

**MINUTES FOR THREE (3) PUBLIC HEARINGS  
BY THE PLANNING AND ZONING BOARD  
HELD WEDNESDAY, NOVEMBER 6, 2013; AT 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Mark Bender called to order the November 6, 2013 meeting of the Planning and Zoning Board at 7:30 p.m.

**A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**

**B. ROLL CALL**

**Members Present:** Ward Willis, Jeanne Cervin, Benjamin Gettinger, John Grant, Edward Mead (Vice Chairman); Michael Casey, Joseph DellaMonica, Jr., Tom Nichol, Mark Bender, Chair.

**Not Present:** Dan Rindos

**Staff:** David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner; Stephen Harris, Zoning Enforcement Officer; Phyllis Leggett, Board Clerk

**Chairman Bender:** Asked for a motion to reorder the agenda to take the items E 4 and 5 under New Business after Item C 1, the public hearing left open and before Item D, Public Hearings.

**Mr. DellaMonica:** Made a motion to reorder the agenda to move New Business items E4 and 5 after Item C1.

**Mr. Casey:** Second.

All members voted in favor.

**C. PUBLIC HEARING LEFT OPEN – Close by 11/19/2013; expires on 1/23/2013**

1. **565 PLAINS ROAD (ZONE LI)** Petition of Randy Simpson for Special Exception and Site Plan Review approval to allow a sound barrier to remain and be completed on Map 62, Block 928, Parcel 5, of which Milford Riders Motorcycle Club is the owner.

**Chairman Bender:** This hearing was left open because the Board requested the sound engineers be present for questions and more data.

**Thomas Murtha, Esq.:** The presentation was made and it was requested that our sound engineer who did the testing come before the Board. He is here to answer questions.

**Chairman Bender:** The Board is looking for more data and additional information on the tests that were done.

**Attorney Murtha:** A total of six tests were done off site; one had eval. results.

He further stated: "Is this wall going to be perfect?" That is not known yet, but it will be better than what is there now. They are trying to cap it, enclose the sound and make it better than it is now for the neighbors.

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**David Collings, PE.** , an independent noise consultant for the last twelve years since retiring from a corporate position. He was requested by the motorcycle club to take sound readings at different locations in the vicinity in the residential area. Based on some conclusions he made some recommendations.

**Chairman Bender:** The Board questioned the one test which was not completed because the motorcycle broke down. It might not have been Mr. Collings' report.

**Attorney Murtha:** Mr. Collings did five off-site tests during a race; not the one where the motorcycle broke down.

**Mr. Collings:** Confirmed that the measurements he took were during a typical race. There were noise samples taken over a sampling period of half a minute to a minute during the race to make sure the typical peaks were captured. The instrument he uses measures not only the average sound level during the sampling period but also records the peak levels. He put both the average and the peak levels in his report.

Four critical measurements were taken at 205 Cornfield Road at the back of the property; a little further south, 141 Cornfield Road and 116 Cornfield Road and then at 558 Plains Road on the south side of the property.

Chairman Bender reviewed the reports and information that was submitted by the applicant at the last meeting. He stated the Board was not trying to put anything on the applicant that cannot be done, however, a base line is needed that is defensible.

**Mr. Collings:** Explained that the email that was sent with the preliminary results of the measurements that he took. It said "these are the results, let us know how you want to proceed with any formal documentation."

Attorney Murtha produced Mr. Collings notes to the Chair.

**Chairman Bender:** Asked what determined the weighting of the sound levels that were noted in Mr. Collings' notes.

**Mr. Collings:** The "A" weighting is generally applied to represent the human ear, as the human ear does not respond to all frequencies in the same way, so the "A" weighting scale is a correction that makes it more relevant to perceive noise rather than the actual sound pressure that an instrument measures.

**Chairman Bender:** Asked if that was a standard weighting that is done for a sound test

**Mr. Collings:** Yes. Most criteria use a single number called DBA and it stands for the actual "A" weighting on the actual measurements.

**Chairman Bender:** Asked if there was a peak value versus a weighted value, or is there no peak value?

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**Mr. Collings:** Replied the weighting mostly affects low frequency response because that is what our ears respond to.

**Chairman Bender:** Asked if these numbers were the highest reading that were recorded during the test.

**Mr. Collings:** Yes. He used the peak readings. The noise source that is being measured is a very intermittent noise; a series of bursts of sound. In addition to measuring the overall average level during the sampling time, he also recorded the peak level in that time. These were the peak sounds, the short bursts of sound that took place during an event.

