

**WATERTOWN PLANNING AND ZONING COMMISSION
Special Meeting
October 17, 2007**

**Watertown High School Technology Center
324 French Street, Watertown, CT 06795**

7:00 P.M.

A special meeting was held by the Watertown Planning and Zoning Commission on Wednesday, October 17, 2007 in the Watertown High School Auditorium, 324 French Street, Watertown, CT at 7:00 P.M.

1. CALL MEETING TO ORDER

Chairman David E. Minnich called the public hearing to order at 8:30 P.M.

2. ROLL CALL

Mr. Minnich asks Mrs. Allen to read the roll

Present: D. Minnich, M. Masayda, J. Franson, R. Russ, C. Mancini,
D. George, G. Martin

Absent: J. Wick, R. Rondeau,

D. George sits in for J. Wick

Others Present: Ms. Ruth Mulcahy, Administrator of Land Use
And Mr. Charles Berger, Town Engineer.

For the record, Mr. Lukasavage is no longer part of the commission

3. COMMUNICATIONS AND BILLS

By Unanimous Consent, motion is made to place items 3a through 3d on file.

4. ARTICLES ON AGENDA

a. James Rizk affordable housing project

MOTION: To table

Motion made by: G. Martin

Seconded by: R. Russ

Motion Carries unanimously.

b. GT Holding LLC

MOTION: To table public hearing
Motion made by: D. George
Seconded by: R. Russ

Motion Carries unanimously.

c. Sandy Alves

MOTION: To approve the zone change from IG-80 to BSC zone
Motion made by: R. Russ
Seconded by: C. Mancini

Roll Call to record votes:

D. Minnich yes
M. Masayda yes
J. Franson yes
R. Russ yes
G. Martin yes
C. Mancini yes
D. George yes

Motion is passed on a vote of 7 in favor and 0 against.

Mr. Minnich asks for staff to file the appropriate legal notices for the zone change.

d. Planning and Zoning Commission an amendment to delete section 83.65 Town of Watertown Planning and Zoning Fire District Fees from the Watertown Zoning Regulations

There are three (3) parts to this. One is to repeal the zoning regulations 83.65, the other is to add section 74.1 which is fees which says the fees shall be paid to the Town of Watertown for zoning petitions, zoning permits and other applications and administrative procedures under theses regulations in accordance with fees approved by the commission using procedures to amend zoning regulations end fees approved by the Town Council using procedures to adopt ordinances. Also, we would add to section 3.5 of the subdivision regulations that is entitled “fees”, fees shall be paid to the Town of Watertown for subdivision petitions, subdivision permits and other applications and administrative procedures under theses regulations in accordance with fees approved by the commission in zoning

regulations section 74 and fees approved by the Town Council using procedures to adopt ordinances.

Motion: To Repeal 83.65 and approve the addition of section 74.1 of zoning regulations and the addition of section 3.5 of subdivision regulations as above.

Motion made by:
Seconded by:

Roll Call to record votes:

D. Minnich yes
M. Masayda yes
J. Franson yes
R. Russ yes
G. Martin yes
C. Mancini yes
D. George yes

Motion is passed on a vote of 7 in favor and 0 against.

Motion passes unanimously.

Mr. Minnich adds that he neglected to set an effective date for Item #3c

MOTION: To make November 1, 2007 the effective date of the zone change for Sandy Alves from IG-80 to BS-C

Motion made By: R. Russ

Seconded By: C. Mancini

Motion passes unanimously.

f. Christina Francisco, zoning application to discuss paper street ordinance

This issue was left a couple weeks ago requesting from special council Warren Hess, a legal opinion on this matter. He has done so and all commission members have a copy.

Ruth Mulcahy is asked to summarize it below.

The issue was does the paper street ordinance apply and in summary, Attorney Hess breaks it down into applicability of the paper street ordinance and he does say that Parcel B would have to comply with the unimproved roads ordinance. That was the main issue of the question and

that was his conclusion. He addressed the effect of the prior zoning permit issued and the effect of the Planning and Zoning Commission approval. He noted that even if a zoning permit was issued before, it does not mandate that a new permit must be automatically issued. The other part of the effect of the Planning and Zoning approval, he said it was unclear from the minutes. It did not mention a waiver of the paper street ordinance. That would have to be something that if the intent was to waive it, it was not clear from the lot line revision acceptance. He covers the issuance of new zoning permit in the event that the commission intended to allow the construction of one home with a driveway and a zoning permit should issue even though the paper street ordinance is applicable. He says you need to determine whether when the commission reviewed the lot line revision whether it was the intent to waive the town council ordinance on that but his overall opinion from reviewing it was that the paper street ordinance was applicable to this property.

Mr. Minnich states it was never the intent to waive the paper street ordinance. He never knew that the commission had the authority to waive it. He adds that the paper street ordinance does apply unless it was waived or the Planning and Zoning Commission intended to waive it. The position at the time was that we did not waive the paper street ordinance. Mr. Minnich asks if anyone objects to that statement. There was no objection.

He feels there is a practical way to resolve this issue. Part of the problem is that this went to Inland Wetlands and never came to Planning and Zoning in means of approving all of the lots, but for a specific issue of the driveway. He states that Roy Cavanaugh was speaking about helping to resolve this amicably is that there is an unimproved portion of Winthrop Street which is all of the unimproved portion of Winthrop Street that we refer it back to the Public Works Director who will come back to us with his recommendation as to whether we should recommend to the Town Council to abandon that unimproved portion of paper street on Winthrop Street. The second part is that there is an unimproved portion of Ripley Street and what was suggested by the Public Works Director in order to get the appropriate frontage is that we get the unimproved portion of Ripley Street with enough of a hem to get a hammerhead to get around that area that would give them the frontage and we would have to recommend to the Council that they waive the requirement in the paper street ordinance that when improvements are made, that half of the road be improved and this would not be anywhere near half the road. The rest of the unimproved portion of Ripley Street beyond the hammerhead may or may not be recommended to be abandoned.

What would probably be the recommendation from Roy would be a minimum of abandon the unimproved portion of Winthrop Street and also

to take the unimproved portion of Ripley Street for approximately 50 feet (approximately) to create a hammerhead on that.

