

**MINUTES FOR PUBLIC HEARINGS OF THE  
PLANNING & ZONING BOARD  
HELD TUESDAY, JANUARY 20, 2009; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the meeting of the Planning and Zoning Board at 7:30 p.m.

She noted today has been an inspiring day for this country, with the inauguration of our 44<sup>th</sup> president. Asked everyone present to join in the Pledge of Allegiance, honoring the greatness of our country.

**A. PLEDGE OF ALLEGIANCE**

**B. ROLL CALL**

**Members Present:** Frank Goodrich, Mark Bender, Janet Golden, KathyLee Patterson, Kim Rose, Kevin Liddy, Susan Shaw, Greg Vetter, Victor Ferrante, Jeanne Cervin, Chair.

**Staff:** David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner, Phyllis Leggett, Board Clerk.

**Mme. Chair:** Just heard the news that the Mayor has been hospitalized due to a drug reaction. Asked for a moment of silence to give him our thoughts and prayers. Also wished his family well during this time.

**C. PUBLIC HEARING heard 12/16/08; exp. 2/19/09**

1. **95 WOLF HARBOR ROAD (ZONE R-A)** Petition of Connecticut Center for Child Development, Inc. for a Special Permit and Site Plan Review to construct a private, non-profit school with accessory buildings and uses on Map 105, Block 914, Parcel 18, of which Connecticut Center for Child Development, Inc. is the owner.

**Mr. Vetter:** Asked if there would be a presentation by Mr. Curseaden to explain the traffic study submitted to the Board.

**Mme. Chair:** There will be no additional presentation, will be discussed what has been presented to the Board. Asked Mr. Sulkis for his comments.

**Mr. Sulkis:** The question that came up was whether the Avalon development had been included in their traffic study as he had recommended in 2007. The answer was no. They have now amended their numbers to include that development. The result is the traffic impact would be minor. Feels comfortable with the traffic that will be generated in this area.

**Ms. Rose:** Asked if the updated traffic report had been sent to the Police Department.

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**Mr. Sulkis:** The report has been sent to the Police Department. Their response has not been received as yet.

**Mr. Vetter:** There is a growth number for general activity in that area estimated at 1% per the City Planner. How was that number arrived at?

**Mr. Sulkis:** Does not expect any significant population growth in Milford over the next 20 years. There are not many places left to develop, unless there are some vast changes in land use. If there would be 5,000 people added to the population in the next 20 years that would be a lot. The 1% would be for the whole city every year.

**Mr. Vetter:** Reviewed some of the charts from the new traffic report and questioned Mr. Sulkis as to the interpretation of same. Stated he did not think the report answered the questions he had posed at the last meeting. The City wants business development in this corridor. If there is a pickup in the traffic flow, is this the best use for this piece of land.

**Mr. Sulkis:** Referred the Board to the section of the report that indicated peak traffic volumes. The slight increase in traffic would not impede travel through the area. It will not be a country road and would be busier, especially being a collector road.

**Mme. Chair:** Asked Mr. Vetter thought he had enough information to make a decision on this application.

**Mr. Vetter:** Stated he did not have enough information to make a decision as to whether or not the amount of traffic would cause an unsafe condition. Also stated he felt concerned about the queue of cars that would be backed up onto the Merritt Parkway to the stop signs at peak times of the day. The new report did not put him more at ease. Still believed the 215 traffic count at peak times was a factor.

**Mr. Sulkis:** The public hearing has been closed and the attempt is to clarify the report that has come in. If the Board is not satisfied with the information so far, they can wait to see what the Police Report states.

**Mme. Chair:** This is the only point that is holding up approval of this project. Proposed a provisional approval pending receipt of the Police Report and any other information that may be pertinent, which could be worked out with Mr. Vetter.

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**Mr. Sulkis:** Stated, for the motion, he would have to know specifically what are the issues that Mr. Vetter is looking for in order to make sure the conditions are met for the purposes of issuing a permit.

**Mme. Chair:** Trying to find out what would be simple that would helpful, but would feel more comfortable to have the police report in the record.

**Mr. Vetter:** The Police Reports tend to center on sight lines and some basic safety matters. The report will not help answer the traffic data issue. The Board has to get comfortable with the data. If there was something that could be made more clear, it's probably a relative understanding of what the traffic is now and what it would be across the full time scale, as opposed to focusing on these two hours they have picked during the day. Also, some kind of clarity on what happens on that interchange when people try and get off there in the morning going to work.

**Mr. Sulkis:** Asked if Mr. Vetter's main concern is whether or not there is a period of time during the day that traffic backs up onto Route 15 as it is trying to exit and whether or not this is contributing to that backup? If it is not contributing to the backup, would that satisfy him?

**Mr. Vetter:** That would. That is the primary safety concern. The other concern is that the increased traffic will have too much of an impact on the neighborhood. The exit and the entrance ramp backing up and flowing into the interchange and stop signs that is where there is danger. The interchange and the highway are the only safety issues. All other traffic issues are quality of life issues.

**Mr. Sulkis:** As a condition of approval, what I stated previously on the record, is what we are talking about. As long as we don't get the backup onto Route 15 caused by this development, then they will be good to go.

**Mr. Goodrich:** The Merritt Parkway exit on Wolf Harbor Road is short. The other side of Wheeler's Farms Road, which is accessible from Stratford with a connector, has a long exit ramp that can be used. The southbound side also has a long ramp onto Wheelers Farms Road which leads to the traffic light at the intersection. Do not think traffic will be an issues, as the Wheelers Farms Road exit provides another alternative.

**Mrs. Golden:** The peak hours for the proposed school and the peak hours for the city schools can coincide. How will that affect the people in that area, especially with children. The children can arrive home from school later, especially depending upon where they live.

