

**MINUTES FOR TWO (2) PUBLIC HEARINGS OF THE
PLANNING & ZONING BOARD HELD
TUESDAY, SEPTEMBER 20, 2011; 7:30 P.M.
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the September 20, 2011 Planning and Zoning Board Public Hearing at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Victor Ferrante, Edward Mead, Mark Bender, Janet Golden, George Gasper, Kevin Liddy, Susan Shaw, Chair.

Not Present: Robert Dickman, Kathy Patterson, Gregory Vetter, Vice Chair.

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

C. PUBLIC HEARING

1. PROPOSED TEXT AMENDMENT TO ZONING REGULATIONS

1. Section 2.5.6 Non-Conforming Plan, Construction or Use
2. Section 6.1 Non-Conforming Uses, Structures and Lots

Mme. Chair: This change was presented two weeks ago as a suspension by the Mayor. It has since been redrafted as a regulation change. She had expected the Mayor to be present tonight to speak to this.

The Chair read the proposed text amendment change to Section 2.5.6 and Section 6.1, as follows:

Section 2.5.6.3 (New)

A complete application for approval for a zoning permit submitted during the period of August 29, 2011 through August 28, 2012 for the repair and/or replacement of any pre-existing, legal non-conforming principal building(s) or use(s) which sustained damage, in whole or in part, as a result of Hurricane/Tropical Storm Irene on or about August 28, 2011 shall be approved within the same location and footprint prior to Hurricane/Tropical Storm Irene subject to the following:

(1) In no way shall any pre-existing, legal non-conforming principal building(s) or use(s) in existence prior to Hurricane/Tropical Storm Irene be increased, enlarged or extended without prior zoning approval.

(2) This section shall in no way relieve any property owner from compliance with §5.8 of these regulations or any State or Federal, including DEEP and FEMA, requirement or approval necessary for the repairing, rebuilding and/or replacing of any pre-existing, legal non-conforming principal building(s).

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(3) Property owners shall submit proof to the satisfaction of the Director of Department of Permitting and Land Use, or her designee, that the application submitted is strictly in connection with the replacement and/or repair of a principal building(s) which sustained damage from Hurricane/Tropical Storm Irene on or about August 28, 2011. Such proof may include, but not be limited to, evidence of an insurance claim, architect's certificate, engineer's certificate or any other evidentiary information the Director of Department of Permitting and Land Use or her designee may deem necessary.

Section 6.1.5 (New)

Article II, Non-Conforming Plan, Structure or Use, §2.5.6.3 shall be incorporated herein and made a part hereof.

The Chair outlined the procedure for which regulation changes are done. Based on the Board's comments, the Board will instruct the City Planner how to move forward with the regulation change. That will then be distributed to City and State departments per statute, and when those comments are received, another public hearing will be held to review the final regulation. Any regulation change will have to be approved by a majority of six members of the Planning and Zoning Board. The majority of six is the majority of the board seats.

There was a broad discussion about the original proposal two weeks ago. Mrs. Harrigan was asked to discuss the FEMA requirements.

Mrs. Harrigan: FEMA ordinances, as the regulation changes are written, are not exempted. When the City enters into an agreement to allow citizens to allow flood insurance within the community, the City is obligated to adopt flood hazard regulations. Within those regulations it does require that any structure that is substantially damaged at or over 50% of the appraised value of the structure, that structure then has to be brought into compliance with the flood hazard requirements. If a property sustains enough damage it has to be elevated up, whether on foundations that are vented or elevated piers, depending on the flood hazard zone that they are located within.

Mme. Chair: Asked the public to come forward and speak to this regulation. She explained the Public Hearing procedure as it relates to the public speaking.

Gina Badalamenti, 20 Bayshore Drive. In favor of this proposal for many reasons. One is it impacts her directly. When she bought this house seven years ago it was disclosed to her that this was a legal nonconforming structure. She had no knowledge of that. She is now finding out after the hardship this storm left her, that she might lose what she purchased in good faith. She and her mother both own the house and they will have to absorb the responsibilities of what this Board decides. She hopes the Board will take into consideration that many people are in the situation of having legal nonconforming structures. Does not want anything more than what she had prior to the storm. She has no problem abiding with FEMA regulations or safety issues.