Mr. Minnich asks for comments. There are none from commission members. He apologizes to the applicant for the amount of time it has taken to get a legal opinion.

Mr. Minnich states to that applicant that it is the determination of his review that the paper street ordinance does apply and given the fact of what she wants to put in, she would have to do the improvements to Winthrop Street. In an attempt to look at where is most appropriate in terms of the issues relating to paper streets and that they do apply, that Winthrop Street portion of the unimproved portion of Winthrop Street that upon recommendation of the Public Works Director, when the comes to us, which should be by the next meeting, to recommend that it be abandoned and the Town Council will consider it as well. As far as the Ripley unimproved portion, approximately 50 feet would be the hammerhead that would be needed. That would resolve the issue that is before us which is that the paper street ordinance does apply to her property. The issue of the zoning permit can be done through the Zoning office.

Mrs. Francisco states that they did approve it and she has the minutes to prove it and she feels that this is ridiculous and will take it up with her attorney.

So that the record is clear, Mr. Minnich states that they had recollected what they had done and their intent is that the Commission unanimously did not waive or intend to waive the paper street ordinance and if they had, it would have required a vote so to waive and that was never part of the motion. He states he recalls it clearly because he was the maker of the motion and he feels it can be amicably resolved with the process and asks the commission if they would like to request Roy Cavanaugh to consider his issues on it and to send his recommendation for discussion.

It is asked if the applicant understands that she is not, not getting what she wants, but they are adding to it. It is just going to take other people getting involved to give us the approvals that we need to say yes.

Mrs. Francisco adds she thinks that it is to take more money out of her pocket. Mr. Minnich tells her that if he had left it the way it was, she would be constructing a road on Winthrop Street and the commission is suggesting that not be done and suggesting the frontage not be done excepting for the hammerhead.

Mr. Minnich wants to be clear and asks if it is the consensus of the commission to ask the Public Works Director to provide a recommendation to them about Winthrop and Ripley Streets. There was no disagreement.

**g. Joseph Schienda, Special Permit #231
Proposed 3 family house, Lots 272, 273, 274, 275 Russell
Avenue Oakville in an RG district**

Joe Scheinda, 279 Hinman Road

Mr. Scheinda states he is looking to build a 3 family house on Russell Avenue which is going to be 3 townhouse units, 3 bedrooms with a garage and the building is going to be approximately 73 x 40. He has come to agreements with sewer and water. The road doesn't have a water main. He has come to a contractor's agreement with Frank Jodaitis that he will do it at his expense and Frank will provide the pipe.

Everything else is straight forward and he is looking for approvals to do the house. There was a problem last meeting with the entry area because most of the frontage would have to be paved.

Mr. Minnich asks Mr. Berger if he has any comments and Chuck states that he has given him a number of verbal comments which look to be accommodated on the plans. He did have one additional thought that he and Ruth had discussed and that was to have the driveway as wide as is to the side parking lot. He states it doesn't need to be wide enough for two way traffic and that would be one way to get some green space back by narrowing it down. Mr. Scheinda replies that he can easily narrow that down and he would rather see grass than pavement as well.

Mr. Berger continues that the back of the units it shows some area drains and he would like to know where they discharge into. Mr. Scheinda responds that they drain into the footing drains and that is because they are sunken patios to provide for a walk out basement. He states they will all be going to the footing drains as well as gutter drains that will be drain into an easement area he has to the property next door.

The Commission requested Mr. Scheinda make a few changes regarding the driveway and additional plantings and then it would be ready for approval probably at the next meeting.

MOTION: To Table public Hearing
Motion Made By: Mr. Mancini
Seconded by: Mr. Russ

Motion passes unanimously

**h. Baillie Company, 0 Frost Bridge Road
Civil One Site Plan Approval**

Attorney Yorio

He apologizes that the engineer, Curtis Jones was taken out of town this evening and was not able to present the site restoration plan. Also, Mr. Davis, a Baillie Company principal is out of town as well.

Attorney Yorio has a copy of all the site restoration work that is proposed on the site and he only has a single copy. He is not certain if the engineers have to provide copies for the commissioners, but he is happy to provide it.

He states that at the Inland Wetland Commission meeting there was a significant plan which was completed between the last two (2) meetings. He states before the last Wetland meeting that there was some comments from a 3rd party review that certain things were not part of the restoration plan and they had some concerns.

He further states that they have addressed all of Fuss and O'Neill's concerns. There are some site testings that he thinks need to be worked through in the next week or so, but next week there will be a special meeting with them before Inland Wetlands to try to close the public hearing.

Mr. Minnich states he was at the Inland/Wetland public hearing on this and their conclusion was that they wanted to try to get this site remediation plan approved as soon as possible so the work can be done before the winter. They have scheduled a special meeting for next Thursday, October 25, 2007 to review the matter. They are continuing the public hearing and that meeting is to work with the Planning and Zoning Commission and approve this plan. He is intending, with concurrence from the Commission to hold a special meeting on October 25, 2007 and to take concurrent action regarding the site remediation plan as both the commissions have been working together and to make sure there were no conflicts. All of the wetland issues are going to be addressed by putting new clean fill in and those issues that are related by the potential wetlands that is in the groundwater within the interior to the site, outside of the wetlands review area, they are intending to put in 1.5 feet of the same soil that is there now. That will take away the current wetlands issues. On top of that, in the area, they are going to have a footprint for the approved building as they are intending to put in the crushed concrete

and a plan to take all the concrete out to crush it, remove the contaminants and place the concrete in the building footprint area.

Mr. Yorio confirms that they are working closely with Fuss and O'Neill. They are working through the particulars of a testing protocol, a permitting schedule and a timeline of events. There are one or two points needed deliberation. There is one variance of opinion on groundwater testing. Fuss and O'Neill is in agreement with the proposal with regards to the environmental plan, site stabilization plan and the other aspects of the restoration.