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**Ms. Rose:** Made a motion to approve this application as presented with the exception of a provision pending a traffic report from the Milford Police Department concerning traffic backup onto the Merritt Parkway.

**Mr. Goodrich:** Second.

**Mr. Liddy:** Asked about the changes that were made to the building.

**Mr. Sulkis:** Noted the items that were changed. The changes were incorporated into the motion that had been distributed to the Board.

**Mr. Liddy:** Asked if the gym was to remain constructed in metal.

**Mr. Sulkis:** The gym will have a four foot stone façade that will look like a foundation. It will be red to look like other barns in Milford and will be constructed of metal.

**Mr. Vetter:** The exit and interchange that Mr. Goodrich mentioned can be troublesome in the morning and night. It is not a good alternative.

He stated in response to Mrs. Golden's point that the motion that is being made will be specific to the safety issue and question with regard to the exit on the highway. The question she was raising was not being covered by the motion presented. If she wanted this issue that pertains to quality of life incorporated in the motion, she would have to state as much.

**Mr. Sulkis:** Mentioned he is on a committee through the Council of Governments that is studying the Route 15 corridor from Stratford to Wallingford. Looking for where there are deficiencies and will hopefully lay out a plan for improvements in the future. This is an area that will be looked at.

The subject of a red building not viewed as being pleasant to autistic children was raised. It was discussed that the applicant presented a red barn-like structure as an alternative to the blue one previously presented and confirmed this color choice would not adversely affect the children.

All members voted in favor. The motion passed unanimously.

**Mme Chair:** The public hearing for the proposed text amendment change has been withdrawn for tonight's meeting.

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**D. PUBLIC HEARINGS CLOSE BY 2/24/09**

2. **127 MELBA STREET (ZONE R-7.5)** Petition of Eric Orzel for Special Permit and Site Plan Review approval for the site grading, fill and retaining wall constructed within 25 feet of a flood hazard area on Map 29, Block 548, Parcel 3, of which Dean Har is the owner.

**Eric Orzel, Owner, Hilltop Turf and Landscapes, Grace Trail, Orange, CT 06477.** Stated his credentials as a Nik-O-Lock contractor and landscaper. Gave the history of the project which was to build a retaining wall on the side of the property to level out the existing slope and to acquire more usable space. Trees had been cut down and there was a deep slope. Before starting the project called the Planning and Zoning Department and Building Department to see if permits were required. Was told if the wall was under three feet high and was within the property line there would be no permit required. The wall was designed and built under three feet. Upon a neighbor's complaint about the wall, the Building Department inspected the property and had no problem with the work, but advised him to contact the Planning and Zoning Department. Upon inspection by Assistant City Planner, Emmeline Harrigan, it was determined that the wall was 25 feet within the flood hazard area and was subject to a Special Permit application. A site plan had to be drawn up to be reviewed by the DEP and upon the approval of DEP and various City departments, must go before the Planning and Zoning Board at a Public Hearing.

**Mme. Chair:** Asked Ms. Harrigan for her comments.

**Ms. Harrigan:** Only reason it is before the Board is because it is within 25 feet of the flood hazard zone. DEP found no impact on the Sound.

**Mme Chair:** Anyone to speak in favor?

**Gary Gregg, Beachland Avenue, Milford.** Thinks that what Dean Har has done has improved the view of the water in the area for the neighbors. The building projects taking place in the area are taking away from the water view.

**Ms. Shaw:** This is a flood area. Asked if the filtration system protected the houses next to this property from getting additional water.

**Ms. Harrigan:** The City Engineer was satisfied it would prevent any additional water flow down to that property.

**Ms. Shaw:** Even under extreme circumstances that occur in that area?

**Ms. Harrigan:** Stated she could not speak to a major hurricane. The City

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Engineer was satisfied that this would control any drainage issue.

**Mr. Sulkis:** The purpose of the wall was to flatten out the slope. Whatever was flowing down the slope was going down toward the neighbors.

**Mme. Chair:** Anyone to speak in favor of the application?

**Gary Gray, Beachland Avenue.** What Dean Har has done in the area to open up the view is commendable because trees were removed which were an eyesore. The retainer wall gives the property a nicer look. Enhances the area.

**Scott Beauregard, 121 Melba Street.** Adjacent neighbor. Have no objections to the wall. Less of a slope. They planted ornamental arbor vitae to protect his property in order to provide privacy.

**Wanda Har, 121 Melba Street.** Owner of the property. At one point the area was run down. Told the neighbor she would clean up the property. That is what she is trying to do.

**Frank Miller, 2 Rock Road,** neighbor. Knew the property before and after this work has been done. Significant improvement. Welcome addition to the area.

**Mme Chair:** Anyone to speak in opposition?

**Karen Fitzmorris, 53 Pelham Street.** Adjoining property owner. Not clear on the use of the property. Not clear if the additional yard space that was mentioned will be used for parking. Not clear on the concept of a retaining wall. Second time the owners have built walls on the property and backfilled into it without permits and called it a retaining wall. Now it can be a required front yard setback without a zoning variance. Not clear that the contractor is talking that the wall is three feet from the stamped sand base that he built. Does appear from the base of the wall to the top, is at least three feet or higher at all points on the wall. Stated that the property is not owned by Dean Har, as indicated on all the applications. The property is owned by Wanda Har.

**Mme. Chair:** Mr. Orzel has the right to rebut Mrs. Fitzmorris' statements.

**Mr. Orzel:** Ms. Fitzmorris most likely saw the footings that were placed below ground. Backfilled because the footings had to come out. Saw the project while it was in the process. This wall meets the regulations as to its height. These retaining walls are used to create useable space. The walls retain the backfill and has a nice appearance as landscape.

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**Rebuttal to Mr. Orzel:**

**Ms. Fitzmorris:** He did not respond as to what this area will be used for. Not clear as to where one measures the wall from.

