

**MINUTES FOR TWO(2) PUBLIC HEARINGS OF THE
PLANNING & ZONING BOARD
HELD TUESDAY, MAY 18, 2010; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the Planning and Zoning Public Hearing of May 18, 2010 at 7:30 pm.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Edward Mead, Mark Bender, Robert Dickman, KathyLynn Patterson, Kim Rose, Janet Golden, Gregory Vetter, Victor Ferrante, Susan Shaw, Chair.

Kevin Liddy (7:47 pm)

Staff: Emmeline Harrigan, Assistant City Planner; Phyllis Leggett, Board Clerk

The Chair asked to reorder the agenda to hear 957 West River Road before Lafayette Street.

Mr. Vetter: Made the motion to reorder the agenda.

Ms. Rose: Second.

All members voted in favor.

C. PUBLIC HEARING CLOSE BY 6/22/10; exp. 7/22/10

1. **957 WEST RIVER ROAD (ZONE R-A)** – Petition of Warren Field, Jr. for a 3-lot re-subdivision on Map 114, Block 907, Parcels 25D, 25C, 25B and 25AA, of which Warren and Mary Rose Field are the owners.

Thomas Lynch, Esq., Lynch Trembecki and Boynton, 63 Cherry Street, representing Warren and Mary Rose Field, the property owners. Application is to resubdivide Lot No. 3 on the current West River Estates Subdivision that was approved by the Planning and Zoning Board in 2000. The Fields bought that property that consisted of 5.5 acres of land. The property was subdivided into three lots. Two lots, one behind the other, are located at the intersection of West River Street with Wolf Harbor Road. The open space to the south of that , was part of that subdivision agreement. Lot No. 3 was the house that the Fields constructed as their own residence. They live at the house at 957 West River Street.

The property has a good portion of wetlands situated throughout. The houses were laid out in a fashion not to infringe upon the wetlands. Lot No. 3 has a portion of wetlands that comes along the western section where the shared driveway is going to be. SP-1 shows the existing subdivision.

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The Fields plan to sell their house, downsize, but stay in the neighborhood. This was part of their original subdivision plan, to subdivide Lot 3 into the proposed Lot 3 and Lot 4. Lot 4 is designated as a rear lot. Under Section 255 of the regulations you have to have sufficient frontage for a driveway, which they have on West River Street. There is a minimum one acre requirement for the lot. The driveway is not taken into consideration in the lot square footage. The legend shows the layout that all of the zoning requirements for the RA zone can be met with this reconfigured lot. A portion of the lot is located in the wetlands. On sheets SP2 and SP3 it shows there will be a shared driveway between lots 3 and 4. The current driveway that comes through a portion of the 50-foot frontage of West River Street will remain, but it will be shared between Lots 3 and 4. As a condition of approval a shared driveway agreement will be required for ingress and egress and also underground utilities will be located within the existing driveway that services 957 West River Street.

The applicant appeared before the Sewer Commission and a public hearing before the Inland-Wetlands Agency. There was a full approval granted from the Wetlands agency. There is a small portion of fill that needs to be accomplished to service the driveway that will be extended back from Lot 3 to Lot 4 and to mitigate that there is a creation area that is shown on the site plan prepared by Codespoti to offset the area, which is approximately 200 square feet of wetlands fill.

The Police Department had a comment regarding sight lines. They wanted some shrubs cleared through the area where the driveway will be. Also, there are two small jogs in the driveway where it becomes wider at the top of the driveway and near the start of Lot 3 and that will allow one car to pull over if another car is coming in the opposite direction. The Fire Department inspector is requiring installation of a sprinkler system because the house is more than 400 feet set back from the road or hydrant access.

Ms. Harrigan: Spoke to Mr. Sulkis who said there was an open space requirement which will be paid to the open space fund in lieu of property.

Mr. Lynch: There was discussion about whether the open space requirement had been met from the previous subdivision. Mr. Sulkis held that that open space was for the original configuration, so the creation of an additional lot would entail either further dedication or payment in lieu of that to the open space fund.

Mr. Bender: Stated since this was approval for a subdivision, how will the sprinkler system be implemented when a house is built.

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Mr. Bender: Asked how the requirement for a sprinkler system for the house get carried over from the subdivision plan which is being approved.

Mr. Lynch: Anyone who goes for a building permit has to go through planning and zoning first. Before the application is signed off on the plans would have to show the sprinkler system. It will be a condition of approval.

Ms. Harrigan: The letter of approval would incorporate the comments of the agencies who provided comments.

Mr. Lynch: Submitted a letter in favor of the subdivision from all the abutting property owners to 957 West River Road.

The Tree Commission also submitted a letter that was received by the office on March 31st, to which Buddy Field responded on April 28th, meeting their concerns.

Mme. Chair: Asked if anyone wished to speak in favor of the application. (No response)

Mr. Lynch submitted a letter signed by all of the abutting property owners in favor of the application.

Mme. Chair: Asked if anyone wished to speak in opposition to the application. (No response)

The public hearing was closed.

2. **PROPOSED ZONE CHANGE – LAFAYETTE STREET (ZONE R-7.5)**

Petition of Stephen Studer, Esq. for a zone change for three properties known as 4 Lafayette Street (Map 44, Block 405, Parcel 22), 9 Lafayette Street (Map 44, Block 410, Parcel 22) and 13 Lafayette Street (Map 44, Block 410, Parcel 21) be returned to their former MCDD zone status from their present R-7.5 zone status.

Stephen Studer, Esq., Berchem, Moses and Devlin, 75 Broad Street, Milford. Present on behalf of the three applicants for a zone change; Muriel Gregory, Frederick Gregory and Allan Gregory. Mr. Allen Gregory is present tonight.

Written material was submitted to the Board which was date stamped into the file.

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Mr. Studer stated Muriel Gregory is the owner of 9 Lafayette Street, one of the three properties in question tonight. Fred owns 4 Lafayette Street and Allen owns 13 Lafayette Street. He explained that on the map he distributed, the properties in the MCDD zone were highlighted in pink and the three parcels in question were highlighted in yellow and are in the R-7.5 zone.