**Mr. DellaMonica:** There should be a baseline of what the neighborhood sounds like before, during and at the peak of the motorcycles running. Are those numbers on the report? If not it will not help the Board make a decision.

**Mr. Collings:** A background noise reading?

**Mr. DellaMonica:** Whatever the neighborhood noise is.

**Mr. Collings:** He has to satisfy himself that what the instrument is measuring is that sound source and not some external noise, such as birds chirping, etc. In this case the sound was distinctive enough. It is a quiet neighborhood so there was no significant background noise that would affect the readings in any way.

**Mr. DellaMonica:** What the Board and neighbors want to know what the difference is when the neighborhood is at its norm and when the motorcycles are running at their peak noise level during a race. Without knowing this it cannot be determined whether or not this fence will lower the noise level that is being experienced now.

**Attorney Murtha:** Isn't the real question: Will this fence make a difference instead of saying the neighborhood is usually two decibels at the peak. The loudest point is when a race is started, 61 decibels. The real question is if the fence is allowed to be completed, will the neighborhood be more quiet? That is the aim for this fence, to make the neighborhood more quiet.

It is the opinion of the sound engineers and the applicant that if the fence is put up it will be quieter. It is not known whether it will be 8 or 20 decibels quieter, but to complete this fence, double lap it, put the soundproofing on and close it in, it will be quieter.

He believed the objective of the fence was to make the neighborhood quieter, not a specific degree of how much quieter. The sound engineers have determined the fence, if completed, will make the area more quiet; double lapped, solid, the effective height of 14.9, but because the track is trapped it has an effective height of even more than 14.9, so it should be quieter. The higher the fence is the more quiet it is. The two feet overhang with the sound again makes it quieter. There is no question that the fence will make it quieter. How much quieter, is not known. He does not think it will be found that it will still be 61 after, but it cannot be said it will be 42 after, but it will be quieter.

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**Chairman Bender:** At the last meeting the number "50 percent" was thrown around.

**Mr. Collings:** Not sure what that means but he did not make that statement. He explained the nature of the sound barrier is to block the line of sight from the sound source to the receiver. The higher the fence or barrier relative to the distances of the two locations, the more effective it is. This is a high fence. The measurements he took in his survey, particular at 116 Cornfield Road, which is to the east of the site, that was showing approximately 57 dbas. Maximum sound overall. That was significantly less than the readings that he took to the northwest where there was a gap in the fence. It is consistent with a sound barrier of this kind being effective. He understands the barrier has been additionally reinforced with an extension at the top.

**Chairman Bender:** Stated he understood the premise that anything the applicant does is better than what is presently there and that is understandable, but this is the Board's only chance to try to do the best it can in representing the residents and the City to get the best situation for them.

**Mr. Collings:** There is no doubt in his mind that there will be an improvement.

**Chairman Bender:** Asked which house was closest to the track.

**Mr. Collings:** 116 Cornfield Road is the closest on Cornfield Road.

**Chairman Bender:** Asked if Mr. Collings felt with a complete enclosure would the closest house with 56.9 go down significantly.

**Mr. Collings:** He would not say significantly. There might be some reduction depending on how much leakage there was to the existing fence. He understands there are some narrow gaps in the existing fence. Those are being addressed. Putting an extension on the top raises the effective height of the wall, which would bring a small reduction, but he did not want to put a number on it. It is a relatively low number at that point.

**Mr. Mead:** Asked if the readings were taken actually at the track during a race, not at the neighbors' homes.

**Mr. Collings:** Yes. He did not put it in the report. He did it just to get some idea of the nature of the sound. That was not the question. The issue was to determine what were the measurements in the neighborhood.

**Mr. Mead:** It would help the Board to know what the number was at the start (i.e. 100) and by the time it got to the neighbor's house it is 57 with the fence having some areas opened up, and then if the fence is closed up to make it tighter and put a canopy over and it goes down to 52 or 48, then it is known it is being cut from 100 to 52 or 48, which is significant.

**Mr. Collings:** The track is a large area. It depends on how close you were to a particular bike at the time you are taking the measurements. He is not sure recorded the specific numbers so he could not present them to the Board and they were not included in his report.

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**Chairman Bender:** Asked if there were specifications to his contract as to what Mr. Collings was hired to do, or was he asked to just give some measurements.