**Final rebuttal to Ms. Fitzmorris:**

**Mr. Orzel:** Reviewed the lawn grasses that will be used. There is still a slope which abuts her (Mrs. Fitzmorris) property. A car cannot be parked at that sloped area.

Anyone to speak in opposition? None.

**Mr. Liddy:** Since the area is being used for children. Due to the slope, will the area be fenced to protect the children from falling down the slope?

**Mr. Orzel:** The wall height restriction at this point does not require a fence. Should not be a safety hazard.

**Mme. Chair:** Declared the public hearing closed.

**Mme. Chair:** This appears to be straightforward. Understands Mrs. Fitzmorris' concerns, but the Board is not dealing with those issues at this time. Suggested the Board vote on this application tonight.

**Ms. Rose:** Made a motion to approve the application.

**Mrs. Golden:** Second.

Nine members voted in favor. Mr. Goodrich abstained. The motion passed.

4. **701 NORTH STREET (ZONE R-A)** Petition of Cornerstone Christian Center, Inc. for a Special Permit and Site Plan Review to construct a church facility on Map 107, Block 807, Parcels 27, 27B and 28, of which Harris A. Stone is the owner.

**Tim Yolen, Esq. 700 State Street, New Haven, CT.,** representing the Cornerstone Christian Center. Introduced Ray Paier, PE, John Wicko, Architect, Stephen Wing, Landscape Architect, and the pastor of the Cornerstone Christian Center, Alfred Watts.

Cornerstone Christian Center founded in 1949 and located in Milford since 1967 on Meadow Street. Gave the educational background of Pastor Watts.

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Described the location of the proposed property to be developed on Connecticut State Route 121. It is a seven acre parcel with an historic farmhouse and converted barn surrounded by what was formerly the Platt Fruit Farm. Stone walls and tree filled buffers surround the property on all sides. All efforts have been made to preserve the existing natural footprint, including the planting of additional trees and rebuilding of stone walls. Project will serve the community and City of Milford. There will be no disturbance of the natural wooded buffer or existing peripheral tree line. The stone walls would be maintained. The farmhouse and converted barn would be preserved and would be brought into zoning compliance. The wood shed and back barn that are on the property would be removed. The farmhouse would be used as a residence for the church. The converted barn would be used for office and storage space. The piles of logs and stone sculptures that are presently on the property will be removed.

The new church would hold 400 seats in the sanctuary. There will also be a fellowship hall in the basement and a wing for children's Sunday School.

Church services would start at 9:30 a.m. on Sundays and depart approximately 1:00 p.m. Volunteers would guide the flow of parking. Approximately one half of the congregation attends Bible Study on Wednesday evenings would arrive at 6:30 p.m. and depart by 9:00 p.m.

Two areas in the old farmhouse, noted as Church Gallery and Conference Room (shown on Sheet A-5) would not be in use on Sunday morning or Wednesday evening. Therefore, additional parking for these areas has not been designated.

The church will be located on the northeast portion of the property with parking on all but the north side. The traditional New England church design will blend with the neighborhood. The location of the church will be located so that the scenic beauty of the orchard will remain. There will be little evidence that there is a church on the property except on Sunday morning and Wednesday evening. Meadow Street, the Church's present location, will experience an elimination of on street parking.

This property is in an R-A zone, one acre zoning, which allows such the proposed use by Special Permit. All the City Departments have approved the application. The Conservation Commission had concerns about the project.

Submitted photographs of the posted sign which were date stamped into the record. Submitted a revised Statement of Use, which contained a paragraph change and was date stamped into the record.

**Raymond Paier, PE, Westcott and Mapes, Inc. 142 Temple Street, New**



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**Haven,** Gave an orientation of the proposed development via a display. Will be a 17,500 sf building placed on the far northeast corner of the parcel to reduce any impact to the neighborhood. Further remote point from any neighbor and from North Street. Parking areas will be broken up. Added landscape islands above and beyond what is required in the regulations. Intent is to keep as much of the character of the orchard intact. Presently there is a septic system, but the intent is to hook up to the municipal lateral sewer lines on North Street. This has been approved by the Sewer Department.

The property consists of seven acres. Meets the setbacks of the R-A zone as defined in the regulations. Height of the building is in compliance. The building area in relation to the lot is in compliance.

Landscaping: The existing vegetative border which serves as a buffer to the golf course will be maintained. Large specimen deciduous trees will be maintained. There will be zero light spillage. Had a meeting today with DOT District 3. Project was received very favorably. The proposed traffic on this road does not warrant a traffic study. No obstructed sight lines for ingress and egress to the property.

**John Wicko, Architect, 50 Broad Street, Milford.** Described, via displayed color renderings, the proposed building that will be in the architectural style of a classic New England Georgian style church. There will be an adjoining wing for the Sunday school. On either side of the church additional trees will be planted to lend a village green feel. Described the interior of the church, fellowship hall and Sunday school via the display. Steeple will be 80 feet, but is not affected by the building height limit of the regulations. Very classic white clapboard with white trim and black shutters. Reviewed via photographs the structures on the property which will be maintained.

**Mr. Yolen:** Summarized: They have complied with all the regulations required for a Special Permit and Site Plan Review. The plan has been devised to work very nicely into the community.

**Mme. Chair:** Will take a break to give the public the opportunity to review the displays.

(A recess was taken from 9:18 to 9:28 p.m.)

**Mme. Chair:** Asked if Mr. Sulkis had additional comments to those presented in the Administrative Summary Form which had been distributed to the board members.

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**Mr. Sulkis:** No.

**Mr. Liddy:** Asked why the Conservation Commission did not approve the development.

**Mr. Sulkis:** Read the Conservation Commission's comments.

**Ms. Rose:** Asked if any of the stone walls would be removed during construction.

**Mr. Paier:** One of the stone walls in the center of the site will be moved to the side.

**Mrs. Patterson:** Asked about the violations on the existing building.

**Mr. Sulkis:** If the Church buys the property, they will be responsible for correcting the existing violations and bringing the building up to code.

