

Town of Watertown
Planning and Zoning Commission
Public Hearing
French Hill Estates
October 1, 2008

Time: 7:10PM
Date: October 1, 2008
Place: **Watertown High School Technology Center**
324 French Street
Watertown, CT

Members Present: D. Minnich, R. Russ, M. Masayda, G. Martin, C. Mancini,
G. Dupliese, J. Blais, K. Demirs, R. Rondeau, D. George

Others Present: Ruth Mulcahy, Administrator of Land Use

Minnich: Next is the application of Joseph Masi and Margaret Raymond for the re-application of an 18 lot subdivision to be known as French Hill Estates located on French Street, Watertown, Ct in an R-12.5 Residential Zoning District.

Mike would you please read the notice of public hearing.

Masayda: The Planning and Zoning Commission of the town of Watertown, Ct. will hold a public hearing on Wednesday, October 1, 2008 at 7PM at the Watertown High School, Technology Center, 324 French Street, Watertown, Ct. on the following application. An application of Joseph Masi and Margaret Raymond for the reapplication of an 18 lot subdivision to be known as French Hill Estates located on French Street, Watertown, Ct. in an R12.5 Residential Zoning District.

Minnich: Thank you. Does the applicant have a presentation? If I may before you begin and I know you are going to give us the green cards for the public hearing the properties. Also just for the record so because this is a re-application we are all clear as to the documents that we have. The Commission's position that the documents that have been received for the prior applications are not part of the record for this application unless they have been resubmitted and references to those documents have been received previously and not resubmitted are not part of this record.

Mike Zizka – Firm of Murtha Kilina

Thank you Mr. Chairman my name is Mike Zizka I am from the firm of Murtha Kilina representing the applicants in this proceeding. First I would like to request I was just notified by our engineer that apparently inadvertently left the green cards at their office. Would it be feasible for us to submit them...

Minnich: That would be fine.

Zizka: as part of the record. Okay I appreciate that. Secondly I certainly understand and appreciate what you said with regard to materials from private hearings not being a part of this record and actually it is for that reason that we are going to submit materials that we consider to be significant that do involve the proceedings of the Commission over the past year and that is we have a list various Commission minutes from public hearings and so forth. Because we think that the history of this project in terms of how the design got to where it is and so forth needs to be part of the record. So that if necessary a court would have a full analysis of how the project got from point A to point B. So the first thing that I would like to do is to submit these documents and I have a list of the Commission minutes that I am going to be submitting they include the November 7, 2007 regular meeting, January 2, 2008 public hearing and regular meeting, January 16, 2008 special meeting and public hearing, February 6, 2008 public hearing and regular meeting, February 20th special meeting, March 5th regular meeting, March 19th special meeting which includes certain memos that were submitted at that time, April 2 regular meeting, April 9, 2008 special meeting and public hearing, April 16, 2008 special meeting and public hearing, May 7th public hearing and regular meeting, and May 14, 2008 special meeting.

Minnich: You are welcome to present this to us. But I will say for the record I suppose I will need some legal counsel on this but reserve my final statement to getting that. But you mentioned the public hearings; you mentioned minutes of meetings the purpose hearing is for people that are here that we have invited to come can speak. They cannot reference and they have no new knowledge of the public hearings that occurred before nor is this Commission retrying not retrying but re hearing a public hearing again before. By trying to begin saying in fairness to everyone now is a clean start what you have submitted in terms of the site plan and required documentation will accept those that what you have submitted anything submitted previously we will expect you to resubmit again. With regards to minutes, regards to public hearings, there is no ability for people to comment on that and there may very well maybe the applications for the affability of those with relationship to the comments made at the public hearings may not have been as fully developed as they could have been in light of what you are well aware of the situation to which that occurred. I suggest that you can consider considering submitting those that, I don't think we are going to finish this public hearing tonight but consider presenting those at next time we meet. In the meantime I will then get legal advice as to whether it is appropriate for us to accept those. Our judgment at this point it is not.

Zizka: The only reason I am smiling Mr. Chairman is because I almost made the pretty much the same argument to the court up in Litchfield with regard to case that I recently tried about 6 months ago. Where I was representing a client whose was before the zoning board of appeals in a different town and the zoning board of appeals had heard prior applications from my client different type of applications. And so they made a decision on this application and an appeal was taken and the attorney for the other town filed transcripts and all kinds of things from the prior proceedings. And I said wait a minute you can't do that, they were not even introduced during the hearing. And the court up in Litchfield said yes but they were part of prior proceedings involving these two things and they may have some relevance so the court allowed them. I not only didn't have the opportunity to look at them and I did not even know until the court hearing that they were going to become part of the records so that's why we feel we have to do this. What I would say to you though I certainly understand you concern that we are not expecting the Commission to you know go through this in any thumb numbing detail and say oh, we would expect that were going to point any portions of these minutes that are necessary to the Commission consideration of this issue. The reason that I am doing this now is simply to have them in the record. There is a the theory that the court using the Litchfield case that I told you about was that Commission members are entitled to use their own knowledge of a particular site and a particular situation in rendering their decision and that's why the court thought it was appropriate for prior proceedings to be admitted. Because the court said well the Commission members obviously were aware of the things that had happened in the past. And so I don't want to be caught between a rock and a hard place in submitting those.

Minnich: My understanding and I am not a lawyer, I am a layman my layman view and my experience of this is that prior public hearings and prior minutes and discussions there is no opportunity for us to have all that. So I would at this point say that we will not accept those for the record. However between now and the next time I will seek on behalf of the Commission advice from our legal counsel as to whether this is appropriate to put those in the record.

Zizka: Alright, what I would like to do then in that case at least provide you with a list of the documents that I intended to submit so at least you have that to present to your counsel.

Minnich: Thank you very much.

Zizka: You are not going to like the next issue. And that issue is that with sincere respect I have to ask two Commission members to recuse themselves and that would be Mr. Martin and Mr. Mancini. I don't know if I need to put on the record I know Mr. Martin you have recused yourself in the past. And I don't think it is necessary to go into it. Because you are obviously aware of the reasons but we believe it would be appropriate for you to recuse yourself again tonight.

Martin: At this point in time I will not recuse myself. I would like to have the reasons though for your request for recusal.