He noted the placards were placed on the three properties as required and notice was sent to the neighbors by certified mail within a few hundred foot radius of each of the three properties.

The Gregorys are asking the Board to restore the three properties to their previous zoning designation. They are each presently zoned R-7.5 single family residential. They were each zoned MCDD. They are asking to again rezone them MCDD. Each of the three properties is bordered extensively by the MCDD zone. Each is located off the Milford Green on Lafayette Street. Each has historically been used for commercial and multi-family residential purposes. There are no plans for development for any of these properties. These are individual lots that have been there for a century or more. The structures are old and historic. There is no development plan. The applicants wish to make the same use of the properties as they have historically been and currently are used.

The concern is that in 2006 the Planning and Zoning Board, without notice to the Gregorys and input from them made each of their properties nonconforming uses when it rezoned them from MCDD to R-7.5, which is single family. The first the Gregorys heard about the change was when they received a letter from the Planning and Zoning Board back in the summer of 2006 telling them that their three properties had been rezoned.

The history of these properties was given to put the request in perspective:

4 Lafayette Street, which is behind a law office and next to a bank. It is one lot removed from South Broad Street and consists of approx. 7,850 SF. The building was built in about 1890. It was purchased by Fred Gregory's father in 1984 and it had been used as a bleach factory and has been converted to a multi-family residence.

9 Lafayette Street is approximately 11,750 SF. That piece of property is the third lot in from the Green and was built in the 1900s. It has been owned for 42 years by Muriel Gregory. In the 1960s it was an office and an apartment and in the 80s it was 100% office use. Now it is multi-family residential.

13 Lafayette Street is approximately 16,120 SF. The house was built in 1905 and purchased by Allen Gregory's father in 1981. It is used for an office and apartment at this time.

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The Gregorys' ownership of the three buildings goes back many years, as does the family history in Milford.

The three lots and structures predate the adoption of Milford zoning. These and other properties on Lafayette Street between South Broad Street and Central Avenue have been, and in some cases still are, used for residential and commercial purposes. In the 1930s when the Milford regulations were adopted, these three lots were situated in a "C" resident zone which is a multi-family zone. It allows one unit for every 625 SF of lot area.

Mr. Studer distributed an excerpt from the 1930's zoning map amended through 1942, together with a copy of the regulations from 1930 amended through 1942, which shows the designation and allowed uses of these three properties, as well as most of that neighborhood.

Gave the background to put the application into context. 2006 the homes on Lafayette were changed from MCDD to R-7.5 without the knowledge of the Gregorys. The properties have been in the family for a long time. Have no plans to change the use.

Mr. Studer reviewed the minutes from the P & Z Public Hearing from June 20, 2006 wherein the zone change took place changing from MCDD to R-7.5. Had the Gregorys received notice when this zone change took place they would have requested to remain in the MCDD as did the two other properties. In 1969 the three properties were zoned RO, Residential Office. Distributed a copy of the map that shows the RO is still in existence in Milford. It is not known what happened between 1942 and 1969 when the properties were rezoned from Residence C to Residential Office. A copy of the zoning map from that time period could not be located. He described how this area was highlighted on the map to focus on the area that is being discussed. This map shows the historic commercial/residential office mix of the zones that were to become downtown Milford. This was downtown Milford in the 1960s, 70s, 80s and 90s and then in 2004, the Planning and Zoning Board, at that time, took the GO, GB, RO and CBD, which collectively defined the business district and turned it into the MCDD. It can also be seen from the map that there is no R-7.5 anywhere in the area in question.

Residential Office is still an allowed use in Milford. It allows offices for business, financial, professional and personal services and allows a mix of office and residential uses. A good example of the RO zone today would be Cherry Street. What has existed historically exists today in this area. Between South Broad Street and Central Avenue it has never been a single family residential area. It has always been multi-family or commercial in nature. Those uses still exist on the Gregory properties today.

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In January 2004 all the various downtown Milford zones, including the RO were changed to MCDD. In June 2006, in response to the multi-family development on Noble Avenue, on a property directly behind 9 and 13 Lafayette, the Planning and Zoning Board on its own volition rezoned eleven properties on Lafayette Street from MCDD to the R-7.5 zone. The three most northerly properties depicted on the map handed out earlier on Lafayette still remain in the MCDD zone. Suggesting that the next three in line going down from the Green, deserve that same treatment.

In 2006 notice was not given by the Board to the individual property owners. Notice was published in the New Haven Register twice, which is the required legal notice. The Gregorys do not live in Milford. They live near Danbury and do not subscribe to the New Haven Register and did not learn of the Planning and Zoning petition until well after the decision was made.

Mr. Studer noted parenthetically that he wished to speak about due process and fairness. For an application such as that being presented tonight by a private individual, the Board requires a large placard be placed on the front of each property and if it faces more than one street, on each street so it can be noticed by passersby. The ad has to be placed in the newspaper, and the third thing that the applicant has to do is mail notice of the proposal to everyone within a 200-foot radius so that they know everything that is going on. These requirements are appropriate and are required by a private applicant. But when it is the Board's own action, the people whose property is actually affected are not even told. It's not telling the people within 200 feet and people driving by, the people who own the property are not told that they are involved. It's possible for someone who lives at the property not to be aware of something taking place, but if they live out of town, things do, and in this instance did, slip through the cracks.

The Gregorys also take exception to what they believe are factual inaccuracies used to justify the Planning and Zoning Board's actions in 2006. Mr. Studer distributed the excerpted minutes from the June 20, 2006 Public Hearing of the zone change. Also attached is a copy of the zone change map. He indicated that the Planning and Zoning Board used the same format on the zone change map that he is using tonight. It showed the 11 properties that were involved in the Board's request to rezone from MCDD to R-7.5.

The regional planning agencies were notified of the proposed change of zone. The reason given for the change of zone from MCDD to Residential 7.5 was "...to correct what should have been zoned residential, but was inadvertently made commercial during the last zoning update." He takes exception to that.

