated the Wetlands Commission was not in favor of installing the sidewalks. Commissioner Gowdy felt there was no doubt the sidewalks were laid out correctly, especially since J. R. Russo did the plans. He reiterated he was NOT in favor of retaining the sidewalks. Commissioner Gowdy noted this Application is for a permit renewal, but felt there must be some grandfathering to consider. He felt the issue of the wider roads should have been caught earlier; it wouldn't be fair to the developer now.

Chairman Ouellette noted FOR THE RECORD the Commission didn't let the permit expire. Commissioner Gowdy agreed there was some responsibility on the part of the developer but he questioned where the Town would go if the project wasn't completed?

Mr. Ussery acknowledged Commissioner Zhigailo's concerns but noted the original approval was reviewed by the fire marshal, the trash hauling contractor, and maybe even the postmaster, who, he believed made their comments in writing. He felt the emergency access was all brought up during the original approval.

Chairman Ouellette questioned what was the issue regarding the phasing? Mr. Ussery reported construction has occurred within Phase I. Mr. Giorgio would like to begin construction in Phase III - which includes 7 single detached units along Mallard Court -

rather than proceed to Phase II. Mr. Ussery reported Phase III also causes less impact to wetlands.

Commissioner Wentworth diverted discussion back to the sidewalk issue. He questioned what was used to melt ice and what is the impact of that product on the wetlands? Mr. Ussery reported a Maintenance Plan was submitted to the Wetlands Commission regarding what would be used as fertilizer for the lawns and what would be used on the roadways and sidewalks. Commissioner Wentworth cited a place/complex on Route 5 and Mill Pond Village which are all connected units; he felt the need for sidewalks was less because there are more driveways and parking lot in those developments. Mr. Ussery clarified most of these are single family detached units, while a few are duplexes; every unit has the ability to park two cars off road.

Commissioner Zhigailo questioned a reference to Chickadee Court, which is a location for a fire hydrant. Mr. Giorgio indicated Chickadee Court is now Mallard Court; they didn't like Chickadee Court.

Chairman Ouellette requested to clarify administrative issues regarding this Application, noting the Commission wants to do everything by the book. He noted an Application has been submitted, fees are noted as paid, plans have been submitted. He questioned if a traffic impact study or other covenants had been filed; he questioned if we are saying what's on file is ok? Town Planner Whitten suggested this Application incorporates all plans, etc. from the previous Application; she couldn't recall if a traffic study had been submitted initially.

Attorney Fahey suggested in talking with Mr. Giorgio and Town Planner Whitten two elements that would enhance the project might be incorporated into the project: 1) a stone entrance feature with sign (one each on Winkler and Newberry Road) , and 2) additional tree plantings within the project. Mr. Giorgio interjected that he is already replacing trees which have come down with mature plantings; money saved due to the elimination of sidewalks would go back into the project. Commissioner Zhigailo questioned what assurances the Commission would have that those additional items would occur? Mr. Giorgio indicated he is doing that now, citing a sensitive pond area where he planted mature trees. Commissioner Gowdy suggested he had to do that already; Mr. Giorgio replied negatively, noting if a tree falls down he isn't required to replace it. Commissioner Zhigailo questioned the need for additional trees, given the heavily vegetated state of the existing site. Mr. Giorgio cited a vernal pool between units 65 and 69 which had little activity when the project was first approved. As the project evolved the pond became more active; trees were ripped out during construction. He added additional drainage to redirect the run off; Mr. Giorgio indicated he is always making modifications as needed.

Chairman Ouellette noted that under a Special Use Permit the Commission has the authority to require reasonable conditions; he questioned if someone could make an argument for sidewalks under that provision? Town Planner Whitten replied

affirmatively. Chairman Ouellette then suggested for someone to say sidewalks were not in the Commission's authority wasn't correct. Town Planner Whitten clarified that the fee-in-lieu to the sidewalk fund is a requirement of the Subdivision Regulations, not the Active Adult Regulations.