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Mr. Ferrante: Asked what she thinks she will lose.

Ms. Badalamenti: Replied she has a two-family structure and has a legal nonconforming garage that the previous owner had changed into a one-bedroom apartment which is a legal nonconforming one-bedroom apartment. She is afraid she might lose the two-family structure and have to move, which she and her mother cannot afford to do. She has three units on Bayshore Drive.

Mr. Ferrante: Asked if she was across the street from the beach.

Ms. Badalamenti: She is on the beach.

Mr. Ferrante: Asked if she was most concerned about the use.

Ms. Badalamenti: She is concerned that she and her mother could be forced into a situation where she has to sell the primary residence because they have to go to a single family and they are not prepared to do that.

John Grant, 11 Ettidore Park. Basically in favor of this proposal. Knows that this was produced by the Mayor's office and not by the Planning and Zoning Board. He suggested some language and requirement changes, especially if there was a legal nonconformity of the structure, whereby the person might not have to go back for a CAM review; require an A-2 survey; come to the Board for a Special Permit or Special Exception. Suggests these types of situation could be determined by the P & Z staff.

Where it states principal building, should also include accessory structures within the legal nonconforming properties.

In Section 5.8.6.2, the dwelling's lowest floor level has to be above the BFE. If someone has an existing nonconforming structure that has been damaged, according to this regulation they automatically have to raise the house, or at least that portion of it that got damages. This should be looked at, as well as garages.

Has not heard anything addressed about building codes. He noted building codes that should be looked at that pertain to buildings within the flood areas.

Jeanne Cervin, 3 Central Avenue. Not for or against this. Believes this has to be thoroughly thought through. Watched the last meeting when the Mayor and City Attorney proposed the suspension of regulations regarding rebuilding of homes damaged in the hurricane. She questioned the legality of this proposal at that time and thinks a land use attorney should have been obtained before the suspension was proposed. She believes all the land use departments should have been consulted.

Does not think the City's land use professionals were involved in the preparation of the text regulation changes proposed tonight. She hopes the desire to help the people who were impacted by the hurricane affect clear thinking and a thorough review of the consequences if these regulations are adopted.

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Questions need to be asked, such as: How many homes are involved? Will the door be opened to future lawsuits? Would the Board be willing to allow an illegal multi-family residence back into a single family neighborhood, thereby disregarding the intent of the Plan of Conservation and Development? Will good will towards some have a negative impact on others? Is the one year time limit appropriate to accommodate all the administrative work that this will entail.

Ms. Cervin distributed to the Board members copies of the Department of Permitting and Land Use Director's comments on the issue of waiving permitting fees.

She suggested that if any regulation changes are deemed appropriate for this recent natural disaster, they should also apply to any similar loss in other natural disasters. It might be possible to formulate a regulation that would apply to all.

Cheryl Warren, 6 Bayshore Drive. She wants the regulations passed. She and her neighbors have struggled with homes that cannot be lived in. She believes it is responsible for the Board, the Mayor and the Town of Milford and everyone involved to address the reality of those who have lost so much due to the hurricane. Asked what happens if another storm comes and the houses are already compromised?

Mary Louise Vitelli, 115 Melba Street. She presumed this regulation would be passed. She is an attorney who drafts regulations and laws. She does not care who drafts the regulation. It is all about content. She has lost her only residence. She is staying at the Hilton Hotel in Milford. Don't let process prevail. This is all about people's lives. Let's move forward and help everyone who has been involved. She has been very appreciative of the people she has met from the City and FEMA.

Marsha Ziebel, 10 Silver Street. She asked that the Board respond, not react. She has lived at the beach for 43 years. She has seen a lot of hurricanes come and go. In 1992 she had over \$40,000 worth of damage. Feels bad for those who have lost their houses, but this will set a precedent. Next month may bring another hurricane. What happens then? What if a tornado hits? She empathizes with what people are going through because she was there herself in 1992. Asked the board to respond, not react.