Mrs. Mulcahy asks him if they received the letter that came from DEP dated October 2, 2007. He states he did not receive it and she said she would give him a copy. It is from the deputy commissioner. Mr. Minnich asks her what the content of the letter is. She states it is addressed to the chairman of the Inland/Wetlands Commission and reads it as follows:

I am in receipt of your August 24, 2007 letter to Marla Butts of the Inland Water Resources Division regarding your concerns about possible environmental violations at the Baillie Company, LLC, property located at 0 Frost Bridge Road, Watertown. The issues regarding possible contaminated material being disposed of on the property is the subject of an ongoing investigation of the Waste, Engineering and Enforcement Division of the Bureau of Materials Management and Compliance Assurance. Notice of violation scel, 2000 1013v issued to Baillie did not cover violations of solid waste statutes. Rather it addressed the placement of encroachments, river ward of state established stream channel encroachment lines and the discharge of storm water in association with construction operations without registration in violation of Section IV of the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities. The NOV was issued by Donna Serenson of the Water Permitting Enforcement Division of MMCA depending of the outcome of WEID Investigation. Additional enforcement actions may be taken by the department. The extensions granted under the NOV have not foreclosed any possible additional action by the department. As soon as WEID's investigation is completed, the department will coordinate a response with the Watertown Land Use Boards.

If you have any questions, please contact Ms. Butts or in her absence, Donna Serenson of the Permitting and Enforcement Division.

This letter was from the Deputy Commissioner, Amy Morella.

Mr. Yorio states he did not receive this letter, but he could not speak for Mr. Davis, but he has not told him that he had received an additional

Notice of Violation from the department relative to solid waste management or disposal. He states that addressing these issues are part of the permitting process that are on the schedule of permits. The permits contemplated by the engineers include a Stormwater General Permit, Stream Channel Encroachment Line Permit and a Solid Waste Management Permit. That should address the concerns that are brought forth in the letter. He states his LEP will be in contact with Ms. Serenson to see if it will suffice and will obtain notices of violation to address them.

He continues and states that they are working as vigorously as they can to be sure that the third party is satisfied and that it meets all DEP compliances, satisfies the mandates of both commissions and are meeting the time schedule as promptly as we can. He is hopeful that by next week there will be consensus on the environmental testing that needs to be conducted. He thinks the plan is comprehensive and addresses everyone's concerns. He states he vehemently disagrees with the Wetlands Commissions' position that an open excavation, where there may be some groundwater percolation constitutes a wetland, but are still in agreement to put a buffer of clean fill, native material, rather than putting concrete or other non-native material.

Mr. George asks where the native material is coming from.

Mr. Yorio states that it coming from other locales on the site that would be areas that would later be developed. It doesn't make sense to remove all the concrete material, put in purchased native material to put on the site, only to have to excavate the very same native material in order to follow through with the development plans on the site when the material is already there. It just needs to be processed.

Mr. Masayda asks if there is a proposed development and Mr. Yorio states that at this time they do not. He asks that they look back to the original permits. The footprint of the original building is what would be in proposal to construct on the site. Mr. Masayda asks if there is a timeframe and Mr. Yorio states that everything is contingent upon the restoration.

Mr. Minnich asks if he will be prepared to answer the questions from Inland Wetlands with regards to what occurred some years ago, which has to do with trees near the river. He states that he hopes they could come to some conclusion on the site restoration plan at the meeting next Thursday.

Mark Gottlieb, LEP, Catalyst

He states that this issued was addressed with Fuss and O'Neill. A write up will be put together using aerial photos. They will be getting a formal

resubmission of sampling plan rationale regarding history and in placement of the old fill. It should be going to them by Friday.

Mr. Minnich states that the first payment has been paid as asked and he thanks them.

Mr. George asks what we will for on site engineering inspections as they do all this work and thinks that we shouldn't be paying anything for it and we want to see that this type of inspection is happening.

Mr. Yorio states that what is in discussion right now is a testing protocol of the material after it is removed from the Inland/Wetland regulated area and processed. It will be testing in 1000 cubic yard increments and at that point, the engineers think that about 1000 cubic yards per day can be processed.

Mr. Duane reiterates that he wants to have inspector in place to see that all the materials will be removed and not testing the area after they are ready to put it back in which doesn't tell if the metal material has been removed.

Mr. Yorio states he is talking about 1000 cubic yards being 'processed' each day and a component of the 1000 yards needs to be tested daily. He states that the LEP will be there to take the materials to be tested and they can make appointments for anybody to be present and any Commission member is welcome to come out while this is being conducted or during processing. Each day the LEP needs to be present to take a testing sample and members of the commission can be present to see what is taking place. If the commission wants to impose a sampling protocol, it needs to be done, but the LEP is going to be there every day to take testing samples if it is at 1000 cubic yards a day.

Mr. George continues that he believes they should have eyes on the process the whole time it is being done. Mr. Yorio asks if he is talking about third party or commissioner review. Mr. George replies that he is speaking of third party and it should be hired at their expense.

Mr. Minnich asks Ms. Mulcahy and Mr. Berger to be sure that Fuss and O'Neill has addressed this issue and is prepared to present their thoughts as to how it should be monitored.

Mr. Yorio states he will address it with Fuss and O'Neill to be sure it is incorporated and he would like to hear any other concerns because there is only one week to finish these things up and he would like Fuss and O'Neill and them to be present to be sure everyone is of the same mindset so there is no argument and no postponement of the process.

Ms. Mulcahy states that in the letter from Fuss and O'Neill of October 10, 2007, they asked for notification in 48 hours because it is very difficult when they are notified on the day and they are saying it again in this letter, so she is assuming that there is still a problem.

Mr. Yorio states he hopes that it was addressed after the last Inland/Wetland Commission meeting, but they have called and met with them and he believes the dialog is open appropriately now. He asks Ms. Mulcahy if there are any other notifications in her office that they need to know about and if she does please forward it. She states that what she spoke of is what she has.

Mr. Mancini asks if they have addressed the issue of dumping on the property. Mr. Yorio replies that he has asked the client to be sure that the gate is secured and there has been permissive access to the site because there needed to be some access to the railway and the worker inadvertently left the gate open on a couple occasion and that is where the truckload of non-consistent concrete was left on the site that was mentioned at the last meeting. He states that his client has assured him that is was not them.