Chairman Ouellette questioned that if the Commission doesn't require an updated Landscaping Plan then there is no guarantee the additional features previously discussed by Attorney Fahey will be put in? Town Planner Whitten suggested the Commission doesn't have to waive the requirement for sidewalks, but the developer can offer other improvements. Attorney Fahey suggested the additional features haven't been decided yet but are on the table. Mr. Giorgio reported that within the last two months he has planted trees in front of the wetlands and added additional trees along the pond; there is no requirement for landscaping around the utility poles but he wants to put in a landscape buffer. Mr. Giorgio reported he is already doing improvements; he isn't in here because of a budget issue. Mr. Giorgio reported sidewalks that have already been put in are chipping and deteriorating; sidewalks might fit there but not all sidewalks are proposed in good locations. Mr. Giorgio reported the only requirement they have is for a sidewalk from Mockingbird Lane to Blue Heron Way, and then it stops; that sidewalk brings you to nowhere. To suggest to move the sidewalk locations isn't the way people walk. Mr. Giorgio reported he has spent money to make the project work; it isn't a budget issue. Commissioner Gowdy felt most of the additional features Mr. Giorgio spoke of would have been done even if the sidewalks were not installed. Mr. Giorgio testily suggested he would do some of it. In the original budget it didn't require 300 plantings; he isn't trying to save money and put it in his pocket.

Chairman Ouellette suggested the former approved plan showed sidewalks, which he is obligated to put in, but.... that permit has expired and the Applicant is submitting a new plan. Town Planner Whitten clarified that the Commission has the ability to require sidewalks, while the developer is asking that they be eliminated. Town Planner Whitten read an excerpt from the Regulations to clarify the issue. Attorney Fahey felt the point being clarified was that sidewalks aren't a mandatory requirement but the Commission could make them a requirement. Chairman Ouellette concurred. Commissioner Devanney questioned if the conditions from the original approval would be incorporated in this approval? Commissioner Gowdy suggested the Commission isn't obligated to include all those conditions because the original approval has lapsed. Chairman Ouellette concurred but noted the regulations have changed since the original approval and if there is something the Commission doesn't like they have the option/ability to make revisions. Town Planner Whitten clarified that this plan set before the Commission is the approved plan, and is what they would like to continue to use, but it includes sidewalks. Chairman Ouellette returned to the question of a traffic study. Town Planner Whitten didn't believe that a traffic study was not required under the 2000 submission. Chairman Ouellette suggested the requirement is in the regulations now; his concern is that this plan doesn't meet the current regulations. He suggested the Commission wouldn't be having this conversation unless the regulations changed; he is seeking consistency of Commission

actions. The Commission must follow its own rules. Commissioner Gowdy concurred but he noted the rules are different at different times.

Chairman Ouellette opened discussion to the audience:

**Dick Sullivan, 37 Rye Street:** questioned the Commission's ability to require a Landscaping Bond regarding the elimination of the sidewalks? Town Planner Whitten noted there is already a Landscaping Bond posted on this project, but the Commission could probably increase the cost of the bond. She suggested the question is – are all the sidewalks necessary, as some are encroaching on environmentally sensitive areas.

**Gerry Wilcox 50 Newberry Road:** felt he was hearing the Commission question the integrity of the developer. Mr. Wilcox suggested that was difficult for him to hear; he felt the developer does a good project and has respect for the wetlands and erosion controls. The developer does what he says he will do.

Regarding the sidewalks they benefit people in the baby-making set – for a place to walk their carriages. Would he want to shovel a sidewalk when he's older; he would rather have grass. Mr. Wilcox suggested he can see why the people signed off on the sidewalks. If he owned the project the cost of the sidewalks would be calculated into the homeowners association fee.