Zizka: Alright very well, thank you. The reasons are my understanding is that you are the son-in-law of Mr. Richard Fusco. And Joe Masi and Margaret Raymond who are the applicants here tonight were applicants previously in front of the Watertown Conservation Commission. At that Watertown Conservation Commission meeting Mr. Fusco intervened in the proceeding and opposed the granting of that application. In addition there is a court proceeding currently pending in the Connecticut Applet court in which Mr. Fusco and the applicants here are parties on opposed sides of that case. With regard to the issue of predetermination I just like to point to the Commission to a couple of cases and I will provide those cases to you.

The town of Old Saybrook Zoning Commission which is at 178 Connecticut report page 190A.

And the other one is Kloter vs. the Vernon Fire District Zoning Commission. It always strikes me as unusual to talk about Fire District Zoning Commission but there it is.

In these cases what the courts have said is and this is why it is always difficult for me I represent a lot of Commissions. In fact I represent more Commissions than I do private individuals. And it is always difficult for me to ask a Commission member to do this. But the rule with regard to conflicts of interest is that it's not whether the Commission member himself or herself feels that he can make an objective decision because you may very well feel that. You may very well sincerely believe you can make an objective decision. And I don't know whether you can or can't. You may be able to. But the problem is from the point of perception the courts have said it is very, very important for the public to be able to have confidence that you will be able to make a fair decision. And that has always been the rule for the court, what is the public going to think, not so much whether the Commission member feels sincerely that he or she can do it. But what is the public going think. And the cases that I am going to present to you, one this Thorne vs. Zoning Commission of Old Say brook was a case where it was a general reclassification of zones in the town of Old Say brook. And one of the properties that were affected was a small piece of property that owned by the

plaintiffs in that case and was zoned for business and it was going to be rezoned to residential. And next to that piece of property was another piece of property owned by one of the Commission members Terrence and sister and the court said that jut the appearance that you would not be able to be fair in rendering a decision that may have an impact on property abutting your family is enough to require disqualification in that case.

In another Kloter case the one of the Commission members used one of the applicant's as his professional tax advisor. That's one that actually surprised me a little bit so that was the connection. One of the applicants was a professional tax advisor for one of the Commission members and the court said that was enough of a relationship that you should have disqualified yourself in acting on that application. I think the same would apply to the status of your father in law I think that is a significant enough connection that family connection that it would bring you in the line of those two cases. So that is the reason I am asking.

Martin: Do you have that on paper by your side.

Zizka: I do.

Martin: Could I get a copy of that. I would like to, because I don't agree with your position and I would like to take accounts...

Zizka: Understood.

Martin: Because I really believe that I can sit here and be totally impartial listen to this presentation and on its merits solely.

Zizka: Fair enough Mr. Martin and certainly are entitled to talk to council about that and I appreciate your willingness to do that.

Martin: Thank you.

Zizka: What I will provide for the record is a copy of the intervention petition that was filed in the Conservation Commission by Mr. Fusco and I will provide copies of the Thorne and Kloter cases unfortunately I have only one copy but will Mr. Martin be able to get a copy of these?

Now Mr. Mancini you're probably stunned and shocked or maybe you already know where I am going on this.

Mancini: No I don't.

Zizka: Alright, okay here is the second rule that the court have used and it is called predetermination. Predetermination means that when a Commission member goes into a public hearing the Commission member is supposed to have an open mind with regard to all aspect of the application. In other words the Commission member should be in a position where the public can feel confident that that Commission can fairly decide upon this particular application. Now as you know recently within the last year there was an application that was made to modify the subdivision regulations because as you are aware the subdivision regulations previously had a paragraph that stated that you have interceptions that are closer than 400 hundred feet you can't put in a road. An application was filed to modify that zoning requirement or that subdivision requirement. And during the course of the hearings on that application the question was put to you whether or not you could approve of a change in that 400 hundred foot rule or a waiver of that 400 hundred foot rule under any circumstances and you specifically said that you could not approve that under any circumstances. You said that specifically in response to a question. Never the less the amendment was made to the subdivision regulations and now the applicant is here and for this particular subdivision plan would require a waiver of the 400 hundred foot rule. Based on what you said previously we have no reason to think that you are open minded about whether or not you are going to approve or could approve an intersection within 400 hundred feet of an existing intersection. Because you said you wouldn't approve under any circumstances.

Mancini: Well you did say at the last meeting that you were going to present to us with traffic engineering and everything else and we were willing to listen to it. You are already saying that I am going to vote no.

Zizka: It is not that I said it, is that you said it.

Mancini: Well know you said you are going to give us new information and you gave us new information.

Zizka: We have given you new information we feel...

Mancini: You are getting an engineer and everything else I am willing to take a vow and giving consideration, now if you think I am going to vote a certain way I don't agree with you, I want to listen to this and I will vote at the end. I am not going to remove myself.

Zizka: I need to present, I understand, I need to present another couple of cases then to the Commission. One of them is called Lage vs. the Zoning Board of Appeals of the town of Madison. And that was a situation in which a Zoning Board of Appeals member had appeared at a Planning and Zoning Commission meeting in favor of the zone change that was requested by the applicant for that particular

matter. And the Commission member the ZBA member pleaded the case of the applicant and said you really should grant this zone change because the applicant wanted to do something specific with the property. Well the zone change wasn't granted so the applicant had to seek a variance. So now she had to seek a variance before the ZBA on which this person sat and the variance was granted. And here's what the court said quote "his remarks indicated a preconceived opinion about the desirability of the change and that opinion must of influenced his vote on the variance. And that continued he would have shown much better judgment had he reframed from acting as the member of the Board of Appeals in this matter.

Similarly in a case called Mills vs. Town Planning and Zoning Commission and I will provide you with a copy of that case as well. That was a case where one member of the Commission apparently there was some competing properties for a business project that the town wanted to develop. And one of the Commission members said looked into a particular parcel and had made some very, very, favorable recommendations to the Commission and the town regarding one particular parcel as opposed to the other. Before the development plan came in for the parcel that that member favored another person came in with a proposal to change the zone of her property so she could use it for that type of development. And the Commission member voted to deny that application and the court said in very, very, strong language given the remarks that the Commission member had made in favor of the competing parcel it was very, very, unfair for that member to sit in judgment on the other competing parcel. And again that may have been a case where the Commission members truly felt sincerely felt that he could make a fair decision but the court again took the position that it is the appearance, it doesn't look to the public as though a fair decision could be made. So that's the reason for our request, I will submit copies of these two cases.