MOTION: To Table
Motion made by: M. Masayda
Seconded by: R. Russ

Motion passes unanimously.

h. Hearing to consider calling of performance bond for Ice House Estates Subdivision – failure to complete subdivision improvements.

Ruth states that this is the hearing and Mr. Minnich asks if Mr. Zappone or his counsel is attending. They continue the hearing without them. Ms. Mulcahy states that she has something that Mr. Zappone dropped off. It was a letter from LeMay Construction, Watertown, CT.

To the Town of Watertown

This letter is to inform the town that Lemay Construction will be constructing 300 + feet of sidewalk on Ice House Road for Woodlands Builders and should take approximately 10 days to complete.

Ms. Mulcahy states that he tells that he has met with the Director of Public Works and states that she did send a certified letter to him about this meeting and met with him and said that it would be beneficial to him to be here to represent himself.

Attorney Franklin Pilicy

He states it is his understanding that the section of sidewalk was to be completed as part of the infrastructure, or subdivision improvements for the lots that were constructed on Ice House Road. The background information tells him that the time period for completion has expired quite a while ago and the sidewalk and some trees have not been completed. The Town of Watertown does have an active letter of credit which supports the performance bond and the purpose of these proceedings was to consider calling the bond due to the failure of the contractor to complete the subdivision improvements during the time period allowed by statute and subdivision approval.

A copy of a court decision has been provided to the commission. It goes back to 1990 but it is the leading court decision that is followed in terms of the procedure to call a bond when improvements are not completed. It tells us that the correct procedure is in order to meet the due process requirements they number 1, treat the owner's interest in a property bond to be an ownership interest in property and requires notice to the developer and an opportunity to be heard before the commission and whatever type of proceeding would suit the circumstances.

It is also his understanding that the developer now has appeared and has proposed to perform the work in a relatively short period of time. He recommends the commission either call the bond and put an effective date on calling it to be 10 or 20 days out so that we do not lose track of this unkept promise.

Mr. Minnich states Mr. Zappone has been sent a certified letter to appear before the commission is not here nor is his counsel or anyone else to represent him this evening. Suggested in this motion, in line with what Attorney Pilicy has stated is that we would authorize the town attorney and the Administrator of Land Use 30 days from this date to call the bond if the improvement is not completed to the satisfaction of the Town Engineer. There have been a number of discussions over the past several years to get this project completed and it may very well be completed within the 30 days but this provides finality to the issue that if it is not completed, the bond will be called.

It also provides that the developer will submit to the Administrator of Land Use by November 16, a 3 year cash bond for the required maintenance of trees in an amount determined by the town Tree Warden which is the Public Works Director. It also allows that instead of calling the letter of credit and the performance bond, which presents some problems for them for the future, if he wishes to give to the Town a cash performance bond in the amount that the Town Engineer determines is yet to be done. That, too, would be satisfactory.

He asks for comments.

Attorney Pilicy recommends that the Town Engineer also be authorized to establish a maintenance bond and that a cash maintenance bond be posted to guarantee the improvements will hold up for the customer 1 year time period from the date of completion and the letter of credit may expire or vanish. It ought to be converted to an all cash bond but would not want to overlook a customary maintenance bond. It could be a letter of credit or cash, but he states he would leave it up to the Town Engineer. He further states that he is not sure what the time periods are on the letter of credit but it is old.

Ms. Mulcahy responds that the credit expiration date is May 15, 2008.

Attorney Pilicy states that it will not be adequate time wise for a proper maintenance period so he asks that the motion be amended to include the Town Engineer may establish a maintenance bond to satisfy with a cash deposit account in the customary manner.

Mr. Minnich reads the motion.

i. Calling of performance bond for Ice House Estates Subdivision – failure to complete subdivision improvements.

MOTION:

WHEREAS, the Town of Watertown Planning and Zoning Commission approved a subdivision entitled ice House Estates on French Street and Ice House Road, Watertown, CT on April 5, 2000 requiring a performance bond in the amount of \$16,700 to be posted for improvements which include the construction of sidewalks and the planting of street trees and this bond was furnished to the Town in the form of a Letter of Credit, 100-

100-146 from Newtown Savings Bank with an expiration date of May 15, 2008, whereas the administrator of Land Use notified the developer, mark Zappone, on September 28, 2007 by certified and regular mail of a hearing to be held on October 17, 2007 and return receipt dated October 1, 2007 was received in the Land Use Office and whereas the Commission held a hearing in the process to call the performance bond for Ice House Estates on October 17, 2007 now therefore after the consideration of the required subdivision improvements and conduct of hearing on the performance bond, the Watertown Planning and Zoning Commission authorizes the Town Attorney and the Administrator of Land Use to call the bond if the required improvements have not been completed to the satisfaction of the Town Engineer and Administrator of Land Use within 30 days from October 17, 2007. The Administrator of Land Use is authorized to receive a cash performance bond I lieu of a performance bond in an amount acceptable to the Town Engineer. The Developer shall submit to the Administrator of Land Use by November 16, 2007 a three year cash bond for the required maintenance of trees in an amount determined by the Tree Warden and the customary one year maintenance bond for the improvements to be established in the customary manner and in an amount approved by the Town Engineer. The maintenance bond shall be a cash bond.

Motion Made By: D. George
Seconded by: C. Mancini

Roll Call to record votes:

D. Minnich yes
M. Masayda yes
J. Franson yes
R. Russ yes
G. Martin yes
C. Mancini yes
D. George yes

Motion passes unanimously

**j. Richard Fusco and Jim Lukasavage Zone Text Amendment and Zone Map Change Application IR-80 to PCD (Planned Commercial District)
CT Route 262, Route 8, Echo Lake Road, Watertown**

Mr. Martin recuses himself from this application. He further states that in the time he has been recusing himself, he has seen other commission members taking a position that shows a predisposition to this topic and he

thinks others should take a look at their own positions through the predisposition issue and consider whether or not they should recuse themselves as well because he feels if they cannot look at this application with an open mind as a plan of development which is conceptual in nature, he is not sure how they can do it when it is proposed as a factual change.