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There was nothing inadvertent about the 2004 zone change from GB, RO, CBD to MCDD. It was purposeful, intentional and no one on the Planning and Zoning Board who was unaware of it at the time. It was discussed in the 2002 Plan of Conservation and Development, as well as in the 2004 zoning regulations. Both were vetted several times over many years. The change that took place that night was not like the Great River Golf Course change which was truly an inadvertent oversight. The Board also made a few other inadvertent oversights. However, the 11 lots were not inadvertent.

Mr. Studer stated Mr. Platt who spoke at that meeting was correct. He said the people south of the Green were not fully aware of the implications of the change from MCDD when it was done and he believes that was the impetus and motivation for the Board to take this action in 2006. It was not inadvertence, but the fact that people's perceptions of what it meant were changing.

In 2006 at least one board member stated that she did not think the 11 lots in question were all previously zoned RO. That some were previously zoned R-7.5. There are some R-7.5 properties on the Green Street/High Street area, but none of the 11 properties was ever zoned R-7.5 and none of the properties along Lafayette were ever zoned R-7.5. None of those properties were ever single family properties. They have always been multi-family or commercial in character since the adoption of zoning by the City of Milford in the 1930s.

At the 2006 meeting Mr. Liddy asked why the 11 lots were being changed to R-7.5. The response given was that the lots were already established for R-7.5. As is now known, that is not correct. Had the Gregorys been at that meeting, that is something they would have pointed out, had they had the opportunity to know of and appear before the Board with respect to the application.

In 2006, the Gregorys actually owned four of the 11 properties. Approximately 25% of the land involved in this decision belonged to people who did not even have notice of the proposal and therefore, could not come and address it. Had they been able to appear at that time, they would have objected; not to the proposal but as applied to their three lots, which are the ones next in line coming down Lafayette Street from the Milford Green. They would have asked that their lots be taken out of the proposal and leave them in the MCDD, just as the Board left the other three lots in the MCDD, to the north of these properties. They do not object to the rezoning of their neighbors' properties to the south, but they are asking the Board to do what they would have asked the Board to do had they been at the meeting in June 2006. Leave them in the MCDD where they belong historically and as a matter of current usage. They believe their lots which are literally surrounded by the MCDD should have been left in the MCDD.

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Mr. Studer had three letters of approval from neighbors that were submitted for the record. Two neighbors are immediate neighbors on South Broad Street and one is an immediate neighbor on Lafayette.

The Gregorys did not receive adequate due process in 2006 and the Board was not given proper information in 2006. There was a lot of confusion in the sense that these 11 properties were being returned to something that they really were not, which is single family residences. Much of lower Lafayette is two-family in nature, while much of upper Lafayette is commercial in nature.

The Gregorys want to use their three properties as they have historically for mixed office and/or residential uses. The three properties in question are all outside the South of the Green Historic District and will not have any adverse impact on it. Believe these properties are the natural demarcation point for the MCDD and the neighborhood to the south. These three properties, because of their situation and location, are not conducive to single family use and by its actions in 2006 the Planning and Zoning Board rendered them nonconforming. They cannot be readily be expanded. They are harder to sell and finance. It places a lot of restrictions upon the historic use of the properties. Asking the Board to revisit the 2006 decision, which was based upon inadequate notice to the Gregorys and inadequate information to the Board and give back to the Gregorys the historic use of their properties, which they have enjoyed for 26, 29 and 42 years respectively.

Allan Gregory, owner of 13 Lafayette St. Stated his family's long-time history as residents and business people in Milford and the use of the buildings both commercial, office and residential. When he bought his property from his father it was zoned MCDD. His family owned four properties and received no notice of the zone change. Believes this is a fairness issue. Understands that the neighbors would like to keep things as they were, but in looking at the matter historically, things are not as they were.

Ms. Harrigan: Noted she is filling in for Mr. Sulkis tonight. There is currently enforcement action for 9 Lafayette St. Based on the zoning history the last approval for that office was for a ground floor office and second story apartment. Based on the Fire Department it has been converted to a three family unit without permits. There are life safety issues with the basement unit which were brought to the Planning and Zoning Department's attention by the Fire Department. They never received a permit for the conversion of that building to two units, let alone three units.

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Ms. Rose: Why is the applicant coming before the Board four years after the zone change took place in 2006?

Mr. Gregory: Was not aware of the zone change. Not an expert in zoning. Did not understand how the zone change would impact his property. Began this application last year but due to certain issues, it was held up until now.

Mr. Studer: Further attempted to explain the reason for the delay.

With regard to the enforcement action, Ms. Harrigan is correct about the fact that there was a third unit in that building and when they learned about it they took steps to vacate the tenant and to remove the apartment. There are two apartments there now, which predate the zone changes and should be grandfathered for two units.

Ms. Rose: Did not understand how there could be a third unit that the owner did not know about.

Mr. Studer: Agreed, but Mrs. Gregory did not know it was not allowed to have a third unit. Once this was determined, the apartment was removed.

Mr. Ferrante: Asked about the history of the properties zoning prior to 1969, and 2004 to 2006. Asked the history of the Gregorys' purchase of these properties and how the properties were used.

Messrs. Studer and Gregory responded by recalling the uses of the properties as businesses and/or residences and the zoning at those times.

Mr. Dickman: Reviewing the minutes of June 2006, with all the people in attendance who were in favor of the change, why were these property owners not in attendance.

Mr. Studer: The people who owned the four lots in question do not live in the area. The people who spoke in favor might have requested that zone change that was instituted by the Board. Four of the people who owned the lots in question were never given notice of the application and the public hearing and an opportunity to speak. It is his belief if they had had that opportunity to speak then as they are doing now, the Board might have agreed it made sense to do something with the eleven properties, but not necessarily all of them.

Mr. Liddy: As a landlord one should be fully apprised of what is going on with his own property. A tenant could be in touch with the landlord to let him know what is happening.