Mme. Chair: No further comments by the public. Asked for the Board's comments based on what the Board heard from the public.

Mr. Liddy: Does anyone know the number of homes that were affected.

Mrs. Harrigan: The Building Department is in the process of inspecting and evaluating properties, especially with regard to the over 50% threshold, where if a property sustained that much damage, it must then meet the flood hazard requirements and elevate up. Does not have a specific count.

With regard to Mr. Grant's comments, Planning and Zoning does not have the ability to regulate or change the State's Coastal Management Act.

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Mr. Liddy: Asked for clarification on some parts of the proposed regulation changes.

The Chair clarified for public that the only way that a pre-existing use, or nonconforming on a lot would become an issue if it is 50% or more. Otherwise, any repair just meets the building code. Only talking about those structures, which is implied within the regulation.

Mr. Ferrante: There is a lot wrong with this section as it is written. The person who said respond, don't react is correct. There have been a lot of hurricanes. If the Board does this every time there is a problem, there will be a mish mash of regulations. He does not see any way to salvage this proposal.

Mrs. Golden: How can it be proved that a damage is Irene related. Someone could have a leaky roof and the damage caused by Irene made it worse. Now they could say it is Irene related.

Mr. Ferrante: Mr. Grant said no A-2 surveys. How do you know what was there before? How do you know what is being proposed if you don't have an A-2 survey? How do you comply with the DEP or FEMA regulations if there is no A-2 survey? He is not sure that this regulation change helps anyone who came before the Board tonight. He understands that the people are hurting but does not think this regulation addresses any of that. Does not see how the Board can do anything with this.

Mme. Chair: Invited Ms. Mathiasen to speak on this matter.
The Chair asked if there was a problem with having this go through the zoning enforcement officer, which is usually how regulations are done. Is this an issue?

Ms. Mathiasen: She does not have any strong comments on the merits of this one way or the other. What is needed is clarification as quickly as possible. From her experience in watching how things go through the organization, the overall impact of this is if a damage has been more than 50% affected, (if more than 50% of the value of the structure has been damaged by flood, as determined by the Building office, that structure is going to have to meet current flood standards and the Board does not have the ability to waive that. Since this proposal only affects buildings that were more than 50% damaged, she does not think it will have a huge amount of applicability because those houses are going to have to be elevated and all living is going to have to be above flood stage. So, this only applies to local zoning requirements such as setbacks. She does believe it applies to uses as well. She does not see this regulation as having a huge impact. Without the regulation the people would have to go through the ZBA if they are violating setbacks, etc. With this regulation they can skip that step. Does not see a huge impact one way or the other, but the sooner that a decision is made by the Board, the better, because confusion is everybody's enemy and uncertainty is everyone's enemy.

Mme. Chair: Unclear as to how staff defines usage. For example, if someone says they have a multi-family home. Is there a record of this? How would staff handle this?

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Mrs. Harrigan: Recounted a call she received today regarding a three unit rental property. There was no property history on file. Based on this ordinance, this residence would be allowed to go back. There is no information as to how or when it was created. All that is known is that it is there and it is not consistent with the regulations.

Mme. Chair: How was it determined what was there?

Mrs. Harrigan: The property owner called to find out whether or not they could rebuild their 3-unit rental property, because they thought they had more than 50% damage.

Mme. Chair: Asked if the way Mrs. Harrigan knows is because someone told her.

Mrs. Harrigan: Yes.

Ms. Mathiasen: It is her understanding from the Mayor and the City Attorney's office that if it was illegal before the hurricane, it will still be illegal. If it was a legal nonconforming before the hurricane, it would continue to be legal nonconforming. That is her understanding of the intent. If someone comes to the Planning and Zoning office and they have an apartment behind their house but they cannot provide any evidence that it was there before and became a single family, it is an illegal apartment.

Mme. Chair: That's for a principal structure only. If it was behind the house, this regulation would not offer them anything. If there is a detached anything, that would not be covered by this regulation change.

Ms. Mathiasen: Stated she would need clarification on this. The point she was making is that if it was illegal before the hurricane it is still illegal. The hurricane and this regulation does not somehow legalize something that was illegal before the hurricane. Wanted to clarify that as this was a point of confusion.