Minnich: Thank you.

Mancini: Can I get a copy of that also for my attorney and then make up my mind like Gary does next and I will do that. I am holding that consideration.

Zizka: And that's all I ask.

Mancini: Mr. Chairman if I recuse myself does that mean I don't have a right to speak on the issue at all.

Minnich: That is correct.

Mancini: Even though I won't get a vote, I will be able to speak on it at all.

Minnich: You cannot influence us or talk to us at all.

Rondeau: Mr. Chairman could I ask a couple of questions to go along those lines.

Minnich: I don't think you want to be involved in this issue. It's between ...

Rondeau: I do want to ...

Minnich: Then again I am not going to allow you to be involved and we are going to move on.

Rondeau: I would like clarification.

Minnich: No, this issue of recusal is the Commissioners themselves and this Commission will vote at the Commission to have either removal as you well know and we may not influence people.

Rondeau: I am not asking... I would like to make a ...

Minnich: You are out of order.

Rondeau: Am I not allowed to ask the applicant a question?

Minnich: You are not allowed to ask the members of the Commission a question.

Rondeau: You are right, so I would like to ask the applicant a question.

Minnich: Very good go ahead.

Rondeau: Sir, is there any ruling or any litigation that would allow a members to recuse him in this particular situation tonight but then be able to come back on the board at a later time? Because obviously something probably not going to get voted on tonight? If they recused themselves tonight are they allowed to not recuse in the future if they seek representation that says they should or shouldn't?

Minnich: Why are you asking the applicant's attorney a question like that when you should be asking our own attorney that? I don't understand your position on this?

Rondeau: You did not want to hear what I said before?

Minnich: I am going to make this ruling any comments regarding recusal is out of order.

Rondeau: Since when do you make a decision as to what I can ask the attorney?

Minnich: Move on.

Rondeau: I would like my question answered.

Zizka: Mr. Chairman if I may I would like to submit the one document that I would like to submit the minutes of the May 7, 2008 meeting where the comments that I refer to were made.

Minnich: That is fair, yes fine. Only relating to those comments.

Zizka: Relating only to those comments. Correct. And I would like to thank Mr. Martin and Mr. Mancini for being civil to me as I had to go through that. What I would like to do now is turn the presentation over to Mr. Don Knolte who is going to give you an overview of the subdivision and tell you what it is specifically that the applicants are proposing.

Minnich: Thank you.

Don Knolte – Stuart Somers Co.

I am moving the display a little closer to me it could be dangerous with the laser pointer.

Minnich: It is fine with us but I don't know if the audience.

Knolte: Good evening my name is Don Knolte I am employed by the Stuart Somers Company Land Surveyors and Engineers with offices at 1211 Main Street South in Southbury. I am here this evening representing the applicants Joseph Masi and Margaret Raymond owners of the property that has been in their family for over a hundred years. I am here this evening to present the subdivision application for 18 lot subdivision on their 14 acre parcel located at French Street on the north side between Gilbert Lane and the side street intersection. Some of you have walked this property in the past. I am this evening with site provisions of the existing conditions are that the property 14 acres adjoins the Echo Lake open space on town property. It has 150 vertical feet I believe we are proposing to construct a 930 foot wide public road with permanent dead end cull de sac and 11 lots on the taking direct driveway access off of the new cull de sac. Feedback from the last application which this is resubmitted we have removed all of driveway access points directing on French Street and instead incorporated a common private driveway 18 foot wide to serve the upper area of its new home sites. This area was being encumbered by a private drainage and utility easement it would be totally maintained by the homeowners who have the benefit of its use. This plan is going to contain slightly from what was submitted originally and that it has been modified to have a larger turn around serving these 7 homes in response the Fire Marshal's comments the radius is now 85 feet in diameter accommodating emergency vehicles to his satisfaction. I do have a memo I can submit into record

his comments of this plan and I will so this time. There is also going to be a new fire hydrant or second fire hydrant within this development right at the turn around part of the area. What I am submitting are the Fire Marshal's comments. I think I will put into the record also the water and sewer the superintendents comments confirming that there is sufficient to serve the development with total water and sanitary sewer disposal. It would require a developer's agreement those were his only comments. I have the additional comment that he believed it would be a better situation if the 18 foot wide private driveway was increased to 20 foot width to accommodate 2 nine foot wide emergency vehicles at the same time more comfortably. Storm drainage to accommodate the redevelopment consists of a detention basin at the intersection of the proposed Brook Hollow Lane and French Street. It also has two bio retention areas one handling the upper private turn around and homes on it. The other is within the town's cull de sac where it infiltrates and renovates and what will occur. The general drainage scheme of this development has been reviewed by the Town Engineer as part of the wetland permit application #589. Which was approved and we had no additional regulated activities perhaps less impact in that from lot 8 which is now 11 the driveway is moved slightly away from the watercourse so now additional action by the wetland agency is required at this time. The project is designed and intended to be phased into 3 phases of construction. Does the system minimize the disturbance of the sloping site and help control soil and erosion. The first phase consists of the construction of the first 650 feet of the public roadway and the private driveway which is about 650 feet long. The storm water detention basin some temporary sediment basins and sod pile area construction of one model home. In addition lots 5 and 6 at the request of wetlands are you see to be mass excavated to rough file grade so that future owners of these lots will have an easier time working between them to complete the development of those areas. Second phase is really the extension of the road across the intermittent water course that basically takes storm drainage from off street road areas. It is also 60 foot long 3 by 4 box culvert and the clearing will be limited to what necessary to complete the road and infrastructure drainage and utilities. After this is done and stabilized the third phase would be individual lot development. So we feel that and the wetland agency agreed that it would be a controlled manner to work on this ground way sensitive site we take a look at seeing it through. To review the open space component of this application there are two open space lots proposed one space at the intersection of Brook Hollow and French Street which is little more than half of the area is to be taken up by the storm water detention facility. Open space number two contained is directly part, the two of these have a combined area of 1.33 acres, 10% of the 14 lot would require that 1.4 acres be set aside. Additional they were providing 3 separate conservation easement areas one is along the brook, and that is intended to protect and preserve the stream built corridor, there is going to be a 650 foot long, 2 foot high stone wall to demarcate and protect this area. That is about inside the over hanger and about 3 tenths of an acre is wetland and water course. Conservation is number two hardly any wetlands and