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Mr. Studer: People should know what is going on with their property. They can check on the property at times and for things that can be seen. You would not know if someone has proposed to change the residential use of your property. In 2004 when the Board went through its comprehensive city-wide rezoning, there are people who found about it belatedly through the newspaper. The Gregorys were not in Milford full-time in 2006. They cannot be blamed for not necessarily knowing what was happening at that time with respect to this particular proposal to rezone.

Mr. Mead: Asked if there was income being generated at this time from the properties and if there is an income why the need for a zone change back to MCDD. What do they propose to put in those buildings that would generate a different income?

Mr. Studer: It changes the uses that can be made of the property. It affects their property rights without notice and limits what uses can be made of the property. If they look to sell the property some time in the future, they are limited in terms of people who are going to buy the property because it is nonconforming. If it is not bought as a single family residence, it could be bought for commercial mixed use or multi-family. However, it cannot be expanded; it is more difficult to maintain; if it had to be rebuilt there can be difficulties. There are more complications with the nonconforming aspects of the use than there would be if it was zoned as it was previously.

Mr. Bender: Asked if the property owner knows the regulations of the MCDD zone and how this zone change would affect what they would like to do.

Mr. Studer: There is more flexibility in the MCDD and they are comfortable with that.

Mr. Bender: Notifications have changed and have gotten better than the old way. The owners now know. It is posted in front of the house. Would not want the owner to come back in a couple of years and say to the Board they were not aware of what it meant to make this change.

Mr. Studer: Made the correction by noting it has always been that the private applicant for a zone change has to give notice to a range of people in the public. The City has never and still does not do it. Potentially this same situation can occur again. Suggested the Board think about how it could improve notification to property owners in a similar situation in the future. A letter to the last known address could be sent from the tax assessor's records.

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Mrs. Patterson: Asked the addresses of the property owners who were in favor of the change.

Mr. Studer: Number 20, which is next to 13. The other letters of support are on Broad Street, No. 24 and 25.

Mr. Dickman: Stated it appears that the people who spoke in favor of the rezoning back to residential at the June 2006 hearing did so it seems in order to prevent commercial use of the properties in the area in order to preserve the character of the neighborhood. It seems that would be directly counter to what Mr. Studer said about the potential of selling these properties to other owners who would use them for commercial use. Whether or not it seems fair, Mr. Studer's client received the same notification as the other residents in the district. Does not understand how four years later the Board can give more weight to what the applicants are asking than the residents who spoke four years ago when the change was made.

Mr. Studer: Explained he is not suggesting the residents who spoke four years ago were not motivated appropriately and he is not suggesting that the properties to the south of the applicants, further away from the Green should not remain the same as they are for the reasons that were established in 2006. He is saying that they think there is valid reason, given the historic nature of this area, for the existing uses on the applicants' three properties to remain for those existing uses not to be rendered nonconforming by a change of which they had no notice. He believes had they shown up in 2006 and presented the case they are presenting tonight, there is a possibility that nine properties would have been rezoned, not eleven. Not asking to undo the others. Asking in this instance to give back what was taken at that time because rendering them nonconforming impinges upon their property values and property rights.

Mme. Chair: Opened the hearing to the public. She briefed the public about public hearing procedure. Asked if there was anyone to speak in favor of the application.

Ray Oliver, Architectural Services, 3 Lafayette Street. He is the property owner immediately adjacent to the subject properties. He has a mixed-use building containing a professional office and three apartments. In favor of the application. It goes back to the historic use of that area of the street. He obtained maps that go back to 1975 showing clearly that the property all the way down to Central Avenue was zoned RO, which is a mixed use office area. The maps were date stamped into the record.

He stated he believed the Board should consider not just the technicalities of notification, although that is problematic, but one of the motivating forces that

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happen during the Plan of Conservation and Development of 2004 was the idea that the zoning was to enhance the vitality of the downtown area. The residential office area was always similar to downtown without the use of stores. It had apartments and offices. That is a good thing because the offices are active during the day and then the apartment user come home at night. There is a non-simultaneous use, but it keeps the downtown center vital throughout the day and the night, so it does not become just a bleak residential, single-family area with nobody using the downtown. He believed that to be a very important concept that was used and maybe it got pushed too far. Believes there was a knee-jerk reaction to the large multi-family building that was created on Noble Avenue and so that was the response of the previous board to re-zone. The idea that these few apartments downtown would help to enliven the downtown is a good thing and should be considered.

He stated he was in favor of the zone change. His neighbors have always been outstanding. They kept their properties in good condition. There were a couple of problems with a tenant or two but they were taken care of right away.

Mr. Ferrante: Asked Mr. Oliver hypothetically, (without considering the multi-family building on Noble Avenue), what he would recommend aside from the alternatives of MCDD and R-7.5.

Mr. Oliver: Historically the residential office zone was that mixed use where it limited the amount of residential and it limited the amount of office use. Restrictions could be made on these properties to limit the scope of what could be done in the future.

Mme. Chair: Asked if there was anyone to speak in opposition.

Richard Platt, 132 Platt Lane: The houses in question are on the historic resources inventory list in Milford. These properties were intended to be in the South of the Green Historic District. Architecturally and historically they belong.

He stated what brought this issue to the forefront in 2006 was what happened on Prospect Street. Prospect Street was made MCDD by the POCD and the neighbors on that street also were not aware of what the implications were until suddenly there was a proposal to build a huge apartment complex between Prospect Street and the cemetery. At that time the neighbors were told they should be thankful they were not trying to build a CVS there. That is what gave Noble Avenue and Lafayette Street the horrors. They did not want anything like that in their backyards looming over their homes.

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Does not think the proper zone for these properties is MCDD. Does not think the present property owners will try to do more than they have historically done, but who knows what will happen years down the road if they are re-zoned to MCDD.

Asked the Board to consider putting language into the regulations that would protect the historic and architectural character of the neighborhoods in Milford.

Lily Flannigan, 38 Prospect Street. Stated in response to Mr. Liddy's statement that Prospect Street was incorporated into the MCDD zone to permit the Lily Pad B&B, the Lily Pad came into existence in 2001, before the street was zoned MCDD.

In 2004 when the residents found out about the proposal to build the apartment house on the street, they learned what being in the MCDD zone meant. She understands what is meant by not being individually notified.