**Mr. Collings:** Asked if he meant was there a standard for measurement?

**Chairman Bender:** Was there a test protocol for what he was to do or did he just determine what was the best way to do the testing?

**Mr. Collings:** They wanted to get a quantitative idea of what was happening at the different locations so that they are not just talking about a nuisance effect, but some tangible noise levels.

**Attorney Murtha:** Interjected to say why specific houses were picked. They met with these aggrieved neighbors and told them they would have someone go to their specific house and measure it at your house. There is a State mandate of 61 dbs, so they would measure what they had beforehand and if they were higher than the levels, they were going to work on the wall and finish the wall. That is how the locations got picked.

**Chairman Bender:** Asked if Mr. Collings thought anything more could be done to lower the noise level.

**Mr. Collings:** Nothing that is simple. He thinks the higher the barrier the more effective it is. The is complicated because the noise source is scattered throughout an area. It is not one location. What they were measuring is what is being heard at these locations for a typical race. Also, there may not be such a thing as a "typical race". This is what was measured at that time and he was satisfied that it was a meaningful measurement.

**Chairman Bender:** Asked if in Mr. Collings' experience, if the complete barrier is put up as they wanted, he is not sure if that 62.1 will go to a 60 or a 30 or 50. There is no guestimate of what number ---

**Mr. Collings:** He expects it come down by anything up to approaching 10 decibels from the readings at 205 Cornfield and 141 Cornfield to the northwest of this area. He thinks that closing that gap is a very obvious improvement in that location. It will not do a lot for the other directions, but those are lower numbers.

**Attorney Murtha:** They are requesting to finish the enclosure and to deaden it. They would lap the 2 x 12s as the plans show so the gaps would be closed and there would be a more dense surface. They would also put in the 48 inches of the deadening sound with a two foot overhang. Because it is at an angle the two feet make the angle sharper the more sound that is kept inside.

**Mr. Nichol:** Stated in summary: The organization is spending a lot of money to put up a lot of wall for some reduction in sound that cannot be measured at this time.

**Mr. Collings:** He can repeat these measurements after the wall is in place, but that is not what is being asked. He can address the theory of noise sound barriers. He would not make

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a recommendation if he did not feel confident there would be the improvement he spoke about.

**Chairman Bender:** Bottom line: This is what he is recommending as the best option. He believes it will reduce the sound. He cannot say exactly how much but he feels confident it will be reduced.

**Mr. Collings:** Significantly and a noticeable reduction at those critical locations and to the northwest of the property.

**Chairman Bender:** Another option at this point is to do nothing and obviously this would stay the way it is.

**Ms. Cervin:** Asked to reaffirm what the Board was doing with this application. The applicant came to the Board because there was no permit for the wall that began construction.

**Attorney Murtha:** Correct.

**Ms. Cervin:** The issue is finishing that wall. The Board has been told that the sound will be reduced.

**Attorney Murtha:** Yes. It is the belief of two sound engineers the noise level will be reduced.

**Chairman Bender:** As part of the public hearing he opened to the public the opportunity to comment specifically on what was discussed tonight. He gave the public hearing procedure to the speakers. He asked if anyone was in favor of the application?

**Greta Stanford, 32 Spicebush Lane.** Stated the neighbors need a respite from the constant noise generated by the motorcycles. She believes the Board was not given the proper presentation tonight. There will be a reduction in the noise. How much of a reduction? The neighbors need some respite from this noise. It is a step in the right direction. The neighbors expect the Board to represent them. They need this. Please give it to them.

**Bob Miller, 141 Cornfield Road.** Supports the application that the Club is making. He would like some relief. He bought a noise meter and can provide the noise levels which can vary from 90 db to 110 db. He does not enjoy his backyard anymore if certain bikes are running. They can do more than a wall. They can do something with the mufflers on the bikes.

**Ernest Dubois, 116 Cornfield Road.** Lived there since 1984. When he moved in the bikes were much quieter than they are now. He does not have visitors to his home in the summer because they cannot talk in his backyard or sit on the porch. It is too noisy.

The Chair asked Mr. Dubois to speak on what was discussed tonight.

**Mr. Dubois:** The report is not telling them anything. Will they spend thousands of dollars building a wall and then it doesn't work and they still have the noisy neighborhood? Something has to be done.