Commissioner Gowdy requested to clarify that the Commission hadn't questioned Mr. Giorgio's integrity; they would like to see a plan that includes the proposed/potential additional entrance improvements and additional plantings. Chairman Ouellette concurred, noting the Landscaping Plan submitted as part of the Commission's packet does not include the additional features discussed.

Attorney Fahey indicated they would be happy to do that but they would like to get the permit reissued; he suggested the updated Landscaping Plan could be a condition of approval. Chairman Ouellette questioned if there was a reason for granting the renewal this evening? Attorney Fahey noted they are about to go into a new phase and are going for financing on that phase; it doesn't look good if the permit isn't current.

Chairman Ouellette returned discussion to the **traffic study**. Town Planner Whitten suggested a quick review of the current file didn't reflect a traffic study. Attorney Fahey suggested the Meeting Minutes would reflect discussion on traffic. Chairman Ouellette suggested he didn't feel it would be prudent of the Commission to vote on the renewal without testimony regarding a traffic study. Mr. Ussery didn't recall if a traffic study was done for the original approval but felt something may have been submitted to the STC (State Traffic Commission). Chairman Ouellette suggested a study would have been triggered by the square footage of the buildings. Mr. Ussery suggested there are 92 units proposed, at approximately 1,000 square feet/unit.

Chairman Ouellette noted the Applicant is suggesting to submit a revised Landscaping Plan to be reviewed by Staff after the renewal is granted; he questioned which Commissioners favored that option? Commissioner Gowdy was in favor; Commissioner Wentworth suggested if the developer crosses his “t’s” and dots his “i’s”; he felt there were currently details missing. Commissioner Devanney favored submission of a new Landscaping Plan, especially if the sidewalks are voted down.

Chairman Ouellette questioned why the Applicant submitted a plan which shows sidewalks if he doesn’t want to install them? Attorney Fahey suggested they submitted a plan the way it was submitted before the permit lapsed. But, he noted, the permit has lapsed, and Chairman Ouellette is correct that under the new regulations the Commission may ask for sidewalks, but they are not required. The Applicant is asking for a waiver of installation of sidewalks.

Discussion followed regarding approval options. Town Planner Whitten noted the Commission could set a condition of approval that the plan must be modified, but that isn’t the Commission’s normal practice. Commissioner Gowdy felt the review could be done administratively, although it’s not a good practice. Chairman Ouellette felt that was a recipe for disaster; is, or isn’t, the plan accurate? Usually everything is very clear on the plan; he questioned how the Commission could conduct business if the plan isn’t clear?

Attorney Fahey suggested they will return at the September Commission Meeting with a plan showing the elimination of the sidewalks, the revised phasing, and the enhanced Lanscaping Plan – showing two entrance improvements and the additional plantings, and they will research the traffic study. If there is no traffic study they will go with discussion in the Minutes. Chairman Ouellette agreed, noting if they cannot do what they propose they can ask for a waiver.

Discussion followed. Commissioner Thurz felt the issue of permit expiration and subsequent reapplication, coupled with regulation revisions which change the project requirements, sets a precedent for everyone else who wants the requirements of their project changed. Attorney Fahey objected to that position; he cited the state of the economy, and felt the track record of the developer spoke for itself. He noted the developer accepted responsibility for letting the permit expire but the bank wants a current approval. Commissioner Thurz questioned the problem with putting in the sidewalks? Mr. Giorgio caustically suggested he would put in the sidewalks; he challenged that the issue of the sidewalks has been an issue for the Commission from day one. It’s not fair to the developer to come in and listen to these comments.

Discussion continued regarding the September submission, various regulation requirements, and specifics of waiver requests.