She is opposed to rezoning the three properties on Lafayette Street. It is spot zoning, or zone gerrymandering. If allowed it will encourage more border neighborhoods apply for a change to opt out or opt into a zone. She and some neighbors are considering a request a zone change from MCDD back to R-7.5. Milford's historical areas need to be protected.

Jeanne Cervin, 3 Central Avenue. Present tonight in two capacities; one as a concerned resident of the neighborhood and as a past Planning and Zoning Board member. She and Mr. Liddy were on the Board in 2006 when the current change was approved.

Asked for clarification as to when the POCD was accepted. She thought it was 2002, not 2004. 2002 was the date of acceptance.

Ms. Cervin gave a history of the creation of the MCDD and its effect on some of the fringe neighborhoods such as Prospect Street, Noble Avenue and Lafayette Street. The concept was and is to encourage and permit mixed use along with business and/or retail in Milford Center. In the enthusiasm for this idea, or perhaps in an oversight, several of the zones in residential neighborhoods near the Center were converted to MCDD. The main streets that were impacted were Lafayette, Prospect and Noble. After the Prospect Street development was approved, she and another board member became aware of the encroachment of this zone into Lafayette and Noble and began an effort to convert the MCDD zone on these streets back to residential in the hope of protecting the integrity of these residential neighborhoods. It was not after Noble Avenue began, it was before then, and they were dismayed to find an application was already in

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process for the apartment building on Noble Avenue. Their hands were tied legally and they would not be able to change that zone or prevent that from being built, so they focused on Lafayette Street.

The Minutes of the June 2006 meeting indicate that the decision was unanimous to change Lafayette Street to an R-7.5 zone. All the members, along with a petition containing approximately 40 names on it were aware of what this change was about. At that time there was no one to speak in opposition. Now Mr. Gregory has stated why this was the case, in his case, but nobody spoke in opposition at that time.

Asked the Board to keep in mind there is now a South of the Green Historic District that begins is directly next door to one of the properties requesting the zone change. She has learned that these three properties opted out of the Historic District.

The Board's decision was unanimous and a reversal of such a decision would be very unusual. Would think that could happen only if there was some new and compelling information, which she has not heard this evening.

There are two lots together that would be large enough, if combined, to build a commercial building, a mixed use retail establishment or an apartment building. It is important to look at all the future possible developments to this zone.

Michelle Kramer, 104 West River Street, part of the Northern Historic District. She is active in support of conserving the historic neighborhoods. This change leaves the door open to encroachment. Concerned about will happen "down the line" to the historic commission and historic districts if people are allowed to opt in and out of zones like this.

Kathleen Seipel, 14 Lafayette St. Owns a house at 44 Lafayette Street as well. Her property is very close to the Gregory properties, being across the street from two of the properties and there is one house in between hers and the third Gregory property. Very important to her that Lafayette Street remain the beautiful, residential and historical area it is today.

Kevin DeMarco, 21 Lafayette St. Noted that the Donaldsons at 15 Lafayette Street, who wrote they are in favor of the project, are elderly and he does not believe they are fully aware of the implications of their home being in the MCDD zone. In January 2007, the South of the Green Historical District was put into effect to maintain the historic integrity of that area. Nos. 4, 9 and 13 opted out of the Historic District, but they are part of the neighborhood. Noted: 4 Lafayette

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has not had a business on its premises since he moved in 14 year ago. 9 Lafayette has not had a business on its premises since Ness Security moved out in June 1998. 13 Lafayette is the only property that had a business in the past 12 years. Thinks 13 Lafayette was for sale at one point, but did not sell presumably because it was not a commercial property. Not as concerned about the properties' use now, but what they could become in the future given a zone change back to the MCDD. Read the reason for the change cited in the letter he was sent, but disagreed with its reasoning.

Carol Smith, 21 Green Street. Fifty-year resident of the area known as Historic District #2. Was Chairman of the Historic District Study Committee and is Chairman of the Historic District No. 2. These parcels are the gateway to the Historic District. Not only to the Historic District, but to the harbor and seaside areas beyond it. Tourism and visitors so important to the economic well being are attracted to the historic ambience of the town. Urged denial of the application.

Andrew H. Duhaine, Reed Street. Once owned three houses on Reed Street. Now owns one which is a two-family. Don't leave this open to more commercial development. Once it is taken away you can't get it back.

George Beecher, 12 Lafayette St. Realizes this area is blessed with being able to retain its historical, peaceful and residential nature. Fear that if the zone change was granted many negative possibilities will be opened. Not concerned with right now, but the potential. Opposed to the change as a long time resident.

Timothy Casey, 59 Green Street. Member of the Historic District Commission #2. All the speakers have given excellent testimony as to what a zone change could potentially mean to the character of the neighborhood. Not concerned with the Gregorys' properties now. It is what could happen if they were sold as happened on Noble Avenue and what was proposed on Prospect Street.

Greg Carman, 25 Lafayette St. Original use of all these homes were single family. His home goes back to 1835 and has always been used as a single family home. There has been some office and mixed use and is now single and two-three family homes, and one grandfathered business on the street. The buildings are in a transition area, between the commercial downtown and the Historic District 2. There needs to be a proper use of these buildings for entrance into the historic area. The Planning and Zoning Board had seen mistakes made in certain areas that were changed when the MCDD went into effect and they attempted to correct the mistake on Lafayette Street, but not before a home which was on the Milford Historic Resources List had already been bought and altered into a large commercial building. There is congestion

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on the street from businesses on Broad Street. There is inadequate parking for employees which jams the entrance to the street. Any more development, large or small scale will be detrimental to the area. Selling the properties for commercial development would financially benefit the owners of the properties and be detrimental to the residents of Milford. He cited Fort Trumbull, the Cadley residence and Noble Avenue as examples of properties that were lost to development. Lines need to be drawn and kept for the necessary good of the community and not for single individuals.