Mr. Minnich states that at the last meeting as part of the motion, they requested Ms. Mulcahy contact the consultant chosen by the commission a year ago when Konover was making the presentation who is not in the picture any more.

The newspapers were contacted, The Waterbury Republican and the Hartford Courant in order to solicit requests for proposals and a number of qualified consultants names were given in both the economic impact statement and the traffic study and proposals were received back and from that process, a subcommittee was formed and they narrowed the applications down to three (3) and they then selected, Brian Miller for the impact statement and Mike Galante for the traffic study. The purpose for this was that the applicant are requested to provide a number of answers to with regards to the impact that this particular zone change would make.

After much discussion, they realize the statements and presentations made by the applicants needed to have a 3rd party review and that is why the above were chosen.

With regards to the motion made at the last meeting, he asks Ruth Mulcahy to tell the Commission what contact was made with these individuals.

Ms. Mulcahy states she was able to get in touch with both Brian Miller and Mike Galante and was able to give them an approximate time schedule to review the applicant's submission. Both said they can meet the timeline if the information was submitted in November or December. They gave a range of price. For Brian Miller, to review and respond, the estimate came in around \$10,000.00 And Mr. Galante's ranged from \$10,000.00 to \$14,000.00 for the traffic study.

Mr. Minnich states that one of the issues is that what is the studies are supposed to be doing in terms of what is the scope to which they are supposed to be preparing an economic impact statement and the traffic study. We started looking from the perspective of the project being 200,000 square feet with multiple buildings and a project with 400,000 square feet with buildings and also requested meetings inviting the town staff as well as the boards and commissions. Several attended including the board of education and gave comments. It was uniform throughout that the impact "may" be different depending upon what the project would

be and we wanted to suggest a budget that would be typical of what would be on that site. The statement given to the board by Konover was that the project would be approximately 400,000 square feet in multiple buildings.

He asks Ms. Mulcahy if she has been provided with the information as to what they are expecting the project to consist of and she answered that she may not have been clear to them and her letter to them was about what was voted on at the meeting. She states she had received a letter about the project from Richie Fusco and reads it as follows:

In regards to the 3rd party review needed for the Route 262 and 8 zone change, the information that was submitted by the previous applicant (Konover) will be the same as the new application. If additional information is needed, please feel free to contact me.

She states she has met with him to explain further information for the review.

Mr. Minnich states he is anticipating that the applicants will answer the questions to the boards satisfaction by the questioned posed in the scope of services. He expects completion by early November, 2007. Both third party reviewers should have their review completed in time for a public hearing in December, a date of which is yet to be determined. The Town Council adopted an ordinance for fees that was recently spoken about and reviewed. In that ordinance, regarding 3rd party reviews, is that the applicant will be paying these monies for the 3rd party reviews and there is a process by which the town ordinance hands it. The applicant will be responsible for the actual dollar amounts that this will incur will. There will be no 3rd party review expenses on behalf of the town for these individuals. The suggested action is to formalize the appointment of Brian Miller to perform a 3rd party review of the application for a zone text amendment and zone map change from IR-80 to PC-D on Connecticut Route 262 and Route 8 and Echo Lake Road and also the appointment of Mike Galante to perform a 3rd party review of the traffic report.

MOTION: Action taken to formalize the appointment of Brian Miller to perform a 3rd party review of the application that is before us for a zone text amendment and a zone change map in an IR-80 to a PCD on CT Route 262 and Route 8 and Echo Lake Road and also the appointment of Mike Galante to perform a 3rd party review of the traffic report that will be given to us.

Motion made by: Mr. George

Seconded by: Mr. Russ

Roll Call to record votes:

D. Minnich yes
M. Masayda yes
J. Franson yes
R. Russ yes
C. Mancini yes
D. George yes

Motion passes unanimously

5. OLD BUSINESS

- a. **Richard Halligan, 236 Oak Drive, Watertown, CT 06795
Open Space Encroachment located between Oak Drive and
Kimberly Lane, Watertown, CT 06795**

Mr. Martin returns

Attorney Franklin Pilicy

Attorney Pilicy states that Assistant Zoning Officer Rafey asked him to look at this property with him about 6-7 weeks ago which he had done. Nothing was done thereafter. He did receive a call from Mr. Rafey that indicated that this issue had come up again and asked him to put something in writing as a recommendation to the commission for this meeting. He states that he did prepare something in writing that contains some background information provided to him by Mr. Rafey. There is some additional information from an attorney from one of the neighbors that had called him to provide additional information as to the nature of the dispute over the open space. He hands out the letter to members of the commission.

The letter is read into the record:

October 17, 2007

Hand Delivered

Moosa Rafey, Assistant Zoning Enforcement Officer

*Regarding: Open Space Located at 263 Oak Drive and 131 Kimberly
Lane
Complaint of encroachment by adjoining owners
Request for legal opinion*

Dear Zoning Enforcement Officer Rafey:

Requested legal opinion concerning complaints of encroachment into town owned space, the open space, was conveyed to the Town of Watertown as part of the Pondview Subdivision. The specific open space in question is a 42 foot wide parcel that runs from Pondview Drive along the rear of lots 27-24 and as part of a larger open space parcel; you provided the following specific background information:

It has come to the attention of the Planning and Zoning Office that the owners of the above-referenced properties have encroached on, to an open space area by extending their lawns into the open space located between these properties. The open space behind 131 Kimberly Lane and 253 Oak Drive is 25 foot wide which was created as a natural buffer between Pondview Estates Subdivision and Oak Drive Properties. The 25 foot strip of open space is part of a larger open space which has been deeded to the Town of Watertown. A site inspection conducted by staff some time in 2006 confirmed that both property owners extended their lawns into the town open space. After several visits to the site, and meetings with the owners of these properties, they were advised to cease disturbance of the town property including removing vegetation and mowing the open space area. Both property owners were directed by the Planning and Zoning staff to plant some vegetation to grow naturally. I visited the site on July 5, 2007 to make sure that the trees and shrubs are planted within the disturbed area of open space. It appears that the trees and shrubs planted in the open space area by owner of 131 Kimberly Lane are acceptable if both neighbors stop mowing or disturbing the town owned open space.