**Mr. Liddy:** Will there be any music or loudspeakers emanating from the steeple?

**Mr. Wicko:** No. The steeple is purely decorative.

**Mr. Bender:** Asked if the church would be in striking distance from the adjacent golf course.

**Mr. Paier:** That issue has been reviewed and the positioning of the church on the property would not be in harm's way from the golf course.

**Mr. Goodrich:** Mentioned various points concerning the site plan with regard to the removal of vegetation that would affect the sight line per the Police Report, church steeple calculations for wind velocity and a handicapped ramp and handicapped spaces.

**Ms. Rose:** Asked if the church eventually wanted to add another service would that require a traffic study?

**Mr. Sulkis:** North Street is a State road and can handle any additional traffic.

**Mr. Liddy:** Asked about the potential of the church steeple being used for a cell tower.

**Mr. Wicko:** Does not believe the steeple's dimensions could accommodate a

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cell tower.

**Mr. Yolen:** The pastor advised him that there is no interest in using the steeple for a cell tower or have an antenna coming out of it.

**Mme. Chair:** Asked for clarification on the existing residences on the property.

**Mr. Paier:** The farmhouse in the front of the property is a residence. There is a single bedroom apartment in the back of that structure. That is all. There will be no residence in the church.

**Mr. Bender to Mr. Sulkis:** Does the Board have jurisdiction over the number of services that can be held, should they change the number of services that are scheduled at this time?

**Mr. Sulkis:** As a Special Permit application, the Board has the right to limit the number of services that can be held per week.

**Ms. Shaw:** Asked if the orchard was to be maintained with no intention of expanding the property.

**Mr. Yolen:** There will be little interest or validity in expanding the property. The maximum of 24% lot coverage has been maxed out. They would have to go to the Zoning Board of Appeals, should they request further expansion.

**Mrs. Patterson:** Asked if the previously approved license for a daycare center at Meadow Street be moving to the new facility.

**Pastor Alfred Watts, 192 Meadow Street.** The present daycare facility will remain on Meadow Street.

**Mme. Chair:** Anyone to speak in favor of this proposal?

**Jim Monde, 673 North Street.** Property is adjacent to 701 North Street. Milford resident for 15 years. Lured to this area due to its rural character, i.e., the apple orchard, rural landscape, open space of Eisenhower Park, the Community Gardens and the Orchards Golf Course. Enjoys the quietness and privacy this part of North Street provides. Has concerns about how this proposal might impact the surrounding environment, compromise the rural landscape and the neighborhood characteristics. Has spoken to Pastor Watts about his concerns. The Pastor fully understands and appreciates his apprehension. From these discussions, he believes the plan, as presented, will have a minimal impact. Appreciates this, but would request as condition of approval, the Board require

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the Cornerstone Christian Center maintain a buffer zone of natural screening between his property to the south, as well as the frontage of 701 North Street, in perpetuity. Stated he is in favor of the application.

**Mme. Chair:** Anyone else to speak in favor? (No response)  
Anyone to speak in opposition?

**Lili Flannigan, 38 Prospect Street.** Read a letter from Richard N. Platt , Jr., 132 Platt Lane addressed to the Planning and Zoning Board dated January 20, 2009, concerning the proposed construction on this historic property. The letter gave a history of the property, which was formerly owned by the Platt family. The property is listed on the 2006 Historic Resources Inventory. He stated he was not in favor of the project and concurred with the Conservation Commissions evaluation that, "It will be detrimental to the character and appearance to the surrounding neighborhood and will adversely affect the general welfare of the inhabitants of the City of Milford because the applicants propose the removal of considerable apple orchards, stone structures and stone walls". *(Mr. Platt's letter and the Conservation Commission's comments are on file at the Planning and Zoning Office).*

**John Nowicki, 710 North Street.** His home is directly across from the Platt Homestead. Has two items of concern: Previous problems with ground water and gasoline, and traffic. Old gas tank leaked and the DEP got involved. An old gas tank used by the farmers was underground, along the stone wall that is to be removed. He has well water. If there should be disruption of the ground water table or drainage, his well could become polluted. Propose that the wells in the area be tested and followed up after construction. Records are on file at the DEP. Second, the traffic on North Street is horrendous. There is a half-mile curve that is a speedway. There have been four deaths in that section due to speeding in that area. Tractor trailers and traffic going to Route 1 and to Derby use this road. Used this road early in the morning and there is heavy traffic on it, as well as weekends, primarily on Saturdays and in the warm weather. Suggested a traffic study be made. DEP should be contacted about the previous study. Asked that the four residents who have wells be compensated.

**Virginia Lewis, 857 North Street.** Agrees with Dr. Nowicki about the traffic condition, with the use of Eisenhower Park, the softball fields and the Orchards Golf Course, especially in the morning on the weekends.

**Mme. Chair:** Anyone else to speak in opposition?

(No response)

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Rebuttal by the Applicant:

**Mr. Yolen:** With regard to the letter from Mr. Platt concerning historical barns, the applicant has worked steadfastly to make every effort to maintain that the property and the buildings keep the character of the neighborhood. Does not agree with Mr. Platt that this amounts to a destructive project in appearance or imposition of the neighborhood.

Became aware of the problem that Dr. Nowicki described as ground water pollution. This occurred many years ago. DEP worked to get the matter resolved. Everything shows that the ground water situation was remedied. A substantial amount of money was spent in the curing and remediation of the property.

Regarding traffic, any development that goes into that property will create traffic, whether it be a subdivision, cluster housing or a religious institution. The only traffic that will occur would be Wednesday evenings and Sunday mornings. This is not a seven day a week process. Traffic times are limited. No traffic study is required or needed. Volunteers will be directing traffic. The application meets the criteria of the Special Permit and Site Plan Review.