Kathleen Donovan, 22 Central Avenue. MCDD has too many possibilities for use. Vote against the application. Takes issue with the comparison of Lafayette Street to Cherry and West Main Streets. Those two streets are major thoroughfares to and from the highways and to downtown and are more conducive to the types of uses they have. Lafayette is not a major thoroughfare to the highway. Some of the homes on Central Avenue went from small multi-family to single family, which contradicts the theory that these homes are combination commercial/residential.

Donald Seipel, 14 Lafayette St. Owns another house on the street. Opposes the zone change for the reasons previously stated. He owns property in another town, but keeps abreast of the activity in that town because he is concerned about his property there. He believes the Gregorys were in the neighborhood at the time the zone change was made.

Pam Mayer, 44 Prospect Street. In support of the neighbors at Lafayette St. So much of this was a result of what went on at Prospect Street. Asked the Board to be considerate of the decision the previous board made which was largely the result of what was happening to the residential areas that surround the beautiful downtown, which was slowly getting whittled away. Most of the residents have been here for many years and want to stay here.

Mary Beecher Hodgins, 10-12 Lafayette St. Historic uses of 4 Lafayette St. were varied. Her mother was active in having dangerous commercial uses of that property removed. Asked for a show of hands of people who did not speak but were opposed to the application. (There was a show of hands)

Michael O'Grady, 32 Reed St. Opposed to any zoning change. Has not heard of any hardship to make this change.

Nancy Bodick, 26 High Street. Opposed to the application.

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Peter Mullen, Jr., 59 High Street. What he sees going on here is similar to what prompted the Historic District 2. Does not know what the future holds, but when two people who own three adjacent lots go for something that has almost no regulation they have something in mind for future use.

Rebuttal:

Mr. Studer: Listened to a number of people who are very sincere in their love for their neighborhood in their concern and what tonight's application might mean to that neighborhood and he respects that.

Ms. Cervin is correct that in 2002 the Plan of Conservation and Development which formed the philosophical background behind the Milford Center Design District. The notion was to treat the downtown as a cohesive whole, recognizing there are [6] sub-districts. It is helpful to the downtown to have a vital mixed use. Professionals and small businesses look for small offices near the Green within walking distance of the downtown. In 2004 when the regulations were adopted to implement the Plan, the regs did not implement the notion that what was good for one street in the area might not be good for another street. The way to address the concerns of what happened on Noble Avenue and Prospect Street might be to amend the downtown regulations to preserve the current concept, as opposed to developing a construct of something that never was. Since the 1930s this block has had a history of commercial and residential mixed use.

In 2006 the quick fix for the neighbors was to make it single family. He gave the sizes of the lots because he realized it is not just about the properties' current use, but what might happen in the future. Lot 4 stands alone. The other two properties combined are approximately a half acre. You cannot get the kind of concerns people are talking about on a half acre of property.

Recognizes the MCDD does offer a wider range of uses and opportunities than the RO did. Would not be opposed to going back to RO status.

Mr. Gregory: Prospect Street keeps coming up. What he is objecting to is what happened to them, which they were outraged over, which is not understanding exactly what happened. They don't have a problem with that happening to him.

Responded to the person who stated he should have been aware of what was taking place on his [Gregory's] property, just as this other person watches over his property in another town.

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Original site for Ness Corporation was on Cherry Street. Went before the Planning and Zoning Board but was told they could not develop the property because it was residential only. A year and a half later that building became offices.

Referred to Fort Trumbull and his attempts to build apartments there which were rejected due to architectural design. He noted what is there now is certainly not architecturally compatible.

Noted the growth of Milford Hospital and the role it has played in providing offices and apartments in that area. In the future, the hospital may make a bid to expand its facilities onto these streets and make a bid for all the properties. No one knows what the future holds.

Agreed with his counsel that this is a property rights issue and he is not asking anyone in the neighborhood to do anything else with their property. He has no control over what could happen in 20 years to the properties and no one knows what future planning and zoning boards will do to the properties. Asked for the Board's consideration and understanding of his position.

No rebuttal from the public.

Ms. Harrigan: No one knows what the properties are intended for and it appears Mr. Gregory is not proposing anything at this time. Thinks the Board has to look at not only what each zone allows in terms of use, but what each zone allows in terms of building footprint. One of the arguments being made by the residents and what is existing on site, in appearance these buildings still look like single family homes. The MCDD regulations allow a building footprint that is different. A "0" lot line front yard setback; 0 or 4 feet side yard setbacks. That is also something for the Board to consider.

Mr. Ferrante: Asked Mr. Studer if his clients understood they are not being forced to convert to one-family homes and what they have been doing for the past number of years they can continue to do.

Mr. Studer: Did not know that the zone would allow them to do what they have been doing. They are stuck in time. There are certain things he can never do with this property. He understands at this time he does not have to convert to a single family residence.

The Chair declared the Public Hearing closed.

[Janet Golden left the meeting at 9:52]

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D. PUBLIC HEARING CONTINUED - CLOSE BY 5/25/10; exp. 6/24/10

3. **145 HIGH STREET AND 0 RAILROAD AVENUE (ZONE MCDD)** Petition of DeLeo Brothers Property Group, LLC for Special Permit and Coastal Area Management Site Plan Review approval for building renovation and reconstruction, 6 residential units, as well as a 15,800 SF parking lot on Map 54, Bock 322, Parcels 1 and 2B, of which DeLeo Brothers Property Group, LLC is the owner.

Kevin Curseaden, Stevens, Carroll and Carveth, 26 Cherry Street. At last month's meeting, the Board had asked for a couple of changes based on comments from the neighbors at Darina Place. Brought revisions to Mr. Sulkis last week. Don't know if he had an opportunity to review them. Have distributed them to the Board. Specific changes were made to the lighting plan. The 20-foot poles have been dropped to 10-foot poles, and the number of poles have increased throughout the site. The lighting specialist reworked the setup so that it is zero illumination on the property line and it is within the standard. A decorative fence was put up between the railroad property and the High Street property. It is an 8-foot white vinyl fence based on the request of the neighbors along the property line. There is also a decorative fence bordering the DeLeo's property with Mr. Agro's on the easterly side. The dumpster was removed and replaced with six receptacles and moved that closer to the building. The landscaping plan has been adjusted slightly. Believes all the issues have been addressed.