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**Ed Fisher, 205 Cornfield Road.** In favor of the wall and would like to see it completed. He wants to know why they cannot put a sound deadening material on wood. He stated wood reflects the sound. If they would put mufflers on the motorcycles, the neighbors probably would not be here. He wants to see the wall get done to make the neighborhood quieter.

**Jim Ballas, 106 Cornfield Road.** In favor of the wall. He wishes the report had been more detailed and quantifiable. He did not see the report but he thinks a professional report would have had dates, times, the number of bikes, the types of bikes that were being run, weather conditions. When you have an objective it should be quantifiable and measureable. He would like to see the wall built but with the expectation when it is done he can go outside and sit on his deck and have a conversation with his family.

**Chairman Bender:** Is anyone opposed to the application? (No response)

The report is public record. If anyone wants to contact the office they review what was submitted and get copies, if they wish. The measurements were obtained on the evening of August 3<sup>rd</sup>, 2012 during a typical series of races. It does not say the type of bikes. It says it was between 7:00 p.m. and 7:45 p.m. The weather conditions were calm and dry with a temperature of about 75° F. It does not say the bike types. It has the addresses 205, 141, 116 Cornfield Road and 558 Plains Road. It goes into some detail, but to the gentleman's point, it does not state what kind of bikes there were. This report is available.

**Rebuttal by the Applicant:**

According to their experts what was needed was four feet of dampening at the top. There is four feet of dampening at the top along the entire wall. There is also further dampening. Supposedly the noisiest point is when the race starts. There is dampening being placed directly behind the start to try to stop it from rising right away. There is dampening in the wall. Their experts said it did not make a significant difference to dampen the whole wall.

**Chairman Bender:** What would it cost to add dampening for the whole wall?

**Attorney Murtha:** Stated he did not know what it would cost but he knows it is very expensive.

**Chairman Bender:** Asked if anyone who had previously come up would like to respond to what he said about the report or what Mr. Murtha said about dampening.

**Mr. Ballas:** To elaborate on what the Chairman said: The time, the dates, the number of bikes, the type of bikes and if this does not resolve it, how many bikes are in that race? Reduce the number of bikes that are in the race. Will that bring down the noise level. It needs to be more thorough.

There were no further questions from the Board.

The Chair closed the public hearing.

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**E. NEW BUSINESS**

4. **1200 BOSTON POST ROAD (ZONE CDD-5)** Petition of TPA Design, Inc. for an Amendment to a Special Permit and Site Plan Review to construct an 8,500 SF retail building on Map 89, Portion of Map 78, Block 832, Parcel 10, of which Matton Group Ltd. is the owner.

**Sam Gardner, GWG Architects, 151 East Street, New Haven,** representing the petition of TPA Design, the Civil Engineers for the owner, the Matton Group. This is an amendment to a Special Permit. The façade and the layout had previously been approved by this board. They are showing some amendments to the front façade design. When the previous application was presented to the Board there was no tenant for the site. They wanted to put up a retail building. The Board received the previously approved design and the new proposed design which reflects the new tenant, Destination XL (DXL), which is the former Casual Male XL. They also own the Rochester Big Man. It is a big and tall man store. This design reflects their national roll out of this concept. He distributed photos of other stores they have been putting up throughout the country and in our area. The photos were date stamped into the record.

Mr. Gardner described how the frame and design of the former building has been changed to the proposed new building. The original building was to be 10,000 SF and the new building will be 8,500 SF in the same location. The DXL entrance will be the largest and most obvious change from the former design. There windows have mannequins that are set on a stage. You would not look directly into the store; it would be a storefront with mannequins. The colors will be consistent with their national color scheme. The awnings will be decorative rather than functional. They will be metal and painted in the DXL colors.

**Chairman Bender:** Noted the changes from the previously approved building to the changes being proposed for a specific tenant. The parking went down from 294 to 279 spaces and there are no waivers being requested.

**Mr. Sulkis:** Mr. Gardner gave an accurate summary of the requested amendment to the previously approved application for the building.

**Ms. Cervin:** The design is generic and requires less parking. She made a motion to approve the Petition of TPA Design, Inc. for an Amendment to a Special Permit and Site Plan Review to construct an 8,500 SF retail building on Map 89, Portion of Map 78, Block 832, Parcel 10, of which Matton Group Ltd. is the owner.

**Mr. Mead:** Second.

All members voted in favor of approval.