**MOTION: To CONTINUE the Public Hearing on the Application of Newberry Village, LLC – Renewal of Special Use Permit and request for Site**

**Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry Road and Winkler Road, owned by Newberry Village LLC and LTP Realty, Inc. [Zoned ARHD; Map 104, Block 17, Lots 19-6 and 19]. Public Hearing is continued until the Commission's next regularly scheduled Meeting on September 13, 2011 at 7:00 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.**

**Devanney moved/Gowdy seconded/**

**DISCUSSION: Commissioner Gowdy indicated he is in favor of voting tonight. Chairman Ouellette felt voting this evening would result in a 2:2 vote (on elimination of the sidewalks), the Public Hearing would have to be closed and the Commission would not get the additional information/discussion it appears to need and the Applicant couldn't submit new plans or information.**

**VOTE: In Favor: Unanimous (Devanney/Ouellette/Thurz/Wentworth)  
Opposed: Gowdy  
Abstained: No one**

**MOTION: TO TAKE A FIVE MINUTE BREAK.**

**Gowdy moved/Devanney seconded/VOTE: In Favor: Unanimous**

The Commission RECESSED at 8:40 p.m. and RECONVENED at 8:45 p.m.

**OLD BUSINESS: Newberry Road Enterprises/Steve Dearborn – Special Use Permit for a Modification to Volume Reduction Facility at property located at 68 Newberry Road, East Windsor, CT. [M-1 Zone; Assessor's Map 93, Block 19, Lot 6] (*Hearing closed 7/25/2011; Action Continued; Deadline for decision 9/29/2011*):**

Chairman Ouellette read the description of this Item of Business.

LET THE RECORD SHOW Commissioner Gowdy stepped down from service on this Application; Commissioner Zhigailo replaced Commissioner Gowdy.

Town Planner Whitten reported the Hearing has been closed on this Application. Subsequent to closing the Hearing she was called into the First Selectmen's Office; because of the contentious nature of this Application it was suggested that the Town Attorney review the record of the Hearing.

Chairman Ouellette questioned if the Town Attorney reviews all applications? Town Planner Whitten replied negatively. Town Planner Whitten summarized that the Commission has 65 days after closing the Public Hearing to make a decision; the deadline for the decision is September 29<sup>th</sup>, 2011. Chairman Ouellette noted the

Commission can't take any new information into consideration; they must make their decision based on what's been submitted. Chairman Ouellette questioned what the Town Attorney can bring to the table? Town Planner Whitten indicated the Town Attorney can clarify the regulations.

Commissioner Wentworth questioned how much past September 29<sup>th</sup> can the decision be made; he suggested the Applicant has been told twice to back for a decision. He felt this was an emotional issue which has been going on for some time. Town Planner Whitten suggested this has been going on for three years. Commissioner Wentworth questioned if the Commission has an absolute promise if he comes back? Chairman Ouellette suggested there are no promises in land use issues/situations. Town Planner Whitten reported the request has been made to the Town Attorney to complete the review before September 29<sup>th</sup>. Chairman Ouellette suggested this is an issue of procedural due process. The Applicant is here for the first time; there are State Statutes and protocol to be followed regarding hearing an application. Chairman Ouellette suggested he would rather hear about errors now before the Commission takes action on the Application; maybe something can be done. Commissioner Devanney questioned if the Commission can take information from the Town Attorney now that the Hearing has been closed? Town Planner Whitten clarified that the Commission take Staff recommendations, but no new information.

The Applicant, Mr. Dearborn, speaking from the audience, questioned if he could say anything? Chairman Ouellette replied negatively. Mr. Dearborn tersely responded that's real good.

**ACTION CONTINUED, NO DECISION RENDERED.**

**LET THE RECORD SHOW** Commissioner Gowdy returned to service on the Board.

**NEW BUSINESS: Mitchell Property Group, LLC** – Modification of Approved Site Plan for existing Contractor's Storage Yard located at 118 Wapping Road. [M-1 Zone; Map 27, Block 65, Lot 32] (*Deadline for decision 9/29/2011*):

Chairman Ouellette read the description of this Item of Business. Appearing to discuss this Application was Attorney Wayne Geralt, representing the Applicant, and Ms. Isherwood, of Isherwood Civil Engineering.