Mark Davis, Engineer, Westcott & Mapes; John Wicko, Architect; Stephen Wing, Landscape Architect are present to answer any questions on the plans.

Mr. Liddy: Looks like all the homes along Darina place already have fences on the rear of their properties. Where will the new fence be put?

Mr. Curseaden: Will have to work that out with the neighbors. The old fences can be torn down and Mr. DeLeo could replace them with one fence stretching across the property.

Mr. Vetter: Asked if there was a change in the width of the buffer strip between the parking spaces and the neighbors' houses. Also asked about progress in the ramp access to the stairs of the train station.

Mr. Curseaden: No change in buffer strip. Sent a marked up proposal to DOT in New Haven. Have received no response as yet.

Mr. Ferrante: Asked if there would be a sidewalk on the property.

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Mr. Curseaden: No.

Ms. Rose: Will the access behind the building up to the railroad station be left?

Mr. Curseaden: No. He had spoken to Mr. Sulkis. People would be walking behind residences in the morning. That would not be a good idea. Hoping to work with DOT and get a real access.

Mme. Chair: Asked Ms. Harrigan if she had comments.

Ms. Harrigan: She reviewed the plans with Mr. Sulkis. They concurred that the changes to the plans met the Board's requirements and are satisfactory.

Mme. Chair: Asked about the lighting poles.

Mark Davis, PE, Westcott and Mapes, 142 Temple Street, New Haven. On the previous plan there were two types of poles; a 20-foot pole and a 10-foot ornamental pole. Eliminated all the 20-foot poles. Discussed the pole change from 20' to 10'. The entire site is illuminated with the ornamental poles. The spillage is the same as it was before. No parking spaces were lost.

Mr. Ferrante: Thanked Mr. DeLeo and his brother for working so well with the Board.

Mme. Chair: Asked if there was anyone to speak in favor of the application (No response)

Asked if there was anyone to speak in opposition?

Robert Sommo, 35 Darina Place. Thanked the applicant for addressing all the issues the residents brought up at the last meeting. Asked to see where the dumpsters would go.

John Wicko, Architect, 50 Broad Street. Showed and described the dumpster plan to Mr. Sommo.

Mr. Davis: Showed Mr. Sommo where the dumpsters were relocated, as well as the revised lighting plan.

Mr. Ferrante: Thanked Mr. Sommo and the other residents who have contributed to this project.

The Chair declared the public hearing closed.

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Ms. Rose: Made a motion to approve the application of DeLeo Brothers for Special Permit and Coastal Area Management Site Plan Review at 0 and 145 High Street.

Mr.Ferrante: Second.

Mr. Liddy: Stated it was not customary for the Board to close a public hearing and vote on it the same night. Suggested waiting for the next meeting to make sure everything is in order and the Board could discuss all the elements of the application. The Board just received the changes to the plans tonight.

Mr. Bender: Agreed. The Board should be given the opportunity to review the plans.

Mr. Ferrante: Withdrew his second.

Ms. Rose: Withdrew her motion.

E. OLD BUSINESS

PUBLIC HEARING CLOSED 5/4/10; exp. 7/6/10

4. **90 HEENAN DRIVE (ZONE CBDD)** Petition of 90 Heenan Drive, LLC for Site Plan Review approval to construct affordable housing units pursuant to CGS Section 8-30g on Map 91, Block 807, Parcel 2, of which 90 Heenan Drive, LLC is the owner.

Mme. Chair: Will begin the discussion tonight and continue at the next meeting.

The City Planner, Assistant City Planner and Fair Housing Officer have all provided information to the Board on 8-30g, as well as the Board's responsibility.

Read a portion of the state statute that defines the Board's duties and responsibilities in their decision making under the 8-30g statute.

Mrs. Patterson: After walking and reviewing the site sees a few safety issues of concern. People would enter from Research Drive into the residence and come out that way where there are a lot of commercial tractor trailer trucks and buses with other business around. The applicant wanted to put a sidewalk between the two entrances of a parking lot. That is not a safe situation either. There is activity there at night, although it was stated there is no night activity. Also concerned about the retaining wall for the people who live at the lower level of the Ryder Park area.

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Mr. Bender: On one of the sketches the road was only four feet from a building. That is too close for any type of vehicle coming down the road. Also, not clear on the letter from the engineer wherein he stated the water was draining into the property. The property is two levels. Has not seen anything that says it is stable enough to handle that.

Mr. Mead: There is no open space being left for the residents' use and no extra parking. Would eliminate three of the homes to provide open space.

Ms. Shaw: Agreed, especially about the open space, but 8-30g does not consider open space or extra parking spaces.

Ms. Rose: This is not a good statute, although it is good intentioned. It does not allow for quality of life by the inhabitants. This development is dangerous to whoever would live there whether they be 55 or older or have children. Riding a bike or walking would be dangerous. With regard to the lower project, agrees that the slope is very steep; did not see evidence the whole thing will hold and the water runoff is a definite issue. Not sure how the development will be contained on top. Not in support of the project.

Mr. Liddy to Ms. Harrigan: Asked if the Board could make modifications to the application or did it have to rule as a yes or no. The applicant threw out many options to the Board.

Ms. Harrigan: Section 8-30g is very specific and the Board could not make modifications as they would a site plan review or special permit.

Mr. Ferrante: Does not know why the applicant offered the Board several options to choose from. Also the lack of parking, circulation within the project and lack of open space are matters of public health and safety.

Mr. Bender: The Board cannot use parking and open space as a reason to deny.

Mr. Ferrante: Believed they do apply to public health and safety.

Mrs. Patterson: Fire Department mentioned there was no other access to Quarry Road which presents a safety issue.