water courses at all. There is maybe a 10th of an acre of the 1.74 acre area that is wetlands. It's over five lots; its function will be to preserve the scenic quality of the area to prevent demutting of the hillside. To hopefully preserving the scenic hydrology without more structural maintenance or frontal drainage structures we do have swales to advert water flowing through the woods away from the lower home sites and then to the town drainage system. There is a third conservation in a small area but still important it is over a sloping area between lot 13 and Echo Lake Road it is about 1,300 hundred square feet. Total combined wetland area located within the proposed open space both in fee of easements of the subdivision is about just over 15% of total set aside this satisfies the open space regulations 7.5.2 which requires that no more than 50% of the open space consists of wetlands. I would now like to the traffic engineer Josh Scott from BL Companies to present his company's report to you on the probably the most significant aspect of this subdivision that meaning the intersection, location, site distances, breaking distances and the need and acceptability of the desirability of finding a reduction and spacing of the intersection to Riverside Street by reducing it by 65 feet from 400 feet to 335 feet. First he will present his report and take any question from you.

Josh Scott – BL Companies

Good evening for the record my name is Josh Scott with BL Companies. I was not here for the first round of the talks but the resubmission we looked at this old zoning regulation of 400 hundred feet from our driveway/public road intersection. The 400 hundred from another existing intersection and we have looked various other regulations through other towns and they range from basically 30 feet to 600 feet depend on where you are looking. We looked at the intersection site distance which is required based on the 85th percentile speed and that speed I believe is 43 mph. Based on state requirements it is 475 feet and where our new driveway is to be located we have in excess of that 475 feet of site distance. We feel that based this submission to be based on what we can get for site distance for safety rather than an arbitrary distance number. We also that stopping site distance is I believe was in one of the past hearings and since there is a significant I believe it is 12% downhill slope on French Street. It is requirement of about 435 feet is needed for stopping site distance which we have about 465 feet so again you're in excess of the requirements. Let's see what else. We also had somebody had stated that possible need for a third lane on French Street. Based on com dots regulations formulas there is no need for a third lane whether it be a left turn or a bypass lane for such a low amount of traffic roughly 15 trips into and out of this site based on the time of day. Just based on that we show that this driveway location is the best location for this site and also as I have also have taken all the other old driveways that were west of the Brook Hollow Lane they have been removed so now we go to an access which is a lot safer than having multiple driveways every hundred feet as you do on the opposite side of the French Street.

Zizka: Just to clarify for the record Mr. Scott in your professional opinion would the intersection at currently proposed pose any safety issues whatsoever with respect to traffic flowing in either direction on French Street?

Scott: No it does not. Professionally speaking we actually feel that the distance location is the best based on the site distances there are achievable at this location. If we move it anywhere farther away from Riverside Street to the intersection site distance actually goes down and if we do the 65 feet we well below the intersection site distance required by the DOT. The site distance is what we feel is the best location on French Street for a driveway. If you have any questions?

Minnich: Our process is when you are finished we hear the presentation then we will ask questions or comments?

Knolte: I would just like to clarify that you have two traffic reports on the files from this application there is the original one and the one revised September 8th that took into account the question of the braking distance that came up at the last meeting that three copies of that were submitted several weeks ago and this report should be referred to.

Minnich: What is the date of the original?

Knolte: I will tell you in one second.

Minnich: When you say original was that submitted with this application?

Knolte: It was originally submitted with this application but it came with the original the last application.

Minnich: I want to be real clear for the record here did you resubmit that to us.

Knolte: Yes

Minnich: Okay thank you.

Knolte: I will give you the date of the new one? The revised report was dated September 10, 2008.

Minnich: And the original was?

Knolte: January 2, 2008.

Minnich: Once again for my own scope of clarity here, both of those were resubmitted as part of this application?

Knolte: Correct.

Minnich: Thank you.

Knolte: I would be submitting a memo that I will just read to you but suggesting some draft findings of fact in this part of the request for the 65 foot reduction in the intersection spacing requirement between Brook Hollow Lane and Riverside Street. Number one DL Company's traffic engineer Fred Greenberg has performed a settlement of the proposed intersection and his report made part of the public hearing records. This included that the proposed and so has Josh Scott engineer from the same company concluded that the proposed systems reduction intersection location will not present any traffic operational or safety issues. Number two the traffic engineer will use the 400 foot separation distance a pierce arbitrary and his report sites generally accepted distances and varied between 175 to 330 feet. Item three the subject property has no other road findings besides French Street. The only possible access into the 14 acre parcel zone R 12.5 is on French Street. Number four the site distance looking easterly on French Street from the proposed roads viewpoint is essentially unlimited by one quarter mile. There is clear on the site between Riverside Street and the proposed intersection cars existing Riverside Street from the stop sign in the direction of the Brook Hollow Lane intersection will be climbing at 12% grade thereby reducing the normal rate of acceleration and increasing the time that may normally take to reach the new intersection. Item 5 the proposed intersection location maximizes the available intersection site distance to the right. It satisfies the 475 foot distance that is based on the measure of the 85th percentile of the travel speeds. Number six the 475 foot minimum site distances per provided exceeds the 455 foot site distance to the right. That is the design standard provided in appendix b of Watertown subdivision regulations for roads, (inaudible) thoroughfares. Number seven the traffic study is determined that the braking distance down to French Street will be 435 feet which is less than the site distance requirement that we need. Number eight on appendix e the subdivision design standards the proposed intersection site distance to the left as well exceeds the 455 foot site distance requirement. Number nine to satisfy Commission concerns over constructing additional driveways on French Street the subdivision design has been revised and incorporated more costly down the driveway off of the new road. Number ten the distance between Riverside Street and Gilbert Lane of 835 feet does not physically allow for the applicant, does not physically allow for the applicant to satisfy section 5.3.7.1 without a waiver and also provide the 455 foot site distance to the right as required by NEC. And lastly the town engineer favored the reduction intersection distance over reduction site distance during the previous public hearing. I will submit that and also give you a memo with the open space.

Minnich: Thank you.

Knolte: I will be happy to conclude my presentation and will be happy to entertain any questions?

Minnich: The approval that you have gotten from the Wetlands agency made the statements that what you are now proposing is less of an impact on the wetlands than what was approved? That's correct?

Knolte: A few square feet maybe a few 100 square feet or less impact for the driveway crossing near the open street.