**Mme. Chair:** Asked if those who spoke against the project wished to rebut.

(No response)

**Mr. Goodrich:** Asked who owned the property when the gas tank situation occurred.

**Mr. Yolen:** Mr. Stone. Spoke with the DEP and anyone else involved, the problem had been fully remediated.

**Mr. Liddy:** Has the gas container been removed?

**Mr. Yolen:** May have been emptied or filled with sand and not removed. DEP did the work at a significant cost and the matter was resolved.

**Mr. Liddy:** Will the container be disturbed in the construction?

**Mr. Nowicki:** Showed on the site plan the location of the gasoline tank. Showed the present entrance and a side entrance to the apple orchard. Against the stone wall at the entrance on the side was where the gas tank was.

**Mr. Liddy:** Asked what the significance of being on the historic record would

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mean if the buildings were razed.

**Ms. Rose:** Asked if the stone wall where the gasoline tank is could remain and not be moved during construction.

**Mr. Paier:** No, due to the required length and width of the driveway and to preserve the existing structure.

**Mr. Sulkis:** Did not know but stated the owner has the right to do what he likes on his property.

**Mr. Goodrich:** Asked how often Dr. Nowicki had his well tested.

**Dr. Nowicki:** Three years ago and it tested fine.

**Mr. Yolen:** Will do testing prior to the construction and after construction on the wells of the neighbors. Will be responsible for the correction of any problem that might exist from this situation.

**Pastor Watts:** Asked that the Board not make it a condition of approval that no further work can take place on the property.

**Mme. Chair:** Replied the Board will consider that. Declared the public hearing closed.

(Mrs. Golden left the meeting at 10:12 p.m.)

5. **12 FRANCIS STREET (ZONE R-7.5)** Pursuant to Sec. 7.1.3.14 of the City of Milford Zoning Regulations, the Planning and Zoning Board will review and consider whether to review and consider whether to revoke the zoning permit issued to Joseph Voll on April 17, 2007, for work to be performed at the property located at 12 Francis Street, Assessor's Map 6, Block 84, Parcel 2, and owned by Antoinette Voll.

**Mme. Chair:** Asked for Ms. Harrigan's comments on this issue.

**Ms. Harrigan:** Gave the chronology of the incidents that took place and why this property was brought to the Board for their review.

1. Approval was granted by the Planning and Zoning Board for a Coastal Site Plan Review in 2006.

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2. Approval was for demolition of the existing house, reconstruction of a single family house with an attached deck and an adjacent pool and hot tub located on the deck.
3. Property is located in the VE flood zone. Home had to be built on elevated piers above the base flood elevation.
4. The applicant was granted a zoning permit to construct what the Board approved in October 2006.
5. After the zoning permit was issued a foundation permit was granted by the Building Department and building the foundation started while the house permit was being approved by the Building Department.
6. During that time there was concern about the construction on the site and in June 2007, John Gaucher of the DEP came out and took photographs in order to review the location and to make sure that any silt screening that was required was in place, etc.
7. While the foundation was being built and before the house permit was issued, the Building Department did an inspection and determined that the foundations constructed on site were not consistent with what was approved by the P & Z Board, the zoning permit that had been issued, and what was required by the Building Department. The Building Department then issued a stop work order.
8. Mr. Voll resubmitted structural plans. Elevations were not submitted. The plans were subsequently approved by the Building Department.
9. Prior to issuance of the building permits for the house, deck, pool and hot tub, the scope of work was revised within the Building Department and was not revised in the Planning and Zoning Department to remove the pool from the scope. The house permit was issued and construction of the house began.
10. In October 2008, the DEP received a complaint regarding the site that stockpiled fill was spread on existing beach grass on the site. This is not consistent with what was requested in the Coastal Site Plan Review. If regrading is within 25 feet of a flood hazard zone, a Special Permit must be obtained. Mr. Voll did not request a Special Permit at the time of the Coastal Site Plan Review and none was granted for this site.

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11. Upon review of the existing information in the file, it was discovered that no beach grass was identified on site as well, as part of the coastal site plan application. This is inconsistent with what is required for the Coastal Site Plan Review application.

Ms. Harrigan explained that beach grass identifies the start of a dune on site. Dunes are protected within the zoning regulations and by state statute within the Coastal Site Plan Review section of the City Ordinance. Explained the importance of beach dunes.

12. Ms. Harrigan and the DEP made a site visitation on 10/21/08. The Office of LI Sound programs issued a letter to the City, the applicant and other officials that based on their observations of the site, there was information that was not provided in the CAMSPR. It was suggested that the Planning and Zoning Board review the application with the potential of revoking the permit. This would be specific to the deck which was in the preexisting vegetative area, which has been referenced as a dune. Also, based on the inspection there was a large concrete base which was determined to be the foundation for the pool, which was inconsistent with the National Flood Insurance Program's requirement that anything built below base flood elevation is free of obstruction.
13. A cease and desist letter was issued to Mr. Voll, specifically related to the grading activity which occurred for which there was no Special Permit issued; and a request that all work related to the deck cease.
14. On 10/29/08, Mr. Sulkis issued a letter to Mr. Voll which notified him that the Planning and Zoning Board was going to review the permits issued, the scope of work completed in the field and decide whether the permits should be revoked. A hearing date of 12/2/08 was set for the Board's review.
15. On 11/1/08 a letter was received from Aleksandra Moch, the applicant's soil scientist consultant, who was retained to devise a proposed restoration plan for the preexisting vegetated area that was identified on site.
16. On 11/12/08, in response to Ms. Moch's letter, requested a schedule with Milestones, rather than an open ended extension of time for this. Also stated a Special Permit would be necessary for the grading activities if the fill was to remain on site and would be working with the DEP to review any proposed regrading plan for the site.