Mme. Chair: That language would have to be clarified before moving forward.

Mr. Liddy: Presented a scenario with regard to the 50% raising of a home and if there is disagreement between what the Building department says and the insurance company says, what would happen.

Mr. Sulkis: The Building department is the last word. If they declare the building 50% substantially damaged, the building has to be raised. If the property owner has an issue with their insurance company, that is between them and the insurance company. The City will not allow people to rebuild in an unsafe manner.

Mr. Bender: Asked about setbacks and would a resident go to the ZBA claiming a hardship due to the storm.

Ms. Mathiasen: If they go to the ZBA they will get a variance and it runs in perpetuity with the land, as opposed to the status of a legal nonconforming, which does not necessarily run in perpetuity. She said this can go either way and she does not have

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any merits on either approach. What is necessary is clarity as to what this does and does not do. Specifically, what it does not do, because the worst thing for the Planning and Zoning office is for people to come in thinking that this means that all zoning requirements are waived, including the flood, for hurricane damage. This would be confusing and lack of clarity is the enemy in this type of process.

Mme. Chair: Is there a ballpark as to how many principal structures may be over 50%.

Mrs. Harrigan: No idea at this time. Appraisals have to be done, minus the land value and then what the 50% is and what the cumulative damage is. Won't know until the assessments have been completed.

Mr. Liddy: Asked Mr. Sulkis as the City Planner, does he see this long term as opening a Pandora's box as far as future natural disasters are concerned. How will this affect the City if it lets people rebuild nonconforming legal buildings, such as three unit apartments in a single family district.

Mr. Sulkis: Regulations have to protect the public's health, safety and welfare. That is done through the regulations. Those regulations consist of setbacks, heights and physical attributes that are assigned to properties. Want the shoreline properties to be safe. Want distances between properties. From a planning perspective, putting things back the way they are could, depending on what the situation is, be putting people back in harm's way. The regulations are set up to get rid of the nonconformities, to make things more conforming and safer. That is what the ultimate goal should be.

Mr. Bender: Believes the setbacks will be the biggest issue that will come up with all the nonconforming setbacks. It seems that the Zoning Board of Appeals has granted variances on setbacks more times than not. The Board has seen that and does not see what the hardships have been. The hurricane would be a good indication of a hardship. In his mind the setback rules seem to get buried all the time.

Mr. Ferrante to Ms. Mathiasen: Asked if she was an author of this text regulation change.

Ms. Mathiasen: This regulation was drafted by the Mayor and City Attorney's office. The Planning and Zoning office will implement whatever the Board decides.

Mr. Gasper: Asked if Staff was in a holding pattern based on the number of people who require help.

Mrs. Harrigan: Cannot waive Building Department requirements. Public still getting estimates and do not know how much money they are dealing with to rebuild.

Mr. Mead: Asked about rebuilding garages and shouldn't it state that if a garage existed on the property before the storm, it can be rebuilt as such.

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Mme. Chair: At the last meeting the Mayor said it was the intention to exclude accessory uses, such as fences and garages. That is why this regulation tonight looks substantially different from what was originally presented. The minutes confirmed that only principal structures were involved. The Board might feel differently and may want to include other things.

Mr. Bender: Asked where the people who spoke tonight are in regard to the process.

Gina Badalamenti: Explained that she is still in the process of determining how much damage she has. Have to deal with homeowners, auto, flood insurance companies. Then with the adjusters and the FEMA Disaster Recovery Center. Also dealing with the Small Business Administration to begin the loan application process, because she does not know what it will cost. Explained what is involved with flood insurance and if you have Increased Cost of Compliance. If the structure is deemed to have substantial damage of 50% or more, you can get up to \$30,000 to offset the costs. Still in the process of navigating how much damage has been done; what she will get from the insurance companies; getting quotes from engineers. This process has taken three weeks so far. She does not foresee knowing what she will come to the office to say they want to do for perhaps 4-6 weeks. This gives the Board time to make its decision.