Attorney Geralt reported this is an Application for a Contractor's Storage Yard. During the previous Meeting they presented two plans, including: 1) the existing conditions, and 2) proposed activities. Attorney Geralt reported they have violated the provisions of the original Site Plan Approval as they did not build the storage bins proposed; they are asking to work within the conditions existing on the site. Attorney Geralt reported they are not asking to change the number of truck trips/day. Attorney Geralt submitted letters of support from abutting property owners (NORCAP) and abutting operators (Herb Holden Trucking).

Chairman Ouellette requested Attorney Geralt to explain what happened regarding the court case involving the hours of operation. Attorney Geralt reported he expressed a concern regarding the limited amount of truck trips and hours of operation; the condition of approval became the modification shown on the plans as note #2. Chairman Ouellette  
READ THE NOTE FOR THE RECORD.

Commissioner Gowdy questioned if the sealed containers shown on the plan contain hazardous waste? Attorney Geralt reported the company that operates this facility – Environmental Services – is an environmental waste hauler licensed by the State of Connecticut. They pick up waste which must be carried in sealed containers to be hauled out of state. That operation is heavily regulated; none of that material comes to this site. Commissioner Gowdy questioned that if a truck picks up a load of waste at 2 in the morning where does that material stay? Attorney Geralt reported the waste stays at another property in South Windsor, but must leave the state within 48 hours.

Chairman Ouellette referenced the materials to be stored in the Contractor's Storage Yard, he suggested the list of approved materials is not all inclusive and not everything is listed. He questioned what if they brought in recycled amesite? Town Planner Whitten suggested if the material is not shown on the plans it's not approved.

Town Planner Whitten reported that this site is truly a bowl; all drainage goes back onto itself. For that reason she and Town Engineer Norton have not required submission of drainage calculations as there is no flow off site.

Town Planner Whitten recommended that all the earthen materials be maintained at a distance of 100' from the property line, while the tree stump pile can be maintained at 50' from the property line. She also recommended all containers and trailers maintain the present zoning setbacks, and recommended that all existing tree lines be maintained to continue to provide a natural buffer to the adjacent properties. Attorney Geralt indicated he no problem maintaining the existing tree line as he felt that helped to keep people out of the site, but he did have a problem with the recommended 100' side yard buffer because some materials are already out that far. Commissioner Gowdy questioned if they could move the materials out to maintain the 100' distance? Attorney Geralt suggested they would have to move the materials that are already there, and it would give an artificial property line of 100' that's difficult to maintain. He also noted the site is not seen from any streets, and they have submitted letters from abutters citing no objection to the current operation. Commissioner Gowdy felt if the rules say 100' then the Applicant should play by the rules. Discussion continued regarding what rules apply. Town Planner Whitten referenced the Earth Excavation Regulations which require that soil stockpiles be 100' from any property line; she felt the current stockpiles are already at 100' beyond the road. Chairman Ouellette suggested the situation which differentiates this application and other applications is the letter from the supporters. And, Town Planner Whitten indicated this Applicant is not taking the soil off site. Town Planner Whitten suggested if the northern tree line is added to plans and storage yard limits

moved to the plan reference line, and if the southern storage yard limits are shown at the tree line then the Applicant would be maintaining a 60' buffer. Attorney Geralt agreed.

Chairman Ouellette noted in similar situations the Commission has asked for markers to be installed to show the locations of the stockpiles as that helps Staff determine if migration of the piles occurs; he questioned if a similar marker could be used at this site? Attorney Geralt suggested the stockpiles will change so they could flag the dark lines shown on the plans with posts.

Chairman Ouellette questioned if any security lights are proposed? Attorney Geralt indicated that issue had not been discussed with the client; he also noted this site has restricted hours of operation. Commissioner Zhigailo suggested some lighting might be a safety feature.

Town Planner Whitten read the proposed additional conditions #16 and #17.

Chairman Ouellette queried the Commissioners for additional questions; no one offered any comments.