Mr. Leslie Reigner and Ms. Rose Reigner, owners of 131 Kimberly Lane and Mrs. Halligan, owner of 263 Oak Drive were agreed to do so. Both parties were advised that if they do not stop mowing the open space areas, the matter will be referred to the town attorney to take legal action.

On August 30, 2007, I received an email, copies attached, from Mrs. Gloria Halligan owner of 263 Oak Drive, Watertown. Prior to responding to the email, the town attorney and I visited the site on August 30, 2007 to see the situation. It appeared that mowing areas on both sides of the open space have not been ceased by abutting property owners. Therefore, the open space matter has been referred to the town attorney for further action. I viewed the property with you and spoke briefly with the owners of Lot 27. As stated, the purpose of the open space was to provide additional buffer to existing lots 23-20 in the Oak Drive development. The Oak Drive development was built during the early 1970's. The owner of Oak Drive, Lot 23 has continued to file complaints that the owner of Pondview Lot 27 has encroached in the Town of

Watertown open space. The following complaint has been received numerous times.

Moosa:

I would like you to once again come to the Pondview area. The buffer zone between 263 Oak Drive and Pondview has continued to be cut and maintained as if the town property is my neighbor's property. You spoke to them a few times but they have continued to cut, trim and rake this area as their own. Please let me know what action you plan to take. I appreciate your help on this matter.

Thank you, Mrs. Halligan

The background information also indicates that the owner of Oak Drive, Lot 23 has encroached in the open space with grass area, landscaping improvements and has constructed a concrete pad that supports pool appurtenances partially or totally encroaching in the open space. An attorney for the Pondview lot 27 owner has reported additional background information to indicate a significant neighbor dispute between the owners. It is significant to know that there is a row of evergreen trees approximately 30 feet in height and approximately 10 feet in width that would completely eliminate either lot from seeing the other lot. This row of evergreen trees appears to begin approximately 10 feet from the rear of Pondview Lot 27. The complaint is that the owner of lot 27 has planted trees and other plantings in an attempt to portion of the open space so that the lot 27 side of the rows is the trees. Reportedly, the owner of Oak Drive Lot entered the same open space on the Pondview side and also put in some plantings. Reportedly these plantings were disturbed by the Pondview owner and then the Oak Drive owner physically assaulted the Pondview owner. This resulted in a criminal arrest of the Oak Drive owner. In the view of this background, it is my opinion that this is more of a neighbor dispute than an open space dispute. It is my opinion that the boundaries of the open space area should be better defined with permanent boundary markers so that all parties are made aware of open space boundaries. It is my opinion that it is not in the best interest of the Town of Watertown to take action against either property owner with respect to the claimed encroachment. The Pondview side encroachment is an approximately 4 foot extension of the lawn area and the open space together with the plantings of several small shrubs that appear to be healthy and maintained.

The Oak Drive encroachment appears to be a small lawned area extending into the open space and blending into the thick line of evergreen trees. There is a concrete pad for a swimming pool appurtenance that appear to be approximately 4 foot by 4 foot in size and totally or partially

encroaching in the open space. It appears this encroachment has existed for a considerable period of time.

It is my opinion that any final decision with respect to addressing the encroachment complaint is within the discretion of the Planning and Zoning Commission. In any event, it appears the Planning and Zoning Commission made a prudent decision in providing for this open space, buffered between the two subdivisions.

If you have any further questions, please contact the undersigned.

Respectfully, Franklin Pilicy, Town Attorney.

Mr. Minnich asks if the complainant or the neighbor present. He asks if they would like to make any statements.

They request not to at this time after this letter from Attorney Pilicy.

Mr. Minnich asks the Commission how they would like to proceed and thanks staff and the town attorney.

Mr. Russ states that he feels the appropriate action would be to undo whatever they did to the open space.

Ms. Mulcahy asks if they should have the concrete removed from a cease and desist order from the concrete pad and cease and desist for the mowing and Mr. Russ replies that if they planted trees in the open space they should take them down. Ms. Mulcahy thinks that the Assistant Zoning Officer asked them to plant the trees back and Attorney Pilicy concurred. They were planted at the request of the land use office.

Attorney Pilicy adds that if the commission is considering further action, he would recommend they schedule a field trip and go out and look at the property. He further states that the boundary markers be re-established and Mr. Masayda adds that they be enhanced with an additional marker in between the two end points with a pressure treated 4 x 4 post.

Mr. Halligan, 263 Oak Drive

Mr. Halligan states that he feels what they are looking for is some type of consistency, markers that can be enforced by the town. He doesn't want anything to be removed. He is just asking that the open space not be maintained. He would like it to stay as open space which was its intent. He speaks of the concrete slab. It is about 2 inches into the open space, approved by a permit about 15 years ago. Ms. Mulcahy informed him that the Planning and Zoning office does not approve concrete slabs and Mr.

Halligan said it was the building department and it was for the pool heater. He assured her that the slab was within the property boundary. Ms. Mulcahy asked if he had it surveyed and he explained that he did not and the town did not but there were surveyors there that put the markers in and he was not sure where they were from.

Mr. George adds that when the subdivision was done, the property corners were all put in.

Mr. Minnich asks Mr. Berger what the feasibility is of the Public Works Department establishing a better definition of the boundary markers and Mr. Berger states that it is certainly feasible if that is what the town would like them to do. He adds that he would check with the Public Works Director because as far as surveying and marking, we do not have a licensed land surveyor on staff. Ms. Mulcahy states it needs a survey and Mr. Berger adds that we have an on call land surveyor that assists us with things such as this at an expense and Ms. Mulcahy claims that the landowner usually has it done themselves.

Mr. George states that if you would go out there with the subdivision map, a locator and a tape, you could probably find each of the corners. Mr. Masayda agrees with Mr. Martin that the town is going to have to go re-establish the easement markers and post them appropriately.

**Attorney Michael Broderick, Middlebury
Counsel for owners of 151 Kimberly Lane**

Attorney Broderick wanted to bring to the attention of the Commission that his clients did have a survey done. The survey shows and encroachment of approximately 1 foot of the concrete pad into the town open space area and it shows the heater encroachment of approximately 3/10ths of a foot. In addition, the owners of 263 Oak Drive have a flower garden on the town's property and have built a small brick patio.