Even though everyone has been great to work with, the process takes time because there are audits and inspection and one must be on the property when this is done. Does not think she will get back into the home by the summer of 2012, and possibly into 2013. Wants to rebuild and live in a safe house and not be a burden to the neighbors or community. Wants to maintain the quality of life she had when she chose to live in this area.

Mme. Chair: The submitted proposal is for one year. Believes two years would be more realistic.

Mary Louise Vitelli, 115 Melba St. There are four groups she is dealing with: Flood insurance; homeowners insurance; FEMA; City of Milford. Now there is a fifth element which is her own independent people because she has been told she needs to hire her own structural engineer. She is in a holding pattern. The City said her house is uninhabitable. She has had to put everything in storage that was salvageable. First floor was entirely hauled away by the City of Milford very efficiently. FEMA and City of Milford have been very good. The structural engineers and all the insurance companies have not come back with reports as yet. They have been to the house several times and she has had to be on the property when they come.

Mr. Ferrante: Does she know whether her house is non zoning compliant.

Mr. Vitelli: Yes. The house was built in 1928. There were no zoning regulations until the 1930's, it is her understanding and they have been modified since then. The setbacks are nonconforming. Does not consider this a hazard. Has been in the house for eleven years. She termed the harm in terms of the nonconforming aspects to be cosmetic and purely about location of the structure on the property.

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Mr. Ferrante: Asked if she would be willing to put the new structure within the proper setbacks.

Ms. Vitelli: The cost would be tremendous and insurance would not pay for this if she has to do all these things.

Mr. Ferrante: That is not what this regulation addresses.

Ms. Vitelli: From the cost analysis she has received she does not think she can rebuild on the original footprint of the house because of the damage. If she were to be able to do that it would be substantially cheaper than if she has to comply with new codes, move it back and change the footprint of the house. It would cost at least \$100,000 more. Looks at her area and sees the devastation and appeals to the humanity side.

Mme.Chair: Closed the public hearing. She thanked the participants for coming down to be part of the discussion. They were very helpful.

D. PUBLIC HEARING – Closes by 10/25/2011; Expires by 11/25/2011

2. **26 & 32 HIGGINS DRIVE (ZONE ID)** – Petition of Kevin Curseaden, Esq., on behalf of Mary E. Stark, d/b/a Bark Avenue Pet House, for a Special Exception and Site Plan Review to establish a Dog Day Care facility on Map 80, Block 810, Parcels 15D and 15E, of which D'Amato Investments, LLC is the owner.

Kevin Curseaden, Esq., 26 Cherry Street, Milford. Also present, Mary Beth Stark, who will be doing business as the Bark Avenue Pet House and Ray Oliver, Architect. The legal notices have been published and the sign was posted on the property. A photographs showing the sign posted on the property was submitted for the record.

The background of this property was as a one-story warehouse approved in July 1984. Nothing substantial is being changed to the structure of the building. A zoning permit was issued in 1984 and a Certificate of Zoning Compliance was issued in 1986 for a one-story warehouse with an office for a use to be determined. The property is located in the ID zone and is no longer being used as a warehouse. This application, in one form or another, was before this Board in 2008, where it was denied without prejudice. and again in August 2009, when it was also denied.

The significant difference between this application and the previous applications is that when the applicant was here before, it was only half of the building that was to be used and this is actually the full building. Therefore, it opened up parking spaces, the circular traffic around the building and resolved a lot of the concerns that the City staff may have had.

The intent is to use this building as a dog day care center. It will have to comply with the Connecticut Department of Agriculture regulations. The exterior of the building will remain unchanged. There will be an outdoor dog run. There will be bollards to

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protect the dog run. It is not a use that will conflict with the neighborhood. Right now there are some warehouses and some other businesses. This is an ID zone and there are so many empty warehouses in this general vicinity because it is not a use that is prevalent in Milford today, unfortunately.

This is a Special Exception application because the zoning regulations for this zone and for the City of Milford do not specifically speak to dog day care centers or any type of centers like this. Therefore it is required to come before the Board and requires a two-thirds vote for approval. The City agency reports have been received and the comments made by the City Engineer through the Public Works Director, and those made by the Health Department will be addressed. All the other City agencies approved with no comments. This application is a change of use from what is there now.