**MOTION TO APPROVE the Application of owner Mitchell Property Group, LLC requesting an approval for a Site Plan Modification for an existing contractors storage yard to be located at Lot 32 Wapping Road, a landlocked parcel known as Map 27 Blk. 65, Lot 32 in the M1 zone.**

This approval is granted subject to conformance with the referenced plans (as may be modified by the Conditions)

**Referenced Plans:**

- C-1 -Existing conditions prepared for Mitchell Property Group, LLC & Scott W. Mitchell, Et Al, located on the east side of N.Y.N.H. & Hartford Railroad Lot No 32 Wapping Road, East Windsor CT prepared by Isherwood Civil Engineering, 58 Ordway Dr., South Windsor , CT 06074, 860/640-4064 [www.iandscivil.com](http://www.iandscivil.com), scale 1 " = 40' dated June22, 2011 , last revised 7/14/11
- C-2 -Site Plan Modification , dated June 22, 2011 last revised 7/14/11

**-Conditions which must be met prior to signing of mylars:**

1. All final plans submitted for signature shall require the seal and live signature of the appropriate professional(s) responsible for preparation of the plans.
2. The conditions of this approval shall be binding upon the applicant, land owners, and their successors and assigns. A copy of this approval motion shall be filed in the land records prior to the signing of the final plans.

**Conditions which must be met prior to the issuance of any permits:**

3. One set of prints and one set of final mylars, with any required revisions incorporated on the sheets shall be submitted for signature of the Commission. Sets shall be filed in the Planning and Zoning Department.
4. A cash (escrow) or passbook bond shall be submitted for sedimentation and erosion control maintenance and site restoration during the **construction of the project**. Any funds that may be withdrawn by the Town for such maintenance or restoration shall be replaced within five (5) days or this permit shall be rendered null and void. The applicant's engineer shall submit an estimated cost of the E & S controls to the Town Engineer. The amount of said bond shall be determined by the Town Engineer.

**Conditions which must be met prior to certificates of compliance:**

5. Final grading and seeding shall be in place or a bond for the unfinished work submitted.
6. Final as-built survey showing all structures, pins, driveways and final floor elevations as well as spot grades shall be submitted.
7. All public health and safety components of the project must be satisfactorily completed prior to occupancy. In cases where all of these components have been completed, the Zoning Official may issue a Certificate of Zoning Compliance provided a suitable bond is retained for any remaining site work.

**General Conditions:**

8. In accordance with Chapter 900.3.f .6 of the Zoning Regulations, any approval of a site plan application shall become null and void in one year from the date of approval if the activities have not commenced and the site plan shall be considered to be disapproved, and **complete all improvements within five years of the date of approval**, otherwise the approval shall become null and void, unless an extension is granted by the Commission.
9. A Zoning Permit shall be obtained prior to the commencement of any site work.
10. This project shall be constructed and maintained in accordance with the filed plans. Minor modifications to the approved plans that result in lesser impacts may be allowed subject to staff review and approval.
11. Any modifications to the proposed drainage or grading for the site plan is subject to the approval of the town engineer.

12. Additional erosion control measures are to be installed as directed by town staff if field conditions necessitate.
13. By acceptance of this approval and conditions, the applicant, owner and/or their successors and assigns acknowledge the right of Town staff to periodically enter upon the subject property for the purpose of determining compliance with the terms of this approval
14. An access agreement must be filed on the town land records prior to obtaining a zoning permit.
15. All materials stored at this site shall be clean, and may never be contaminated. Storage of contaminated material would constitute a hazardous

**Additional Conditions:**

- 16. Northern tree line shall be added to plans and storage yard limits moved to the plan reference line, and southern storage yard limits shall be shown at tree line.**
- 17. Storage yard limits shall be demarcated in the field; to be approved by Staff.**

**Devanney moved/Wentworth seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**Opposed: No one**

**Abstained: No one**

**NEW BUSINESS: Gerald Wilcox** – Request for Site Plan Approval to build a 5,000 square foot building addition located at 50 Newberry Road. [M-1 Zone; Map 092, Block 19, Lot 4].