According to the memo from Moosa Rafey, Assistant Zoning Officer, both parties appear to be mowing the grass on both sides of the open space. His clients, since the visit by Moosa Rafey, have made an attempt to be very careful not to mow the open space. They do not mow themselves, they hire people to do it. There could have been some inadvertent excursions and it was not a deliberate attempt to flaunt the agreement with the town or to irritate their neighbor. In addition to the open space area behind 263 Oak Drive, the owners of that property also encroach upon and maintain the area of Pondview Drive Extension which is to the north of their property. Pictures of the area from the town's website are shown.

He urges the commission to come to some sort of resolution that doesn't make the dispute between the parties get further out of hand. It is town property and both parties have at some time encroached on it. There has been a prior agreement where his clients planted shrubs. There are markers on the property and a survey has been done. Whatever the town does to resolve the issue, he request each be treated equally. He states that it best serves everyone if the matter ends.

Mr. Minnich tells Attorney Broderick that he thinks his comments are in line with what the motion is and tells him that the first step would be to get the boundary lines more permanently defined.

The homeowners are asked if they know where the markers are and the answer is yes.

Leslie Reigner, 131 Kimberly Lane

Ms. Reigner states that where the pins are set are not in a direct line. The properties go at an angle and it might be helpful for a pin to be put in the middle and she states she would like someone to maintain that they are trying to follow the rules of the Assistant Zoning Officer and states further that the neighbor is complaining that they are maintaining the lawn and his property is all enclosed and he continues to mow the lawn and he has never stopped except one time when Moosa was supposed to come out and he is still doing it.

She continues by stating that she thinks this is ridiculous and she tells the commission that she has never complained to anyone and mind their own business and she would like her neighbor to do the same.

MOTION: Request the Public Works Department establish more permanent boundaries indicating the open space area that would be clear for both parties to see.

Motion Made By: Mr. Masayda

Seconded By: Mr. Martin

Roll Call to record votes:

D. Minnich yes
M. Masayda yes
J. Franson yes
R. Russ yes
G. Martin yes

C. Mancini yes
D. George yes

Motion passes unanimously

Mr. Minnich reiterates that re-establishing the boundaries is the first step and to make sure this does not escalate and he suggests a site walk after the boundary determination is done with both parties and come to a conclusion.

Mr. Martin feels that this does not warrant a site walk and that once the boundaries are established and there should be no further encroachment from either party.

The entire commission is in agreement and Mr. Minnich asks the complainants if it is they are in agreement and Mrs. Halligan asked if she can be notified before they come. Mrs. Mulcahy explained that they go from site to site and would not be able to do that and Mr. Berger offered to knock on her door before they start the boundary line establishment.

Rose Reigner, 131 Kimberly Lane

Mr. Reigner asked that they be clear when they make their recommendation that it is for both sides because they have never made a complaint and their neighbor always mows and yet they are constantly going to the Assitant Zoning Enforcement Officer with complaints about them and sending him to their house. She claims that she spoke to the people who mow her lawn to stop mowing in the open space area. She further states that the company sends new people and they don't always do it perfectly but she has shown the owner of the company where he should mow, but in general do not mow the buffer area.

She adds that the people that are complaining are the ones who are constantly maintaining their buffer area which is much larger than the Reigners and she again asks that the recommendation be consistent for both parties and thanks the board. Mr. Minnich asks if it is understood that there be no further encroachment into the open space and the space will be clearly marked.

**b. 60 day Comment Period for Tamarack Energy Inc.,
Watertown Renewable Power LLC for a facility on Echo Lake
Road in Watertown**

Mr. Minnich explains that where they left off was that they wanting to decide whether they wish to be an intervener in the citing council process. Two concerns were considered, one was the environmental impact review

and how that process was going and the second was the indication that we had understood that there would be 40-50 trucks per day using the roads to access the site that would be bringing the wood chips and they would be in normal size tractor trailers and they would all be wood chips, not big logs.

Tamarack had held an open house and had a number of exhibits and provided someone to walk around and explain. Mr. Minnich tells the commission that he took advantage of the opportunity and he indicated to them the question that the Planning and Zoning Commission had and asked them how they calculated the energy generation of 30 megawatts. The Tamarack representative provided it via email which was also provided to the commission. Mr. Minnich states that he responded with a question on the calculations in relation to one of the boards they had there as a display that showed a different number and that question was responded to as well.

Mr. Minnich wants to make sure that this goes back on the agenda in the property timeframe to determine if what has been presented is adequate in terms of the trucks. In terms of the environmental impacts, he states that he got a thorough understanding on how the review process is being done by the citing council and understands how that will be monitored continually in real time by both Tamarack and the DEP. He further states that it is clear to him that the environmental process is in place. He asks the board where the wish to go next with this.

Mr. states he attended this open house for the school and returned at 9:15 to find that Tamarack Energy had left before the time they advertised which was 10:00 pm.

Mark Mirabido, Tamarack Energy

States they made the decision that after an hour of no guests, they made the decision to leave before the 10:00 timeframe and apologizes. Mr. Martin tells Mr. Mirabido that he feels it was a poor night to hold their informational meeting because of the school's open house and states that he feels the community needs to take a good look at this.

Mr. Martin tells Mr. Mirabido that he would like to get a better understanding of this. He speaks of the proximity to neighborhoods and the worry about the smell of smoke. Mr. Mirabido states that he'd be happy to go through the posters with him.

The citing council will be the ones reviewing this project and if the commission is not comfortable with the process, Mr. Minnich states the commission ought to be considering being an intervener so that the citing council will know what our comments are. He is confident that the

process is in place and has spoken with the State Representative who assured that if there are any issues, he will be of assistance to the Commission in getting their attention.

Mr. Masayda states that the only thing he is concerned about is the pollution as shown in the comparison which was to a fossil fuel burning plant. It states that it is cleaner than a fossil fuel burning plant.