There is a request for a few waivers that are mostly buffer waivers in the back of the property and on the side of the building. The location of the building is not being changed. When the building was originally constructed it was built to comply with the setbacks in existence at that time. Now the setback is 30 feet as opposed to 20 feet away from the street at the property line and the waivers in the back are for some reduced landscaping. The specific waivers requested are listed in the plans under the Zoning Table.

The site plan changes are minor. This would not be an issue to require such a heavy vote from the Board if were not for this being a Special Exception. It would be a minor site plan amendment, in addition to the Special Exception per the regulations. The Board has had some Special Exception applications come before them recently. They look to the nature, location, size, intensity and use that will be determined. Will it be disruptive to the neighborhood. Most of the members of the Board have seen this application a few times and would most likely come to the conclusion that it will not be a disturbance to the neighborhood or to the neighbors, or violate the overall zoning of the ID zone. They are transitioning the use from industrial and manufacturing economy to a service economy.

Ray Oliver, Architect, 3 Lafayette St. This is an existing building in the Industrial Zone. Not making any change to the structure itself. Improved some of the site arrangement. SP-1 shows the existing building which will now be used for the pet day care center and all the site area will be used for parking and circulation to support that.

Mr. Oliver described the site plan via a display. Access to the site is a one-way circulation pattern with diagonal parking. There will be some drop off spaces along the side with the entryway to the building. The overall structure of the building will remain the same. The front of the building will be used for the office area, which will include an entry, reception area, offices, a break area for the staff and other office functions. The back portion of the building will be used for dog training and for some of the kennel area. The new part of the building is a dog run at the back of the building which will be fenced. There will be a concrete curb to keep the cars from bumping into the structure.

There will be a translucent plexiglass or fiberglass roof on the structure to keep the rain water from going into the sewer. All the dog waste will go into a sewer connection as

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approved by the Sewer Commission that goes into the sanitary sewer and is treated. There is limited green area in the building. There is a landscaped area in the front with a couple of existing trees. Plantings will be added along the side property line where one of the waivers is requested to reduce it from 5 feet to a 2.5 foot strip. The Tree Commission agreed with the plan to keep the mixed plantings and volunteer species that have grown up in the back part of the property line as a buffer to the remainder of the space. The site lighting will be done off the building itself. A photometric plan was submitted which meets the requirements for the foot candle and spillage off site. The light fixture will be mounted on the building. The dumpster area will be enclosed with the same type of fencing that will surround the dog run. Site drainage is what is existing on site. A drainage plan of the overall property has been submitted by the engineer. It shows the two lots of the application and the general layout of the drainage and the grading of the subdivision. No problem is anticipated with the drainage. The use is compatible with the industrial area. There should be no problem in terms of noise or disruption with cars and traffic. There is sufficient parking for the staff that is on site as well as the people who are coming and going dropping off their pets.

Mr. Sulkis: This is a good plan. It is a significant improvement over the last submission.

Mr. Liddy: Any overnight boarding?

MaryBeth Stark, 936 Mapledale Avenue, Orange CT: Yes, there will be overnight boarding.

Mr. Liddy: Asked if there are sleeping quarters for staff for overnight boarding.

Ms. Stark: Staff will not sleep during work hours, even overnight. There will be break rooms, but no bedrooms.

Mr. Liddy: Will a vet be on staff?

Ms. Stark: Veterinarians will be on call, but that is down the road.

Mr. Liddy: Asked if there were any issues raised with the one day care center on Gulf Street, that might need to be addressed here.

Mr. Sulkis: None that he can think of that is applicable to this situation.

Mr. Bender: Noted there are actually three other such facilities in the City. Asked if there would be a speed bump in the dog drop off area.

Mr. Oliver: A speed bump could be added to that section of the driveway coming around the corner. It's not a bad idea.