Chairman Ouellette read the description of this Item of Business. Appearing to discuss this Application was Gerald Wilcox, the Applicant.

Chairman Ouellette requested an update on the previous application approval. Town Planner Whitten noted this Application was added to the Meeting Agenda at the last minute. Mr. Wilcox came in in 1988 and received approval to construct a 250,000 square foot building. Mr. Wilcox got a Zoning Permit but built only half of the building; he is now seeking approval of the second half of the building. Town Planner Whitten suggested the only thing changing from the original approval is that drainage calculations are now required. Drainage calculations have been submitted; Town Engineer Norton has submitted a memo dated August 9, 2011 which indicates the detention area shown will detain water and not overflow onto adjacent properties. Town Planner Whitten indicated the permit is no longer valid as State Statutes require Site Plan Approvals to expire in 5 years; the Zoning Permit expires in a year. Town Planner Whitten suggested the Applicant is asking for approval of what he asked for in 1988.

Gerry Wilcox, one of the principals in 50 Newberry Road, reported his property is across the road from the Insurance Auto Auction facility; one half of his building has been built. Mr. Wilcox contradicted Town Planner Whitten's assessment regarding the expiration date; he felt the Statute was recently changed to 14 years. He reiterated "this" has been built; the landscaping has been done, utilities, sewer, and improvements are all done. The electrical will be extended to the new building; he will do new footing foundations. The new building will be metal, 100' x 50' in size, the same siding will be used. Mr. Wilcox indicated he had a tenant for the new building who is ready to move in. They are going through Wetlands now. Mr. Wilcox indicated he wanted to do several building applications; he is asking to go this additional 100' x 50' now.

Commissioner Zhigailo questioned if there were any provisions for roof drainage? Mr. Wilcox suggested there is none on the existing building; there are neighbors next door whose drainage goes into a swale on his property and into the street drainage.

Commissioner Devanney questioned who the tenant would be? Mr. Wilcox suggested it would be a storage facility, but he couldn't say any more than that.

Commissioner Thurz questioned if Mr. Wilcox would be using the same doors? Mr. Wilcox suggested there would be only one door; the rest of the building would be siding.

Chairman Ouellette questioned if there would be any exterior lighting proposed? Mr. Wilcox replied negatively, noting the Commission has his permission to come onto the property at any time. His property is lit from the back by the neighbor's property; there are no outside parking lot lights.

Commissioner Devanney referenced Town Engineer Norton's comments. Town Planner Whitten suggested he is happy with the drainage calculations as submitted. The building is considered impervious coverage, the parking lot is gravel so the co-efficient hasn't changed.

Chairman Ouellette questioned how the regulations have changed since the original Special Use Permit Approval? Town Planner Whitten drainage calculations are now required and have been submitted, although that was not a requirement of the original approval. The Commission has the opportunity to continue this Application if they are not comfortable with the information presented.

**MOTION TO APPROVE the Application of owner Gerry Wilcox requesting a re-approval for a site plan review for construction of a 5,000 sq. ft. addition to an existing building at 50 Newberry Road. M1 Zone, Map 092 Block 19 Lot 4**

This approval is granted subject to conformance with the referenced plans (as may be modified by the Conditions)

**Referenced Plans:**

- **Site Plan Proposed Building for Betty H. and Gerald J. Wilcox, Newberry Rd, East Windsor CT scale 1" = 40', prepared by GF Richard , LS # 8173, 46 Newberry Rd, Warehouse Point CT dated March 1988, last revised 11-7-88.**

**-Conditions which must be met prior to signing of mylars:**

1. A paper copy of the final approved plans (revisions included) shall be submitted to the Town Planner for review and comment prior to the submission of final plans.
2. All final plans submitted for signature shall require the seal and live signature of the appropriate professional(s) responsible for preparation of the plans.
3. The conditions of this approval shall be binding upon the applicant, land owners, and their successors and assigns. A copy of this approval motion shall be filed in the land records prior to the signing of the final plans.