5. **326 WEST MAIN STREET (ZONE CDD-1)** Petition of Jon Eckman for an Amendment to a Special Permit to expand a daycare center to adjacent space on Map 53, Block 307, Parcel 3, of which Fischel Properties is the owner.



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**Gina DeLucca, Owner of Oce Upon A Time Daycare Center, 326 West Main Street.**  
Proposing to add 1,500 SF for a school age program.

**r. Sulkis:** This is an interior space within a very large plaza. This use is already there. They are looking to expand where there were some offices previously. There are no exterior changes.

**Mr. Mead:** Asked if there would be a problem with parents dropping off and picking up with the increase in the number of children.

**Ms. DeLucca:** The times of drop off are between 7:00 and 8:30 a.m., and pickup is between 4:30 and 6:00 p.m. Because of the hour and a half time span for pickup and drop off, half the lot is not even used. The staff takes up approximately 15 spaces throughout the day. Parking should not be an issue.

**Mr. Casey:** Made a motion to approve the petition of Jon Eckman for an Amendment to a Special Permit to expand a daycare center to adjacent space on Map 53, Block 307, Parcel 3, of which Fischel Properties is the owner.

**Mr. Nichol:** Second.

All members voted in favor of approval.

The Board resumed the original agenda order.

**D. PUBLIC HEARINGS - Close by 12/11/2013; expires on 2/14/2013**

**2. Proposed Moratorium on Medical Marijuana Dispensaries and Producers**

The following language would be added to the Milford Planning and Zoning regulations:  
**Section 2.7.10**

The Milford Planning and Zoning Board shall not accept or consider any application to permit the establishment of Medical Marijuana Producers and dispensary facilities for a period of twelve (12) months commencing from the effective date of \_\_\_\_\_. The reason for the moratorium is to allow the Planning and Zoning Board to review the "*State of Connecticut Regulation of the Department of Consumer Protection concerning palliative use of Marijuana*" and the associated application process for producers and dispensary facilities, and to draft/or adopt municipal regulations regarding the production and distribution of medical marijuana within the City of Milford. The expiration date of said moratorium will be \_\_\_\_\_ unless extended by the Planning and Zoning Board.

**Chairman Bender:** Read the proposed Moratorium on Medical Marijuana Dispensaries and Producers. He stated that this moratorium was generated mostly from being on the South Central Regional Council of Governments. Five or six towns have adopted the Marijuana Moratorium. Mr. Sulkis had said that when a major change comes to a statute, a lot of towns do this to give themselves some time to look at it and see if there are any effects to it or if something needs to be changed.

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**Mr. Grant:** If approved, he requested that the Regulation Subcommittee review and investigate the statute and determine if any other regulations need to be changed as a result of it. He noted that all applications for any kind of facilities have to be into the State by the 15<sup>th</sup> of this month ----

**Mr. Sulkis:** Interjected at this point that the purpose of the public hearing was talk about the regulation as proposed. The Board should not give testimony for or against this at this time.

**Mr. Grant:** Went on to say that the Board would not need more than a couple of months to review the regulations.

**Chairman Bender:** Opening this to the public and then it can be discussed further.

The Chair opened the hearing to the public and reviewed the procedure for public comment. He asked if anyone was in favor of the proposed moratorium? (No response) He asked if anyone was against the proposed moratorium? (No response)

The Chair closed the public hearing.

**Ms. Cervin:** Asked to postpone discussion until the next meeting due to the length of tonight's meeting.

**Chairman Bender:** Suggested tabling the item for discussion at the end of the meeting if time allowed.

**Mr. Mead:** Made a motion to table the item for discussion at the end of the meeting if time allowed.

**Mr. Dellamonica:** Second.

All members voted in favor of tabling the motion.

**3. Proposed Zoning Regulation Text Changes Petitioned by Mayor Benjamin G. Blake, In Accordance with the Provisions of Connecticut General Statute 8-3b**

**Article VI** Non-Conforming Uses, Structures and Lots

**Article VI, Section 6.2** – Non-Conforming Uses,

**Section 6.2.6** – Discontinuance

**Section 6.3.6** Non-Conforming Uses and Structures

**Section 6.3.6 -** Restoration

**Article VIII** Interpretation, Administration and Enforcement

**Section 8.2.2** - Authority to Enforce

**Article XI** - Definitions

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**Section 11.2 - Other Terms**  
Structure; Improvement, Substantial

**(Complete text changes are on the City Website and the City Clerk's Office)**

**Mayor Blake:** Asked for the Board's consideration and action on those items that pertain to the proposed zoning regulations that he put has forth. He is present to support his application for his proposed regulation changes.