Minnich: You changed the given that statement you changed this what they have seen this is a slightly different project?

Knolte: Yes, we would not have a problem reviewing this with the Commission of staff discuss this with Moosa Raffey.

Minnich: So my question then I guess to Ruth is what is the position of staff in regards to this position's needing to be reviewed by Inland and Wetlands Agency and do you know if the Inland and Wetlands Agency should be reviewing this in your opinion?

Mulcahy: As you stated he did discuss this with Moosa Raffey and Moosa's opinion was because it was less impact to the wetlands if this does not need further review by the Inland Wetlands Agency Conservation Commission that was,

Knolte: That's when he called you in your office.

Mulcahy: He called me after your discussion that there was no requirement for you to go back because the permit that you have which is in effect for 5 years actually is for more impact than when you do less impact he said they never required anything to come back for that.

Minnich: Thank you that answers my question. I have others but I will turn it over to other members. Does the Commission have any comments or questions?

Dupliese: In regards to the Inland and Wetlands impact of the first Inland that you provided you got an okay from, is there more asphalt than there is more runoff due to this design than to the previous design that was submitted and is that meet with Mr. Berger's requirements for drainage?

Knolte: It provides drainage calculations and contention studies have been submitted I can't tell you whether it at this point Chuck Berger's full satisfaction we demonstrated that there will be still no increase in the runoff in all storm events to the 100. We also demonstrated that we can treat the storm water runoff at first instant runoff through the system. I also didn't mention earlier but probably should of the storm water control fan actually may go beyond in that we are providing that 10 of the lots I think have sub surface liter gallons of 40 feet of 2 by 4 galleries to put the water back into the ground and any amount that does not drain into a storm water formal structure impoundment area will be directed into the ground.

Dupliese: So Mr. Berger does have the new calculations?

Knolte: Yes he does.

Dupliese: He has not finished reviewing that.

Knolte: I believe it is still under review.

Minnich: Is there any comments or questions from members of the Commission?

Masayda: I know you indicated in your presentation that no bypass on French Street was necessary because of the low volume of road, just from a safety stand point if there is available right of way on French Street could the shoulder be possibility made a little bit bigger to provide bypass, because you are going down to 12% grade someone thought to turn this into a subdivision, I know you can't take right of way from a property across the street but if it is possible that the available right of way could the shoulder be possibly widened to create potential bypass capabilities?

Knolte: Let me get my scale and study that and see what room is physically you are looking for a physical distance between the edge of the pavement and the right of way?

Masayda: Well you don't have to provide the answer at this time.

Knolte: There seems to be a wider right of way on our side of the street there is absolutely no room on the other side with the sidewalk, there are driveways going over the bump of the sidewalk. So there is probably physically room another issue that I probably should have bring this mind should have mentioned is that of sidewalks being offered in this subdivision which I have neglected to say that they are proposed within the approved Hollow Lane right of way five foot sidewalk with snow shelf on west side of the road going up and around the cull de sac. There is none provided for the proposed Gilbert Lane however between Gilbert Lane or

Riverside Street if the Commission, I know some thought was given by the Commission whether it be better suited to be out there or within the development, it wound up to being out there, then there would not be any room for a bypass lane.

Masayda: So the pedestrians coming out of the new subdivision for them to get to sidewalk on French Street would have to cross French Street at that intersection?

Knolte: Correct yes.

Masayda: Now how much distance would it be from this development driveway say up to where the proposed light would be at the high school or to what is that road just before the high school? Gilbert Lane, the only reason that I am thinking of that I maybe from a safety aspect the benefit of providing a sidewalk up in that direction where you have a controlled signal vs. a sidewalk from within the subdivision that may be more desirable to have it on French Street on that side of the road than on the dead end street? With very low volume.

Knolte: That is a possibility the applicant is opposed to trying to gain grading rights or easements over private properties in front of his property there is ample room and it could be and said but he does not want me working on other peoples properties to make a continuous connection to that intersection?

Masayda: It would not be his responsibility but if again I don't know what the other adjacent property owners maybe in their opinion they do not want it or maybe they do want it you can't have an applicant go outside of his property boundaries to grade another properties. Joe Masi would like to speak.

Joe Masi – 33 Pleasant Street – Oakville

I will just answer your question Mike. It's a sidewalk to nowhere we don't own the (inaudible) road and we don't own Gilbert Lane. Okay the sidewalk that you say that would be in this area in any event they come here they would have to cross over at least in this particular area it's a crossover that can be clearly marked. Okay because there is a intersection there we don't own this land on either side we don't want anything held up by the owners. Okay in terms of getting rights of way to the land. We don't know what the slopes are, we don't know if it is possible and we go the other way to Gilbert Lane we have the same situation we don't own it, there is steep banks and I think it is impossibility. But we feel it safer inside the subdivision with a crossover in one place to an existing sidewalk; the state did not feel that it was necessary to build a sidewalk on this side. Although every 75 feet has sewer water laterals that they knew were projected houses.

Masayda: Again I wasn't aware of what right of way existed out there it was just a question, when you look at a roadway you try to look where is the safest spot for someone to cross because of the proposed signal going at the high school I would think there is going to be a designated crosswalk there but if there is no physical way to get to it, I feel like there is no sense of putting it on French Street that is that.

Minnich: Does anyone else have any comments or questions?

Rondeau: In the open space I believe it is number one the right on French Street that actually has water retention basin in it?

Knolte: Yes, that is a .45 acres of storm water control facility.

Rondeau: I am sure you are probably aware of this but as a general rule we don't like to take open space that has storm water retention in it so if for some reason another that were to be just the storm water part were to be taken out does it still meet open space requirements?

Knolte: An easement, if there was an easement over a lot there?

Rondeau: Would it still meet open space requirements?

Knolte: Yes, if you have like 26% counting the easements are 26% set aside for open space vs. the 10%. So we are about in excess of the minimum requirement.

Rondeau: Would you guys be opposed to making that an easement vs. open space as far as the water retention zone, the basin itself?

Knolte: I don't see where that would be a problem as far as the matter of Public Works?

Rondeau: Chuck what's the am I not correct in making that...

Berger: If you want to go in that direction it should be a separate parcel that is owned by the town for storm water detention. Make it separate from the open space but the town should own it.

Knolte: The other draw back to that would be that he you would lose the continuity of the open space easement from Echo Lake Park out to French Street along the brook.