**Conditions which must be met prior to the issuance of any permits:**

4. One set of final mylars, with any required revisions incorporated on the sheets shall be submitted for signature of the Commission. Set shall be filed in the Planning and Zoning Department.
5. A cash (escrow) or passbook bond (made out to the applicant AND the Town of East Windsor) shall be submitted for sedimentation and erosion control maintenance and site restoration during the **construction of the project**. Any funds that may be withdrawn by the Town for such maintenance or restoration shall be replaced within five (5) days or this permit shall be rendered null and void. The applicant's engineer shall submit an estimated cost of the E & S controls to the Town Engineer. The amount of said bond shall be determined by the Town Engineer.
6. A zoning permit shall be obtained prior to the commencement of any site work

**Conditions which must be met prior to certificates of compliance:**

7. Final grading and seeding shall be in place or a bond for the unfinished work submitted.
8. Final as-built survey showing all structures, pins, driveways and final floor elevations as well as spot grades shall be submitted.

9. All public health and safety components of the project must be satisfactorily completed prior to occupancy. In cases where all of these components have been completed, the Zoning Official may issue a Certificate of Zoning Compliance provided a suitable bond is retained for any remaining site work.

**General Conditions:**

10. In accordance with Section 13.5.4 of the Zoning Regulations, any approval of a site plan application shall commence the construction of buildings within **one year from the date of approval** and **complete all improvements within five years of the date of approval**, otherwise the approval shall become null and void, unless an extension is granted by the Commission.
11. This project shall be constructed and maintained in accordance with the filed plans. Minor modifications to the approved plans that result in lesser impacts may be allowed subject to staff review and approval.
12. Any modifications to the proposed drainage or grading for the site plan is subject to the approval of the town engineer.
13. Additional erosion control measures are to be installed as directed by town staff if field conditions necessitate.
14. By acceptance of this approval and conditions, the applicant, owner and/or their successors and assigns acknowledge the right of Town staff to periodically enter upon the subject property for the purpose of determining compliance with the terms of this approval

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)  
Opposed: No one  
Abstained: No one**

**BUSINESS MEETING/(1) Correspondence:**

Town Planner Whitten referenced the attached JI Article, and noted a site walk was held with the facilitators, Wetlands Agent/Assistant Planner Newton, and Commissioner Zhigailo to familiarize the facilitators with the Route 140 corridor. The site walk was noticed as a Special Meeting. The facilitators will be contacting property owners this week.

Town Planner Whitten showed Commissioners the flyer which will be posted in various locations; Chairman Ouellette suggested posting the flyer on the Town website. A direct mailer will be sent to property owners, as was done for the Farm Regulations.

**BUSINESS MEETING/(2) Staff Reports:**

**TOWN OF EAST WINDSOR  
PLANNING AND ZONING COMMISSION  
Public Hearing #1597 – August 9, 2011**

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- Chairman Ouellette questioned if Town Planner Whitten had had an opportunity to acquire the sign regulations for South Windsor as was suggested by the Economic Development Commission? Town Planner Whitten reported Assistant Town Planner Newton researched South Windsor's sign regulations, and found East Windsor offers more space under our regulations.
- Chairman Ouellette questioned if a list of regulation changes was being gathered; Town Planner Whitten replied affirmatively; she is already compiling the list.

**SIGNING OF MYLARS/PLANS, MOTIONS:**

- Annette Fortune – Site Plan, North Road

**ADJOURNMENT:**

**MOTION: To ADJOURN this Meeting at 9:42 p.m.**

**Gowdy moved/Devanney seconded/VOTE: In Favor: Unanimous**

Respectfully submitted,

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Peg Hoffman, Recording Secretary, East Windsor Planning and Zoning Commission  
(8033)