Ms. Shaw: The original Police Department took issue with the single access into the northern end of the park and that it did not connect with the other end. The applicant sent a letter to the police department saying they believed it was impossible to connect the two roads. Sgt. Sharoh of the Police Department

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amended the report to reflect that in light of the impossibility, it would be approved but recommended that the two private roads become connected along with the easement to allow emergency vehicles to pass through the complex. He rephrased it to say through the suspected reason of topography, it is not practical to interconnect the two private roads, although it would be beneficial to have the roads interconnect, it should not be deemed necessary for approval. It was a concern of the Police Department that the roads were not connected.

Agrees with Mrs. Patterson regarding safety. There are currently tractor trailers up there as they go down Research Drive.

The use of the area is described by the applicant as Light Industrial. It is an industrial district, even though it can be used for office space. There could be any number of allowable uses in the industrial zone, i.e, freight, trucking, etc., which present a safety issue as well as changes the use, in portion, of the ID zone. However, the ID zone in that area cannot be used to its full potential. The Plan of Conservation and Development speaks about the necessity for maintaining our industrial zone as an economic vehicle. Agrees that the northern portion presents a safety issue as well as a possible change in zone use.

The Chair discussed the process by which the Board would make a determination on this application.

Mr. Liddy: Asked that the City Attorney review the Board's motion to make sure the City has legal grounds to stand on should the Board's decision be appealed.

Ms. Shaw: The Board will give due diligence as it would with any motion it makes. Any applicant has the right to appeal any Board decision. The Board will spend some time on the motion to get it right.

Mr. Bender: Asked if "due diligence" meant that the City Attorney would review the motion before it is presented.

Ms. Shaw: In the past two years not aware of times when the Board's motions have gone to the City Attorney for review.

Mr. Bender: Stated whatever the motion is he would like the City Attorney's office to look at it. The way the two groups, (applicant reps vs. city reps), were disagreeing as to what was right, he would like the City Attorney's office look at the Board's motion and give their opinion.

Ms. Shaw: Responded that the Board is always in the middle when the City Planner and the applicant disagree. The Board is elected to interpret the regulations.

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Stated she had asked Mr. Ivers to be present because he was the City's authority on fair housing and 8-30g housing.

Mr. Bender: Asked the Chair if it was her opinion that the City Attorney's office did not need to weigh in on this very important decision.

Mrs. Harrigan: Asked to comment. The Board has to make their findings. They have reviewed and deliberated the information they received. By statute, it is the Board that has to develop their findings and make the decision. Agrees that the Board's discussion needs to be deliberate and thorough because the motion has to reflect the entire contents of its argument, whether for or against. The City Attorney cannot add to that.

Mr. Bender: Not asking for the City Attorney to make his decision. Asking for information to help in the decision because it is a very critical decision. The point was made that whatever decision the Board makes, may or may not result in legal action. Would think the Board would want them in early to weigh in an opinion, not a decision, before the Board makes a decision.

Ms. Shaw: The Board has to be careful that if they make a motion it cannot be substantively changed. If the Board feels uneasy at any point, it can ask for an opinion, but asking if its opinion has the capacity to be appealed or to be appealed successfully has never been asked in the past.

Mr. Bender: The Board has used the City Attorney's office many times in the past. They have provided their opinion numerous times. Prior to the public hearing he asked the Chair to ask the City Attorney to weigh in during the public hearing and the Chair felt it was not necessary.

Ms. Shaw: Trusts the Board will feel comfortable by the time it establishes the motion, however, the Board interprets its own regulations.

Mr. Liddy: Has seen a lot of 8-30g applications in the years he has been serving on the Board. The City Attorney has always reviewed the motion before it was read in public to make sure it was constructed properly.

Ms. Shaw: That is what she said would be done, but as far as the content is concerned, it would be inappropriate for the elected Board to do that.

Ms. Rose: Has the applicant actually ever satisfied the Affordability Marketing Plan with Mr. Ivers?

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Ms. Shaw: Not to Mr. Ivers' satisfaction. Mr. Ivers' letter of April 6, 2010 to Mr. Sulkis contained comments on the plan. Mr. Carroll or Mr. D'Amato had stated that they would not present anything further on the marketing plan than has already been submitted.

Mr. Vetter: Suggested continuing this discussion at the next scheduled meeting.

F. PROPOSED REGULATION CHANGES

Ms. Harrigan: At the Zoning Board of Appeals meeting last Tuesday, the ZBA found for the appellant that the zoning regulations were unclear as to what defines abutting Long Island Sound. This was a property on the Housatonic River where a property owner had installed fencing behind the rear elevation of the house. The regulations clearly do not allow fencing on properties that abut Long Island Sound. It was the Zoning Board of Appeals' decision that they did not feel that the Housatonic River qualified as adjacent to Long Island Sound and overturned the cease and desist order of the Assistant City Planner.

In view of this situation she supplied the Board with a proposed regulation change based on the discussion held at the last meeting with regard to Section 4.1.7.3 of the zoning regulations, to add the words "watercourses, or tidal wetlands" between the words "Long Island Sound" and "only" of the current section.

Mr. Vetter: Concerned that this is a broad restriction for the purpose of providing view protection.

Ms. Harrigan: Explained that this was the clearest and most simple way to apply the regulation that is fair to everyone, especially for the properties along the Housatonic.

Mr. Liddy: Asked how a water course was defined, i.e. rivers, LI Sound, tidal wetlands?

Ms. Harrigan: Water courses cover rivers, brooks, streams. If the Board has consensus, it can be referred out and perform the statutory necessities before a public hearing is scheduled.

G. LIAISON REPORTS - None

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H. APPROVAL OF MINUTES – (5/4/10)

Mr. Vetter: Motion to approve the minutes.

Mrs. Rose: Second.

The Board voted to approve the minutes as recorded.

I. CHAIR'S REPORT

Read a memo from the Mayor advising of a free FOI (Freedom of Information) workshop to be held on June 29th at the City Hall. Two sessions will be held; one at 2:00 p.m. and one at 6:00 p.m. Notify Toni at the City Attorney's Office if you would like to attend.

J. STAFF REPORT – None.

Mr. Vetter: Motion to adjourn.

Mrs. Patterson: Second.

All members voted in favor of adjourning the meeting at 10:53 p.m.

Phyllis Leggett, Board Clerk

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