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17. On 11/20/08, Attorney Curseaden contacted the Planning and Zoning Department to request an extension of time, which was granted to this evening's hearing. Again requested the time frame for a potential restoration plan from Ms. Moch. Mentioned that FEMA was reviewing the foundation for the proposed pool with a determination pending from their office.
18. On 11/26 a determination was made by DEP's Flood Management section that indicated the information received from Mr. Voll, the pool foundation was in violation with the NFIP's Free of Obstruction Policy for areas below base flood elevation and without removal of the existing pool foundation and redesign to either the original approval, as was granted by the P & Z Board, or an accepted alternative that the residential structure could not be found compliant with the NFIP standards.

It is now up to the Board to determine, based on the information provided by Staff, if the original Coastal Area Management Site Plan Review did not provide necessary information, which makes the work that has been done on site inconsistent with the zoning regulations, and whether or not the Board chooses to revoke the zoning permit.

Summary: Pool foundation on site cannot meet NFIP standards and DEP's Flood Management section. Staff contends there was an existing dune on site.

Ms. Harrigan described the material she had distributed to the board showing pictometry image levels of the property which depict via aerial photography the areas to which she is referring.

**Kevin Curseaden, Esq., Stevens, Carroll and Carveth, 26 Cherry Street.** Distributed exhibit packets to the Board. Also present, Joseph Voll, the applicant and property owner; Joe Codespoti, Jr., surveyor and Alesandra Moch, soil scientist.

Stated he did not have the information that had been distributed to the Board and he was at a disadvantage. Secondly, he did not think the Board has the legal authority to hear this matter under Section 7.1.3.14, which states a public hearing would be held in order to revoke a site plan review. The item on the agenda tonight is to revoke the zoning permit. Based on this section, the Board would have to have the authority to hear something in order to revoke it. This item is not on the agenda to revoke a site plan. The revocation that the Board is being asked to act on is revocation of the zoning permit which allowed for the house to be built as well as other aspects of items to be constructed. The house has been built and has met the approval of the building department.

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In conversations with Staff on this matter, they say their concern is with the deck and the grading. That is not what is on the agenda for tonight. If the Board acts to revoke the zoning permit, the house that is already built is subject. The owner could lose financing of the property; he could be made to take down the house. Not just talking about the deck.

The zoning permit dated April 17, 2007, included all aspects of construction, namely, the house, the deck and hot tub and pool. This is an approved project. He has his building permits for it. The City's position is that he has overworked the permit or violated it in some way. That is not true. That is based on an aerial photograph of supposed vegetation.

Mr. Curseaden stated he did not feel the Board could scrutinize the photographs they were given to determine how old the vegetation is that in that area. Many factors surrounding the claims of these photographs could be disputed, i.e. the source of the photos taken off the internet, what time of day they were taken, does not state what kind of vegetation is on there. Agree that the natural resources need to be protected, but it cannot be determined from the aerial photographs what is on that site. Surprised that this can be considered evidence.

Named the exhibits he had distributed. The plans had been reviewed by staff and approved by the Planning and Zoning Board. The plans were reviewed again at the time they were approved for a Zoning Permit. Two years later the City is arguing the dune and beach grass were not shown on the Coastal Area Site Plan.

Mr. Ferrante and The Chair admonished Mr. Curseaden for the tone and volume of his voice in addressing the Board.

Mr. Curseaden apologized to the Board.

Referred to a letter from Ms. Harrigan wherein the zoning permit was in question of being revoked. Have tried to work with John Gaucher of the DEP. A remediation plan has been developed. Mr. Gaucher does not have any problems with the remediation plan, however, Staff does not find the plan sufficient.

He stated that an administrative agency may not review its own decisions and revoke action once duly taken. In this case action was duly taken. He cited the term "Municipal Estoppel" and how it applied to Mr. Voll.

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**Aleksandra Moch, Environmental and Land Use Consultant, Landscape Designer.** Asked to put together a mitigation plan for the property in question. Stated the State does not have a good definition for a dune. Read the definition of a dune by the DEP and the definition from the Dictionary of Geomorphology. Discussed the function and importance of dunes. Stating that it is unfair to state that beach grass that is just developing is a dune. The area has the potential to develop as a dune, but at this time should not be considered a dune. Stated the area that was filled was sparsely vegetated by the beach grass and some other vegetation.

Another condition of the property is the foot traffic from the public access way that is on the property. Foot traffic is impacting the vegetation in this area and has been doing so for many years. Photographs of this area had been distributed to the Board. Ms. Harrigan had stated that some of the fill had spilled over adjacent property. Does not believe that was done but if that is the case, this area can be mitigated as well.

Described the proposed mitigation plan for the property. Added sand to the area which will help form a dune. Add vegetative grasses to replace what is missing. The reference to be used is the manual "Technical Support for Coastal Habitative Restoration". This speaks to dune restoration. In this particular case, where the damage was unintentional, it will lead to the restoration of a dune. It uses the sand and sediment that was excavated from the side of the house. It was not brought in or contaminated. The area will replenish the beach and make the potential dune formation stronger. One hundred plugs of beach grass will be added to the area, which will restore it to its preexisting condition. John Gaucher is in favor of this remediation proposal and its positive long term effect on the area.

**Mme. Chair to Staff:** Does the Board have the legal right to hear this matter?

**Mr. Sulkis:** Yes. The Board has the expectation that when it approves something it gets built. What was approved and what is being built is not the same thing. When something is found not to be correct, anyone in municipal authority can take measures to correct it. The matter can be taken before the Board, just as it does in any land use matter. Upon its decision, should Mr. Curseaden not be happy, the matter can be taken to the Superior Court.

**Mr. Curseaden:** What was approved was built. The issue is whether or not there was a natural resource that had been there in 2006, that was not shown on the plans when it came before the Board, which is no longer there.