Mr. Mirabido states there is an increasing demand for power and right now, most of it comes from fossil fuel plants and that is the reason it was used as comparison. Their position is that it is a cleaner alternative, and MR. Masayda asks him what the pollution is compared to what is there today which is nothing. Mr. Mirabido tells him that there is an air permit approval process that happens separately from the citing council and the application was submitted in September. Part of the approval process involves the use of best available control technology which means other biomass plants through New England are looked at and employ emission levels and technologies that are the best available in terms of control. Basically any new plant that gets built will be cleaner than what is existing now. This is the process that DEP and EPA use to tighten down control as more plants are being built. He thinks we need to trust the process will address those concerns. Air emission modeling is part of that which determines stack height and make sure there is enough dispersion.

Mr. Martin states the site is what concerns him. This is right next to residential developments and asks if tests were done on the flight distance of the air to the nearest residence and Mr. Mirabido states they are being done now and they are looking at the sensitive receptors in the view shed of the shack. It doesn't make sense to do this until you know the height of the stack and that is part of the air permitting process. Mr. Martin states he understands the need for generation in Connecticut. He is concerned about who is "watching the henhouse" and with the strong drive to develop power, we are willing to sacrifice other things to make it happen.

Mr. Masayda and Mr. Martin discuss the amount of trucks and conclude that the town will notice a difference although they will not be coming into town but off Route 8 which has a lot of traffic.

Mr. Minnich informs the board that the wood chipping will be done off site. The noise pollution happens when they chip on site. He asks Mr. Mirabido how we get understanding that there will be no chipping on site besides just telling us. Mr. Mirabido tells them that if they look at the site layout and show how tight a fit to have the storage, power facility, etc., and there simply is not enough space to do chipping on site.

Mr. Mancini asks about something he had read about rechipping in house of bigger pieces. Mr. Mirabido confirms that this is correct which he informs that it is a standard piece of equipment at any biomass power facility where oversized material goes through a screen and if it is too big, it gets tumbled into a chipper inside a building and it would be designed within the required noise limits.

Mr. Minnich asks if the consensus is that the Commission not wish to be an intervener in this project before the citing council.

For purposes of unanimous consent is there any disagreement that the Planning and Zoning Commission will not be an intervener in the Tamarack Energy Project before the Connecticut Citing Council.

There is an objection by Mr. Martin to the unanimous consent because he feels he does not yet know enough about the project.

MOTION: Planning and Zoning Commission will not be an intervener in the Tamarack Energy Project before the Connecticut Citing Council.

Motion Made by: Mr. Mancini

Second: Mr. George

Roll Call to record votes:

D. Minnich	yes
M. Masayda	yes
J. Franson	yes
R. Russ	yes
G. Martin	no
C. Mancini	yes
D. George	yes

Motion passes with 6 in favor and 1 opposed.

Mr. Mirabido adds that there is no reason the town cant submit comments to the Citing Council or to Tamarack.

Mr. Martin asks if there is any location where he can get data because he wants to get very comfortable with it because at this time he is not. Mr. Mancini suggests he take a ride up to the plant with him and Mr. Mirabido tells him he would be glad to go over it with him and set up a visit to a plant if requested.

5. NEW BUSINESS

a. Release of a tree bond for Bellemeadow Subdivision, Watertown

Mr. Minnich asks Mr. Berger for his recommendation. Mr. Berger replies that he has a memo from the Public Works Director stating that all of the items dealing with the street trees have been adequately addressed and to release the tree bond.

MOTION: To approve release of tree bond

Motion Made by: Mr. Masayda

Seconded By: Mr. Russ

Mr. Mancini asks if he should recuse himself because he has family who lives on the road and knows the road and he doesn't know the what the tree warden does. He knows that trees were planted and died and they replanted and they died, and replanted again. He feels the ones up there are a little scraggly and there are newly planted trees.

He states the trees have been planted and are dying and he asks how we would know the ones just planted are going to be alive next year. He adds that just before the storm drain, the road has already caved in.

Mr. Berger states that he was not aware of that and wasn't sure if Mr. Cavanaugh was aware as well. He states that in the 5 years he's been here he has only released a few street tree bonds and we do not do annual inspections to see the conditions. He states that at first they make sure they are there and three (3) years later come back to see if everything is alive.

Mr. Mancini states the trees were just planted and asks when the three (3) years would be in effect for and Mrs. Mulcahy states that it is from the original planting. Mr. Martin states that he deals with trees all the time and the trees need to survive two (2) years before they release anything.

Mr. Minnich asks what the regulations say and Ms. Mulcahy states they rely on the recommendations of the tree warden and this case there are enough projects Mark that if there was a problem, he would fix it. She feels the tree warden is the only one who can make the recommendation

for the release of the bond and thinks that it was discussed with the Public Works Director and all the issues were resolved.

Mr. Martin feels there should be some kind of process in place to track the trees. There is discussion that maybe the process should be improved moving forward and Ms. Mulcahy states it would have to be in the bond agreement.

Mr. Mancini asks about the storm drain and Mr. Berger informs him that the street has been accepted and the one year maintenance was released one year later and now it is a town problem.

Roll Call to record votes:

D. Minnich	yes
M. Masayda	yes
J. Franson	yes
R. Russ	yes
G. Martin	yes
C. Mancini	no
D. George	yes

Motion passes with 6 in favor and 1 opposed

b. Memo from Harry Ward requesting authorizing \$2800.00 for silt removal from Echo Lake for silt ponds

It came from a previous settlement of claims against First Connecticut Properties for damages to Echo Lake. There is an amount of \$20,726.99 in the account this is a request to use those monies for doing the silt pond removal on Echo Lake.

MOTION:	To approve the authorization of \$2800.00 for silt removal
Motion Made by:	Mr. Masayda
Seconded By:	Mr. Russ

6. CHAIRMAN'S REPORT

Mr. Minnich states that they did attend and have a court hearing with CCPW lawsuit and it is now in the hands of the judge for a decision. He has 180 days to make a decision

7. ADJOURNMENT

MOTION: To adjourn the special meeting at 11:20 P.M.
Motion Made by: Mr. George
Seconded By: Mr. Mancini

Michael Masayda, Secretary
Planning and Zoning Commission