Rondeau: That entire parcel isn't the basin it just the part right up by the street.

Knolte: It is little over 50% of that.

Rondeau: I guess what I am saying could may be the part where there is storm water basin be one lot and then it would continue as is based on using his vernacular as far as describing what is being done.

Knolte: Yes we will take you up on French street and Brook Hollow...

Minnich: I am not so sure I agree with it...

Charles Spath – Principal of Stuart Somers Company

I think I understand your question. The open space portion of the detention pond what Chuck is saying is that can be a town owned piece of land but it would not be designed as open space. And that could contain the detention pond and the left over area could be open space. You are correct.

Rondeau: That is actually what I am asking not a problem then? Can maybe Mr. Masi wants to do that can someone tell me the logistics or the reasons why you would have all of those houses being served off of a common driveway vs. it being a road?

Spath: What we are proposing here is since the last time we submitted the difference in the design is really just the upper lots which are the 7 lots. The last submittal we had we had less lots but we had access to French Street and I think it was the Commission's request that we would for safety reasons and other reasons that we would keep this development with less lots, less access points to French Street. So what we did is we designed one single drive that would access the upper portion of the property we have legal frontage and squares for all the lots on the parcels and that's why the conservation easement too. The reason that is conservation it is not open space because they cross those lots. So we cannot give that to the town in fee because that would make these lots illegal. It would not meet the zoning requirements. So what we have done is because of the there is one drive and the cost of one drive to go up to these lots is substantial we have incorporated this later design with a couple of additional lots they all have legal frontage. The road still has only has 15 lots on the dead end street. There are 3 legal frontages on French Street but what this accomplishes is you have a development that has only one access and you have a buffer between this development and French Street. The point that is shown in green is the driveway there that is an existing treed area that would remain and the detention basin there would be trees taken down that the construction for the detention basin would be there is a planting plan included in the application that trees would be planted in the detention basin itself and there would also be trees left below the detention basin where the area you are asking if it was to be open space. So there are two pluses to this. This development you are not really going to see any houses, this is also better than the last plan that we had. In respects the original plan was the same one, the same location where the road is now. The second plan that we put in trying to accommodate the 400 foot

separation distance there was much more excavation that was required. Just to put it on the record your 400 foot separation distance is arbitrary there is no set distance between intersections for safety purposes. Each one in itself is different and in this case we are only asking for a waiver of 65 feet which is very minimal. The reason for that is for safety purposes if you were to access this property as it is now this is the one spot which is safest access if we were in front of this Commission or we were to propose condominium development which would be more development than what is shown here now. Much more we would not be here because it is a subdivision regulation. So we are trying to work the Commission in that respect I just want to make that clear. Were not asking for much of a waiver we are here for you I think you went over this subdivision in great detail before. I know that Chuck has gone over the subdivision in very great detail. We are here before you and we have a good plan here if you have any questions, the main concern I think is the intersection distance and the intersection distance has nothing to do with more than its arbitrary situation in your regulations which you allow us to waive with the $\frac{3}{4}$ vote and that's is why we are here before you?

Minnich: You have some more questions?

Rondeau: I have two more questions but I appreciate everything you said but why is that a driveway and not a road going to those houses?

Spath: The reason it is a driveway is because if it was a road we would not meet your regulations.

Rondeau: And wouldn't it meet the regulations?

Spath: Because of frontages there are a lot of reasons why we would not meet your regulations, the width, the width is only 18 feet is proposed now, the maximum width we would propose is 20 feet which is only not a condition but a request from Fire Marshal. It goes into great detail going over your regulations you have frontages, you have squares; you have amounts of lots on a dead end street. What this is a private driveway and this meets your regulations in regards to zoning requirements.

Rondeau: You're saying if that were a road it would not meet our regulations as far as the road itself as far as making the interior lot or making the lots?

Spath: There is no interior lots, regarding the width of the road, the width of the road you require is 30 feet the driveway were only proposing is 18 feet wide.

Rondeau: Why can't that be 30 feet wide?

Spath: There would be no reason to make it 30 feet wide.

Rondeau: So you saying you're making it a driveway instead of a road just so that does not have to be paved out to be 30 feet?

Spath: What we did we took the driveways off of French Street which was a request taking the driveways off of French Street were trying to build one driveway. We are trying to build one driveway so we will have disturbance than two driveways and engineering purposes makes the lots work for safety access and vehicular access and it also meets the zoning requirements.

Rondeau: If that were a road it would have various requirements that a driveway does not would you agree or disagree with the width being one?

Spath: The width being one yes.

Rondeau: So I guess what I am trying to get at or trying to find out or determine if there is seven houses that are going to be serviced off this one driveway in essence a quantize road.

Spath: Put it this way it is no different than condominium development, if you had a condominium development with units up there it would be possible 18 foot wide, 24 foot wide access depending on the amount of units up there it is no different.

Rondeau: Would that driveway meet all the safety standards that a road would meet? As far as slopes and everything associated with...

Spath: It generally meets all the safety requirements a road needs, it also at this time is approved you know by Chuck has reviewed it okay it also we looked at it for access for vehicles that we need to access those seven lots and also for fire apparatus. We actually the Fire Marshal, Fire Chief Alenkis to just widen it two feet so he could have two large vehicles pass each other at the same time. And he also requested we talked to him about putting in about putting a fire hydrant up there.

Minnich: The road now is 20 feet wide that driveway is 20 feet wide?

Spath: The driveway was originally proposed as 18 feet wide the only comment we received is if we could make it...

Minnich: What is the proposal of the applicant for the width of the driveway now?

Spath: It is 18 feet.

- Minnich: Thank you. Ray you could share some time with some other people so.
- Rondeau: You went around to everybody and nobody had any questions I was the last one so I was going to ask my question. You mentioned the numbers of 435 and 475 as far as stopping distances go, you mentioned 85% percentile for meaning the 85% percentile for the traffic on the road?
- Spath: We meet all safety requirements for the location of the road in regards to stopping distances, site lines. The only issue is separation distance which is arbitrary distance between intersections.
- Rondeau: So my question between the 435 is what you have and what are required are 475?
- Spath: We have a minimum of 475 that braking distance that is site line, the braking distance if you were to brake going down the hill is 435 which is less than the site, so the sit distance is about that so we meet that requirement.
- Rondeau: So for clarification that is for the speeds that were observed while you did your traffic study not the posted speed is that correct?
- Spath: We above the posted speed.
- Rondeau: Does this piece of property have access to Ice House road?
- Spath: There is no other access other than French Street to this piece of property, no other public access.
- Rondeau: I know when we were out there walking it we were kind, in fact you and I think walked out we out kind of over maybe where the dam and then we went out onto...
- Spath: That is all town property.
- Rondeau: That is all the questions I have. Thank you.
- Minnich: Alright Duane.
- George: You said somebody said before that was to be maintained by the property owner.
- Spath: That driveway would be maintained.
- George: How is that going to be?