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

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Maureen Tyliszczak, 65 Queens Avenue, Stratford, CT. MaryBeth has taken care of her pets for ten years. She is a reliable and hard worker. This will be a great asset to the City. She will do a great job for the City and for the animals, as they are her first priority. Ms. Tyliszczak spoke here three years ago and hopes this application passes now.

Mme. Chair: Anyone to speak in opposition to the application? (No response)

Mr. Liddy: Noticed there is a room for cats.

MaryBeth: Will have one room with cages for cats.

Mr. Bender: Asked if the State Department of Agriculture decides about drainage and where the waste goes.

Mr. Sulkis: The Sewer Commission wants them to get rid of solids through the sewer system. The plans show a bathroom with a fixture and a toilet that is set aside just for that purpose. The urine on the outside is not harmful and can be released into the environment.

Ms. Stark: This time they were asked to hook up to the sewer, so there will be a drain that goes into the sewer. The rest is picked up and disposed of and is hosed off at the end of the day. There will be a special, large toilet for the facility's use for waste removal.

Mme Chair: Closed the Public Hearing.

Mr. Curseaden asked that the Board hold off voting until all the members of the Board are present.

[A recess was taken from 8:45 pm to 8:54 pm]

[Mark Bender left the meeting at 8:48 pm.]

E. NEW BUSINESS

3. **734 NAUGATUCK AVENUE (ZONE HDD)** – Petition of NRG Devon Power LLC for Coastal Area Management Site Plan Review approval to apply engineering control to the Devon power Generating Station located on Map 23, Block 301, Parcel A 1 C, of which Devon Power LLC is the owner.

Leslie Ross, Plant Manager, 254 Pond Point Ave, representing NRG Devon Power. He is the plant manager for Devon station as well as Norwalk Harbor Station, and Connecticut Jet Power. Also present is Andrea Steele from the consultant company, Shaw Environmental. She will answer questions related to the technical aspects of the application.

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This is an engineered controlled project to cover some of the acreage at the facility. It is required by the State and EPA. This will improve the condition of the site by providing cover for 18 acres of the property for land impacted by historical pre-1972 coal operations and will provide long-term benefits for the facility. Coal activities predated NRG's ownership by 27 years, in completing this proposed project, NRG looks forward to fulfilling its environmental obligations it acquired when they purchased the facility in 1999.

The facility is on a total of 60 acres. The proposed engineering project involves an area of 39 acres east of the River, west of the railroad checks; south of a heavy industrial zoned parcel and north of I-95. Out of that 39 acre area, 18 areas will be covered and out of the 18 acres, 9 of it is already covered with continuous pavement area, which will need more repair work to make sure it is impervious. Gravel will be spread on the remaining 9 acres, which will be on top of existing gravel, to get the required coverage of four inches, as well as some of the soil areas. This is required to be in compliance with the Connecticut Transfer Act, when the facility was acquired in 1999, to limit exposure to coal and coal ash concentrations in the soil that is exposed in the area. Coal operations ceased in 1972 when the predecessor converted to oil. The work will not be conducted latterward of the river bank or bulkheads. There is no impact to the slope and all work will be 3 feet or more above the high tide level. The project will not impact the river or the river bank. The site usage will not be changed. The project will enhance the coastal area by protecting potential erosion of soil during flood events. The project will not cause any change in grades or storm water runoff. Approvals have been received by the Connecticut DEEP Remediation Division, as well as the EPA have approved it and Milford's Inland-Wetlands agency does not require a permit for this. All work will be performed under the direction of Shaw Environmental Engineering on the site.

Ms. Harrigan: Had no additional comments. Mr. Ross covered everything.

There were no questions by the Board.

Mme. Chair: Entertained a motion from the Board.

Mr. Mead: Made a motion to approve Petition of NRG Devon Power LLC for Coastal Area Management Site Plan Review approval to apply engineering control to the Devon power Generating Station located on Map 23, Block 301, Parcel A 1 C, of which Devon Power LLC is the owner.

Mr. Ferrante: Second.

All members voted in favor of approving the motion.