The Mayor reviewed the sections, articles and definitions he proposed to defend and change. With regard to Section 6.2.6 and 6.3.6; nonconforming uses and structures, he is proposing in the event of a natural disaster or other casualty, where a use or structure is damaged more than 50%, the owner be permitted to restore or reconstruct said use or structure. Sixteen out of twenty-four Connecticut shoreline communities contain the same or similar language to what is being proposed tonight.

With regard to Section 8.2.2, he proposes in addition to the Chairman of the Planning and Zoning Board; the City Planner; the Assistant City Planner and the Zoning Enforcement Officer, that the Director of Permitting and Land Use be given the authority to enforce zoning regulations.

In regard to definitions he is proposing changes to the definition of "structure" and "substantial damage". The Board has a copy of the specific regulation changes as well as the Staff's comments thereto. He requested the opportunity to address some of the comments and to alleviate some of the concerns. He noted he had just received the staff comments on Monday. He thought they were well-founded and he has suggested amendments for the Board to consider. The staff comments that he thought were well founded and he adjusted, were: Section 6.2.6 and 6.3.6. He added the term "legal" to "legal nonconforming". He also put the proviso, per the staff recommendations that they would be subject to Section 5.8 of the flood regulations. With regard to Definitions, Section 11.2, he removed the word "placement" and removed the terms "ground mounted mechanical units".

Aside from the changes noted above, he had written responses to the Staff comments. He distributed copies of his response to Staff's comments. **[The Mayor's complete response is attached to these Minutes]**

**Chairman Bender:** Suggested the Board review the Mayor's comments and recommendations.

**Mr. Sulkis:** Thanked the Mayor for his comments which gave some clarity. Asked for Staff to have the ability to go through them and address them. In addition, because the application that was submitted was one thing and the Board was handed, in some instances, different material tonight with changes. It will have to go through the process again and it will have to be re-noticed because it is not the same material that was previously noticed.

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**Mayor Blake:** Responded absolutely not. The Planning and Zoning Board has the prerogative to amend whatever is proposed today. These are not substantial changes. He has confirmed this with the City Attorney's office.

**Ms. Cervin:** Need more time to review what the Board just heard. She questions the issue of the amendments. She asked about Section 8.2.2 Authority to Enforce. The Mayor had said in his application it was "for the betterment of the City and to improve operations." She asked if there was something right now that is not working with the zoning enforcement process that the City has at the moment? Why does the Mayor want to see that changed?

**Mayor Blake:** The City is still in the process of implementing the KRIT recommendations. This is one component of that report. One of the things that came out of KRIT was there should be cross-training. This lends itself to that. Also, that champion, the DPLU Director, needs to have those mandates to move projects forward and to move the department forward and that is consistent with that charge from the Kimball Implementation Report that since 2009, the Planning and Zoning Board and the City of Milford have been trying to fully implement.

**Ms. Cervin:** Asked if the Mayor was saying that things are not moved forward in a way that is appropriate?

**Mayor Blake:** This adds one more tool in order to accomplish that.

**Chairman Bender:** The public hearing will be left open so the Board could review these things and see what specific changes there are. The Chair will verify that the public hearing will not have to be renoticed due to the changes that were made.

The Chair opened the hearing to the public. The procedure for speaking was reviewed. He asked if anyone was in favor of the proposed changes?

**Ann Ryling, 81 Indian River Road.** She would like to see these changes made. Asked the question if the nonconforming use include the 1929 law that says a house can be built on an undersized lot if there has been no foundation and no house on it previously? This is something that is happening in her neighborhood.

**Chairman Bender:** Stated he knows this is happening but he does not think it has any bearing on that, but he would verify it.

Anyone else in favor of the regulation changes? Anyone opposed to the regulation changes?

**Barbara Bell, 24 Winthrop Court.** Addressed Section 8.2.2, the regulation change that would appoint the Director of Permitting and Land Use to be a zoning enforcement officer in addition to his position as Director of DPLU.