Spath: There would be a document put on file. We do not have a draft document for the Commission, I don't think it is necessary information it would be privately maintained it is either by the whole subdivision okay the 18 lots we could divide it by 18 lots or would be by the 7 lots.

George: Would there be an association or what would it be?

Spath: It could be done that way or it could be done as a document we going to 7 lots. The association possibly, I could have the attorney...

George: I think we would like to know how that is going be angled because we won't to know for sure that later down the road when that needs maintenance in that, there not back here trying make it back to a town road. Which would not meet the regulations and we would have to deny it.

Spath: It was the same if there were 3 lots or 2 lots it is privately maintained access to those houses.

George: This is different.

Spath: Yes but it is not that much difference because the width of the driveway is approximately 18 to 20 feet, a double lot you usually you have 15 or 16 feet, it not much greater than that. We did allow for a greater turn around up top much greater than we originally proposed to make it easier for the turnaround at the top. That is the only difference between that and a common driveway.

George: It is not much further than you talk about 2 or 3 look at the distance of that roadway?

Spath: The reason that distance is there is because we are in front of the Commission my understanding is that it is now is don't have any driveway regulations in the town of Watertown with site lines so what we are trying to do was keep the access out into French Street if you look opposite of French Street there is a driveway every 100 feet and we could have done that with this property, but were trying to safely access the property and that road that is there the drive that is there that we proposed is doing that. That is what we trying to address. There is the issue like you said people coming to the town in the future trying to get the town to take it over but it's going to be on record that it is private when they buy it, that will be on the record.

Minnich: Okay questions if that is all.

Joe Masi: I am a little bit gun shy of an associations because I have a lot of experience with West Hartford the town tries very hard to shift the responsibility of the

maintenance of detention basins, believe it or not detention basins, channels going to the detention basin to the home owners under homeowners associations. You very seldom ever get a homeowners association that can collect the money from their members the fund regulatory cleaning and or repair. And then it becomes a civil action between individuals suing the board about collecting money to do the repair because ultimately when comes to the town, the town says if we have to clean it we going to bill you for it. So the bill always winds up with the people in the association and then it becomes a civil issue. Where talking about how we are going to provide the proper protection for the people who own that so that one individual doesn't get selfish and not want to contribute vs. the rest contributing it is a sticky situation it is going to take a little thought. But I have seen many of them fail.

George: I would like to see that, I would like you to present that to us?

Masi: Present what?

George: Your proposal of how...

Masi: We are thinking about it at this point in time and we did not think the public hearing would be over tonight anyway. We got to come up with something.

Minnich: A couple of questions. Could you review for me the other alternative access to this proposed subdivision other than French Street?

Spath: There is no alternative access because we do not have any other access points to this property.

Minnich: I repeat there is no alternative analysis of other accesses?

Spath: No there is not because we do not have any access any other public street or highway to access the property. The only access or frontage we have legal frontage is French Street. It may look like there is frontage over on Ice House but that is actually town owned property. It is owned by private properties to the west on Gilbert. So the only access we have is French Street that is it, it's just where on French Street and where we have it is what we feel is the best location.

Minnich: What is the date of the latest plan we now are looking at?

Knolte: It would be 9/15/08 the latest revision dates.

Minnich: So you will be providing us with some common driveway documents relating to this common driveway.

Knolte: Yes, Mr. Masi said we will have a draft document.

Minnich: I did want to comment very short 30 seconds no more on this issue of this 400 footage to which you presented issues relating the distances for stopping distances and site line distances but what also needs to take into account here does the you used the word several times arbitrariness of the 400 feet part of the responsibilities of this Commission is to determine the traffic and circulation of the town and includes (inaudible) of a site plan that comes in here. So part of the 400 hundred feet is indeed part of the issue is the character of the town, that a former Commission decided or made the deduction that that was what should be the distances between intersections so I only putting in my statement that it not just the safety issues to which you are talking about but also is the character of the town and I don't view that as you characterize it or the applicant characterized it. I don't mean to make you standing there now using the word arbitrary. I think that there probably was some considered opinion as to what it should be.

Joe Masi: If I may just answer that. Judy Wick and I were on the Commission that drafted those regulations and we drafted them because what the fellow who prepared the codes at that time told us was a reasonable situation that appeared to be the way the state was going. But in retrospect the state they no longer do that. You had Cavanaugh's letter okay stating that the state if they had to do it would actually go zero. And that if in fact they prevented a person from using their property the state would have to pay for taking of the land. So my point to you is that the source that we went to which was the state at that time who said 400 feet no longer uses that ruler in making their curbed determinations. So one has to almost say that they are arbitrary because we are based on old an arbitrary rule that no longer applies from the people that we took it from which was the state DOT. It is as simple as that.

Minnich: That is obviously your view. I do have some other we obviously are going to continue this hearing I do want to ask Chuck if you have any comments at this time or do you want to wait until the next hearing which we will do in two weeks here or what is preference for your presentation?

Berger: I prefer I do have a number of draft comments that I have been working on and discussing with Mr. Knolte and I would like to have the opportunity to meet with him and resolve as many of those as possible before the next meeting.

Minnich: Okay is two weeks satisfied. Ruth do you have any comments that you want to make this evening?

Mulcahy: No I probably consult with the Town Engineer to see any other issues but at this moment I don't have any?

Minnich: Let me turn it over to the public? You want to ask a question I am sorry.