F. PUBLIC HEARING – Closed 9/20/2011; Expires 11/24/2011

4. **EASTERN STEEL ROAD (ZONE ID)** - Petition of John Knuff, Esq. for a Special Exception and Site Plan Review to permit a package store selling alcoholic liquor on Map 80, Block 810, Parcel 13A, of which Wiehl Properties, Inc. is the owner.

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Mme. Chair: The applicant has requested the Board put off voting on this item until a full complement of the members are present.

G. PROPOSED TEXT REGULATION CHANGE – Discussion

Definition – Crawl Space/Lowest Floor

Mme. Chair: Although not on this agenda, the Board is taking up some regulation changes that have been in the hopper for a while. Asked if the Board wanted to hold off on this discussion until the next meeting.

The Board members chose to discuss this proposed change with the other regulation changes.

H. BOARD MEMBERS' GREEN GUIDELINE BOOK AND BY-LAWS

Mr. Vetter had planned on attending tonight's meeting but could not. He forwarded the work that the subcommittee on the by-laws has done. Three of the five member subcommittee are not present tonight. She circulated Mr. Vetter's summary of the Subcommittee's suggestion for the process of electing a chair and vice chair.

Mr. Ferrante noted he had prepared his own interpretation of what Mr. Vetter had submitted, which he believed clarified some of the points. Mr. Ferrante distributed his notes to the Board.

The Chair read Mr. Vetter's notes as follows:

Election of the Chairman of the Planning and Zoning Board

- To be held every 2 years, in alignment with municipal elections.
- The person receiving the majority of votes is named chairman
- Voting will occur at the first meeting of the calendar year. If the vote is unresolved in the first meeting, voting will continue at the second meeting of the calendar year.
- Voting will consist of no more than 5 "rounds" of voting per meeting.
- If, after said two meetings, the PZB voting for Chairman results in a tie, the following guidelines will direct the Board's actions in selecting a Chairman:
 - The two candidates for Chair who have received the two highest tie votes, will each preside over the PZB as Chair and Vice Chair for a term of 1 year until the next municipal election cycle.
 - The party of the Mayor will begin as Chair and preside until December 31st of the current year. The other shall be Vice Chair and their positions shall be reversed for the second year.

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- The chair is not vacated until a new Chair is elected. In the event that the preceding Chair and Vice Chair are no longer on the Board, the Board member with the longest continuous time served will chair the meeting.

Mr. Liddy: Asked why the subcommittee chose to elect a chair every two years.

Mr. Ferrante: The Board does not change every year. It changes every two years. Why not do it in that sequence?

Mme. Chair: This will be a great discussion at the next meeting. There is no FOI to prevent the Board members from speaking to the committee members to get clarification on this.

Stated that the subcommittee has done a great job tackling this issue.

I. PLAN OF CONSERVATION AND DEVELOPMENT - None

J. LIAISON REPORTS

Mme Chair: The waivers proposed by the Mayor were granted by the Board of Aldermen.

K. APPROVAL OF MINUTES – (9/2/2011)

Mrs. Golden: So moved.

Mr. Gasper: Second.

All members voted in favor.

L. CHAIR'S REPORT

Mme.Chair: Stated she received an email from the City Engineer, Gary Wassmer, wherein he took issue with some of the comments made by some of the Board involving Alpha Street, where a couple of the Board members had suggested that the City Engineer had okayed or indicated that it was an impossibility with connecting the sidewalks. He said he never said such a thing.

The Chair said she went through the record. There is no way to go back in time to correct the minutes, but with the Board's permission she would insert it into tonight's meeting for the record.

M. STAFF REPORT – None

Mr. Gasper: Asked if there will be a meeting on October 4th on the Plan of Conservation and Development, which was previously set up with Mr. Plattus.

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Mrs. Harrigan: Will have to follow up with Mr. Plattus. The office is preoccupied with other matters at this time. There is a tentative date of October 6th for FEMA to come out and speak to homeowners about substantial damage, increased costs of compliance; different grant programs that will be available to them.

Mr. Ferrante: Moved to adjourn.

Mr.Liddy: Second.

All members voted to adjourn at 9:13 p.m. The next Planning and Zoning meeting will be held on October 4, 2011.

Phyllis Leggett, Board Clerk