In the earlier published regulations, no particular statement was made as to the purpose of this change. Tonight the Mayor made several statements as to the purpose of this change. One possible purpose that a member of the public might imagine was that he thought that more professional zoning enforcement was demanded, but he particularly said that was not the

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case. She thought it was correct when he says the credentials for the zoning enforcement officer or the Director of the DPLU did not have to do with credentials or professional certifications. Ms. Ball read from a report by former Mayor Richetelli who wrote: "The DPLU Director is responsible for administrative functions and not land use decisions". That is the reason the DPLU Director does not have to be professionally certified. He is never supposed to be responsible for land use decisions.

Does Milford need speedier enforcement? The DPLU Director cannot do two jobs more speedily than one. He already has one job. This is giving him another one. He is also being appointed to the position of Chief Building Official. She does not understand how he can do three jobs more speedily than one. The KRIT report evidenced the Building Department was not working well. It made some assertions to the Planning and Zoning Department but gave no particular evidence that the Planning and Zoning Department was not working well. She had not heard evidence offered by the Mayor, pro or con. She heard some assertions, but no particular evidence. Her main question is does the Board really need the appearance of the DPLU Director as Zoning enforcement officer. The Board is elected and genuinely represent the people of Milford. The City Ordinance gives the Board power to make land use decisions, which the DPLU Director does not, and to establish land use policy. The Board also has executive authority and responsibility at the State and Federal level of governments, not the City. There is a professional staff to help the Board do its work. She does not understand why it is necessary for a City administrative official to be inserted. The KRIT report stated the building department was not functioning properly. Milford needed line workers. Instead it got a major bureaucratic reorganization and an expensive administrator. Summary: Mayor wants to get the greatest value out of the Director; it is impractical to have one person do the work of three; which one of these jobs is not for real? The proposal raises conflicts of interest. An administrator is not supposed to be in a supervisory capacity over himself.

**Mark Lofthouse, 54 Maple Street:** Reserved comment until he hears further with regard to regulation change 6.2.6. He understands the intent is to have people back in their homes who have displaced after storms Irene and Sandy and the Mayor's good intention to help with the nonconformities. His concern was the flood insurance and having people removed from that.

Biggest concern is with 8.2.2. The proposal for the DPLU to be the zoning enforcement officer. He does not believe it is an appropriate position for the DPLU. It undermines the Planning and Zoning Board over time. He was on the Board that had trouble with the previous city planner and they were not here all the time to see what personnel issues were going on. The Board gave up some of its power for personnel matters. The Board did not give up any power relative to planning and zoning and land use issues. Giving the DPLU zoning enforcement lets them behind the Board's fire wall. Historically, his personal regret was to allow any oversight to the mayor's office. He thinks the DPLU becoming the ZEO can be abused over time. Urged the Board not to allow this to happen.

The KRIT team suggested the DPLU. He does not believe the Kimball report ever called for a DPLU. He was never a big fan of the DPLU. To give them power over the Board and behind what the Board does is a mistake.

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**Chairman Bender:** Anyone else against the regulation changes? (No response)  
The Chair clarified Ms. Bell's statement that the Director was the Chief Building Inspector. The Director is the Chief Building Official. Tom Raucci is still the Chief Building Inspector.

**Mayor Blake:** The present DPLU Director is Milford's Building Official, not the Chief Building Inspector.

With respect to some of the comments that were made, the intent of the Sections 8.2.2 were specifically to help with the administrative tasks. He is giving more administrative abilities to the DPLU Director, not to have any of the legislative type of authority over this Board.

**Chairman Bender:** Offered the speakers the opportunity to speak to what the Mayor said. He left the public hearing open to review what the Mayor had stated and to ask more questions based on the input the Board received tonight.

**F. PUBLIC HEARINGS CLOSED 10/15/2013; expire 12/19/2013**

6. **141-159, 146 MERWIN AVENUE (ZONE R-7.5)** Petition of Daniel Migliore, for Special Permit and Site Plan Review approval to construct six units of affordable housing, in an existing building, under CGS 8-30g on Map 59, Block 739, Parcel 2, of which Milwood Properties, LLC is the owner.

**Mayor Bender:** The hearing has been closed and is up for Board discussion.

**Ms. Cervin:** One of the points the Board was discussing was the parking area and people who might be living in the affordable units would be walking across the street to that lot, or whether that would be used for people who are frequenting the restaurant. Her opinion is that the parking should be used for the restaurant users because it is more of a safety issue for the people living in the units than for the restaurant. You should be able to park where you live.