Dupliese: I only have one thing. The conservation easement behind lots 18 and 17 I know that when it was in front of Inland and Wetlands there demarcation in there for some wall, now you got conservation easement up above also. It is behind lots 4, 7, 8 actually on the high side is more concerned about, is it possible to put a stone wall at the conservation easement behind 4, 7, and 8 and the reason being you know that they are going to, you know the property owners it happens all the time is we put a conservation easement up that we put up a couple of plaques they ignore the plaques go right over. The reason we put stone wall behind the other lots was so that they didn't trespass down. I think for two reasons now I would like to have it so they do not trespass onto conservation and number two is down the water being (inaudible) is that slopes down to the conservation easement and any water that is shedding off of those lots now would be slowed down by a stone wall and go through it almost as a spreader or slowing it down and causing it to absorb back into the hillside before it runs down the hill towards the other walk?

Knolte: I don't believe that is necessary the wetlands, what we proposed down below the stone wall was to buffer the wetlands and there is no wetlands area.

Spath: The main purpose of that conservation easement is to do exactly what we said one of the reasons is to allow the vegetation to remain so there wouldn't be as slow down. But there is no reason for the stone wall it has no bearing on the property. If it could be demarcated by posts I don't think it is necessary it's usually a wetlands conservation easement.

Dupliese: So the conservation easement then is that there will be no, because this is a hillside no trees, so you will not touch anything beyond that. There is no excavation there is no filling, there is no nothing in that in that conservation easement. So the trees will, it will be whatever is that line nothing will be cut beyond that line.

Spath: Yes there will be document on file okay there may be a minor spot during construction in that all will be planted we don't propose it that way but if there is a swale in this case there is a swale right here for some reason there is a tree right there and we have to then...

Dupliese: So as long as you are not going to touch anything within that conservation easement, that was my biggest concern so that doesn't trampled upon at a later date because the lots run past that conservation.

Spath: We would be able to demarcate it but I don't believe a stone wall is not necessary.

Dupliese: Thank you that is all.

Minnich: Before I turn it over to the public, I want to ask one question of Chuck on the basis of the information that was provided with the traffic report this evening with regards to the to the stopping distances and the site line distances and the calculations that, is your office capable of giving us some third party review from your office as those topics?

Berger: I believe so. I would like to discuss that with Mr. Cavanaugh to make sure he is comfortable with that.

Minnich: I am not looking tonight to looking at another third party to review.

Berger: I have to talk to Mr. Cavanaugh about that.

Spath: I just have a question, when you say a third party review do you mean another traffic engineer looking at that or do you mean Chuck looking at it?

Minnich: I was asking if they thought based on the calculations that you have presented on the traffic report as well as stopping distances and the site line distances if they were capable or had the resources to comment on us to that.

Spath: Okay you said third party review I thought you were talking an out source and we are not against that.

Minnich: I don't know that we to answer if he doesn't tells me, the Commission will then have to consider that for the moment his response is a non response.

Spath: Okay, thanks.

Minnich: Is there any comments from members of the public on this project? Any comments from members of the public? Hearing none. Some issues to be done by next time we are going to get the common driveway issues squared away, Chuck is going to get his review to us, and both of the two gentlemen that were issued a recusal about tonight will be in contact with the Town Attorney and whatever he wants so by our expectation by next meeting you will have a response to this. In fairness Chuck you said two weeks is fine for your time for your response.

Berger: Yes

Zizka: Mr. Chairman if I can ask a favor I don't know if I am in a good position to ask a favor tonight. But I actually would not be able the attend the next Commission meeting in October I know Mr. Masi and Ms. Raymond would like to have me here would it be possible to continue this to your November meeting. I presume Mr. Berger would not have any problem with that?

Minnich: I don't know that we have a problem with let me ask before we respond we respond to you. If from the response that Chuck gets from Mr. Cavanaugh the director of Public Works in needing to get any third party review we have we understand our time obligation here you wouldn't have any problems with the extending the time?

Zizkas: We would not.

Minnich: That is fair enough. Do any members of the Commission have any issues with doing this the first meeting in November?

George: Probably better.

Zizka: Mr. Chairman just again for clarity and thank you again for your patience you mentioned some of the things that you will need more information on and you said the driveway issue and I just want to make sure I understand what you meant by that?

Minnich: On all of the common driveways there is a common driveway agreement, and I don't know if that's, I am unclear yet how your proposing that whether it is an association or whatever but we have standard common driveway agreement to which we work with. You can obviously get that from our Town Attorney. I have never seen one for seven so I don't know how it all impacts but you folks, all I want to really understand is what your proposal is and I do from my perspective want to have that understood at the time of considered approval.

Zizka: I fully appreciate that. I wanted to make sure I understood which common driveway issue that you were talking that was very helpful you did say you have a form of agreement that you typically use in other situations similar?

Minnich: Any time we have a standard common driveway agreement, I never seen for this many?

Zizka: I can tell you certainly that with regard to the common driveway I have prepared a number of them and I worked with more towns and I have prepared a number of common driveway agreements and the number is really not significant in terms of the agreement in fact in some places it may be preferable because you have more people sharing the load. If you only had one or two people you would fewer people paying for the same driveway and I think there actually may be some encouragement with more people it's going to be less of a burden on to do that. The agreement itself shouldn't be a problem. It was as Joe said from his experience in West Hartford it is considered the best way. The other comment that I wanted to make you mentioned arbitrariness and I understand what you were saying and you have to have some standard and somehow or another you have to

set a standard and use whatever in this case it is 400 and we appreciate that for whatever that was the standard that used and that is what the Commission needs to go by generally all we are saying tonight is that you did I think you looked forward several months ago I understood there would be some instances where that simply would not be possible in those instances you would consider other arrangements as long as we could demonstrate there is faith. And I think we have done that but I for one do appreciate what you are saying about having standard.

Minnich: I guess I was most put out by the language of the arbitrariness rather than what (inaudible)

Zizka: Well I think yes and I think in fairness I think from arbitrary you were correct in thinking engineers are thinking from a safety perspective more than anything else. That 400 is not necessary from a safety perspective that as you pointed out there may be other (inaudible)

Minnich: And the last issue I had you are going to getting us the green cards at the next meeting?

Zizka: Yes we can get those definitely.

Minnich: Is there motion until our first meeting in November? Is there a second? All those in favor please say I, all those opposed no motion carries.

Mancini: Excuse me Mr. Chairman I abstain. And Gary you...

Martin: I will abstain.

Minnich: With 5 in favor and none opposed.

Text of Motion to Table to the November 5, 2008 regular meeting
Motion made by G. Dupliese and R. Russ
Aye: 5
Opposed 0
Abstained: G. Martin, C. Mancini

Michael Masayda _____
Secretary