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**Mr. Sulkis:** The other issue that does not appear to be a concern to Mr. Curseaden is the pool, which is a big concern.

**Mr. Curseaden:** The pool is not going to be built.

**Mr. Sulkis:** The foundation is there so it exists and is a concern.

**Mr. Curseaden:** Exhibit 6 is Mr. Codespoti's memo which addresses some of the issues discussed tonight. Asked the Board to read that before they make a decision.

**Mme. Chair:** Running out of time. Will not be able to continue for much longer.

**Joseph Voll, 17 Colonial Drive, Milford.** Has owned this property for ten years and a long time resident of Milford. Had to tear down the house due to an act of nature. Stated his Coastal Area Site Plan Review had been accepted and approved by the Planning and Zoning Department. When he received the letter about the Cease and Desist order from the Planning and Zoning Office, he was told he had no right to appeal. Mentioned the fact that the structural footings were done correctly. Mr. Crabtree went over the plans and CAM application three times. Approval letter from Dave Sulkis was dated October 5, 2006. Was told if he could straighten the matter out with the DEP there would be no problem. Have straightened the matter out with the DEP. Only problem is the pool foundation. Because there are FEMA rules about the pool, it is off the permit now. An engineer has been hired to do additional calculations to make sure everything will be done properly.

**Mme. Chair:** Asked for Staff's response.

**Ms. Harrigan:** Stated there is a dune on the site. A dune is thought of as a big hilly structure. Information from the State's NEMO program was included in the Board's packet. It indicates the Connecticut topography is shallow due to it being buffered by the Long Island Sound. It is different from the dune structure from that of Cape Cod or another coastline that has direct ocean frontage.

Explained the pictometry photos that were distributed to the Board were received from the State of Connecticut, which were brought into question by Mr. Curseaden.

**Mr. Sulkis:** In answer to Mr. Codespoti's memo, the photos did not come off the internet.

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**Joseph Codespoti, 504 BPR, Orange.** Surveyor who did the Coastal Site Plan Review. He explained if you want the most accurate depiction of what is happening on the ground, the proper surveying measurement is Class T-2. Aerial photography can be used but is not as accurate as an actual survey.

**Mr. Sulkis:** Asked if beach grass was observed when the A-2 survey was done on the property in 2005.

**Mr. Codespoti:** Is a licensed land surveyor. He is not an expert in wetlands. A soil scientist would be an expert in that field. The topography as depicted on the ground conforms to T-2 topography.

Messrs. Sulkis and Codespoti further discussed methods of surveying properties.

**Mme. Chair:** Motion to extend the meeting.

**Mr. Goodrich:** Motion to continue the meeting for thirty minutes.

**Mrs. Patterson:** Second.

All members voted in favor.

**Mr. Vetter:** Motion to table the public hearing on 12 Francis Street in order to hear the application for 223 Housatonic Drive.

**Mr. Bender:** Second.

All members voted in favor of tabling 12 Francis Street.

**Mme. Chair:** Apologized to the applicants of 223 Housatonic Drive for not realizing they were in the audience to have their application heard.

**E. NEW BUSINESS**

**223 HOUSATONIC DRIVE (ZONE R-10)** Petition of Jeffrey Elovitz for a Coastal Area Management Site Plan Review to construct a single family residence on Map 14, Block 17, Parcel 13, of which Jeffrey and Theresa Moody are the owners.

**Jeff Elovitz, Architect, 444A Washington Avenue, North Haven, CT.**  
Architect for the project.

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**John Gable, PE, Connecticut Consulting Engineers, Meriden, CT.** Prepared the CAM report . Very straightforward application. All the construction activity, demolition and addition are out of the 25 foot setback from the flood zone. Everything appears to be in order.

**Mme. Chair:** Noted that a variance had been obtained for a side yard setback.

**Ms. Harrigan:** DEP receives copies of all applications for a Coastal Area Management Site Plan Review. They had a few comments which the applicant has addressed.

**Mr. Liddy:** Are there any dunes on this property???

**Ms. Harrigan:** No dunes. Only tidal wetlands.

**Ms. Shaw:** Motion to approve the application for Coastal Area Management Site Plan approval.

**Mr. Vetter:** Second.

All members voted in favor.

**Public Hearing on 12 Francis Street continued at 11:08 p.m.**

**Ms. Moch:** Summarized. Wants to do the restoration project as soon as possible. Would like the board's approval so that the plants can be ordered and planting can start in March/April.

**Mr. Ferrante to Mr. Codespoti:** Commented on the A-2 survey that Mr. Codespoti had prepared in 2005, there was no indication of any vegetation on the property. Ms. Harrigan has brought up the issue of beach grass.

**Mr. Sulkis:** Stated that beach grass has to be protected. Had the original survey depicted the beach grass, the matter would not be before the Board tonight.

**Mr. Ferrante:** Based on Mr. Codespoti's mention of accuracy, in view of the fact there is no depiction of any beach grass, so it does not matter if Ms. Harrigan is off by a foot or a hundred feet.

**Mr. Codespoti:** Replied from an aerial photograph the type of beach grass cannot be determined.

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**Mr. Ferrante:** Stated beach grass should not be discussed if none was indicated on his survey.

**Mr. Sulkis:** Asked what the client told him was the specific purpose of the application and did he know it was a Coastal Area Site Plan Review.

**Mr. Codespoti:** The survey was done for the variance application.

**Mr. Liddy:** Asked how the endless pool got a permit in view of all the violations that were cited.

**Ms. Harrigan:** The plans showed the pool on elevated piers, like the house foundation. The pool was not a solid foundation as it exists now.

**Mr. Bender:** Is it the applicant's position that nothing was done wrong, differently, etc? Everything was done as he was supposed to do?

**Mr. Curseaden:** It is the applicant's permit he has built everything according to the permits that were issued, except for the endless pool where there was an issue with the piers and there were structural issues from the way it was originally approved and how it could actually be built. The foundation had been approved and according to the Building Department it is not in compliance with the original site plan review and Mr. Voll has agreed to remove that. According to Mr. Voll he has not encroached on any beach grass, dune or protected area. The CAM report that was presented at that time identified the beach and adjacent areas and the resources that were on site. There was nothing being hidden.

**Mr. Bender:** Read from page 3, Part IV of the CAM report, "On adjacent site are beaches but no dunes" and "beaches will not be disturbed". Stated he found this disturbing as material underneath the house was taken and put somewhere else on the beach.

**Ms. Moch:** This was not intentional. John Gaucher said it was not part of the permit and should not have been done, but it is actually positive as it is beach protection.

**Mr. Bender:** Just trying to find out what was done that was not supposed to be done.

**Ms. Moch:** Agreed this was not originally shown on the plan.

**Ms. Rose:** Asked Ms. Harrigan for a definition of dunes.

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**Ms. Harrigan:** Read a definition of dunes.

**Ms. Rose:** Retraced the chronology of the stages of this permit to get a clearer understanding of the matter to be determined. From the information she had it appeared beach grass was present on the property before construction began.

Also, based on the survey that was done for the Zoning Board of Appeals variance, the survey was not meant to show anything other than the property and boundary lines of the house.

**Mme. Chair to Staff:** Asked what is being required of the applicant in order to be in compliance, and was demolishing the house in question.

**Mr. Sulkis:** Taking down the house was not the issue. The pool and deck are the issues.

**Mme. Chair to Staff:** If the issue of the deck was corrected to bring it back to the state that it was in, they could do that through the office? It would not have to come back to the Board?

**Mr. Sulkis:** If they said they would take off the deck and restore the beach to the conditions that existed before and remove the concrete foundation at the beach, Planning and Zoning would not have a problem with this.

**Mme. Chair:** If they leave the dunes as they are now, then they have to come back to the Board for a Special Permit?

**Ms. Harrigan:** Yes, because they would have regraded within a flood hazard zone.

**Mr. Sulkis:** No one is disputing the proposed restoration area. There is a question as to whether the restoration area is taking into account the full area that is disturbed. As far as Staff is concerned, they are stopping far short of where the grasses were that were in effect where a majority of the deck is.

**Mme Chair:** If they choose to try to restore it to what was the original state, what process would they have to follow?

**Ms. Harrigan:** Commented on what would have to be done with regard to the beach grass.

**Mr. Liddy:** Asked about compliance of the deck and its size.



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**Mr. Sulkis:** The fundamental issue is was the original survey that was presented actual depict the site conditions. It is Staff's contention that no it did not. That is why the matter is before the Board.

**Mr. Vetter:** How can it be determined by the Board what can be done to correct this matter?

**Mr. Sulkis:** From the information provided to the Board showing where the old house was, where the new house is in relation to where Staff believes the beach grass was. The Board will have to determine that. This is an unusual situation.

**Mr. Ferrante:** If they remove approximately 19 feet of deck, remove the pool and revegetate, then it is okay?

**Mr. Sulkis:** That would be the optimal solution if this had originally been done as a Coastal Site Plan Review, then there would be no structure on that beach grass.

**Mme. Chair:** Cannot decide this matter tonight.

Anyone to speak in favor of revoking the zoning permit?

Anyone to speak in opposition of revoking the zoning permit?

**Linda Voll, 119 Forest Street, Stamford.** Has grown up on Francis Street. Testified there was no beach grass where it is said that there is beach grass. Upsetting to hear the testimony about what was done on the property. Opposed to revoking the permit.

Anyone to speak in favor? Anyone to speak in opposition?

**Mr. Bender:** Is the Board going to try to find a resolution to this at the next meeting?

**Mme. Chair:** We would hope to come up with a recommendation.

**Mr. Curseaden:** The overall concern is the impact on the natural resources. John Gaucher does not have a concern over the plan that was proposed. Believes the best solution to this matter would be a Modified Coastal Area Site Plan application. Would prefer the matter not go back to Staff, because it is predetermined what they want to happen to this application. Very difficult to determine exactly where this beach grass was.

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**Mr. Liddy:** Does it matter where the beach grass was? Doesn't it matter where the beach grass is now?

**Ms. Harrigan:** Excavated fill has been put where the preexisting beach grass was.

**Mr. Goodrich:** Has John Gaucher submitted anything in writing as to his opinion and comments?

**Mr. Curseaden:** Communications via email. He was away and his response to the plan has not been received.

**Ms. Harrigan:** She received the restoration plan on Thursday afternoon which was forwarded to Mr. Gaucher. Has had communication with him. He has not submitted anything in writing to Mr. Curseaden or her.

**Mr. Goodrich:** Asked that the public hearing be left open to receive the information from Mr. Gaucher.

**Mme. Chair:** The public hearing will be left open solely to receive the information from Mr. Gaucher of the DEP.

**F. PROPOSED REGULATION CHANGES**

**Mme. Chair:** Mr. Sulkis has a lot on this. That is why the building height issue was not heard tonight.

**G. LIAISON REPORTS**

**H. APPROVAL OF MINUTES – (1/6/09)**

**Mr. Bender:** Motion to approve.

**Mr. Vetter:** Second.

All members voted in favor of approving the minutes as recorded.

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**I. CHAIR'S REPORT**

At the next meeting we will address the memo received from the City Attorney's office concerning abstaining and recusing in voting. Would like to establish a policy on this.

**J. STAFF REPORT**

**Mr. Sulkis:** We can go into the Kimball Report at the next meeting.

**Mr. Bender:** Motion to adjourn.

**Mr. Ferrante:** Second.

All members voted to adjourn the meeting at 11:30 p.m.

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Phyllis Leggett, Board Clerk