**Chairman Bender:** Stated his issues were the safety of the residents and the visitors due to the commercial restaurant parking and traffic on the property. The safety of the residents and visitors due to the proximity of the living space in the commercial parking lot where cars, delivery trucks, etc. could inadvertently drive right into the residential living area. There is no curb there. Also concerned about separating the property from 159 from 141 to establish 159 for residential units would remove all commercial parking from the existing 151 property, which is the restaurant, which would appear to result in no parking for the existing commercial business because you have separated those properties and the restaurant property line is right against the building. Separating those properties to create the residential units would result in significant and vital commercial required infrastructure that would no longer be located on that property, such as grease traps that are on 159. It is his opinion that these units that are sought for affordable housing is an excuse by the applicant to avail itself of the benefit of 8-30g scrutiny and review. They know that otherwise commercial applications that have been before the Board and would likely be again would not be looked upon favorably in

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regard to the public interest, health and safety, which interests clearly outweigh the need for affordable housing. The lack of safe access to the residents and visitors to the housing units, in particular. The issues do not outweigh the benefits of the 1 or 2 units that would be obtained. He has not received any clarity on the property separation.

**Mr. Sulkis:** The application was always viewed holistically. It was always both the properties because they had been merged through use. That has never been a question. He referred to Mr. Migliore to confirm that has never been in question. As the Chair stated, the infrastructure for the restaurant is on the other property. Its garbage and greasetrap are on the other property. The parking is on the other property. It has historically been used as one property. He is confused when the Board started to get to is it better if it is separated or not separated? It is one property that happens to have a restaurant on it and this structure that may or may not be affordable housing.

**Chairman Bender:** They were talking about two different addresses, when they took the patio off.

**Mr. Sulkis:** They had originally shown a patio as part of the application. What they were saying was they have abandoned doing that. They were not going to pursue the patio at this time.

**Chairman Bender:** Bottom line is that there is commercial parking, driving and all kinds of activity that make it very unsafe for residents and visitors.

**Mr. Mead:** During the hearing Commissioner Tom Nichol brought up that people who were pulling up in front of the building where the affordable housing units were going to be, that headlights would be shining into the apartments. The engineer said there was no way to prevent that. Some type of screening could be put up, but as was said, the landowner is trying to get some use out of the building because it has been before the Board 2-3 times and nothing went through. He could see if it was a new building on a separate piece of property that was vacant before and they built this building, but with the commercial restaurant and joint use of the parking for the restaurant, the housing and the garbage receptacle and the restaurant being part of the whole scenario, it is not a good fit for the use of either building.

**Mr. Nichol:** Sees it as an unsafe property for residential use. He sees it as a safety issue because nothing stops anyone from driving through that building from that parking lot. As far as quality of life goes, he would not want anyone shining their lights in his window at night.

**Chairman Bender:** Stated he did not want to do a motion tonight, but give direction to the Staff to come up with a motion for the next meeting.

**Mr. Mead:** It is like a mixed use building, but instead of it being a separate building where the restaurant is on the bottom and the apartments are upstairs, it is two separate buildings on a lot where it is not feasible. He asked Staff's opinion on parking requirements in an 8-30g application and that local zoning regulations do not have to be adhered to. So typically a certain number of parking spaces have to be provided but none have to be provided per unit?

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**Mr. Sulkis:** Local zoning does not have to be followed. That includes parking. In theory you could propose affordable housing at any location that has zero parking because parking is a local zoning requirement.

**Chairman Bender:** The only reason that rule applies is because Milford is under the 10% housing rule. If Milford was above 10%, then the regulations would apply.

**Mr. Sulkis:** If the City was above 10%, the applicant would not be able to take advantage of 8-30g in that situation.

**Chairman Bender:** The City is a little above 6%.

**Ms. Cervin:** It appears the Board is asking Staff to write a motion for denial based on the safety issue.

**Chairman Bender:** Safety, health and if the benefits do not outweigh any issues of public interest. It can be noted that this property has come before the Board for other applications and was denied.

**Mr. Sulkis:** Asked the Chair for clarification.

**Chairman Bender:** Repeated his statement that the units sought for affordable housing is an excuse by the applicant to avail itself of the benefit of 8-30g scrutiny and review when it knew that its otherwise commercial applications had been and would likely be looked upon again unfavorably.

**Mr. Sulkis:** Asked if the Chair wanted a motion with the information from his notes and the Board's comments.

**Chairman Bender:** The statements he made mimicked those expressed by Mr. Mead and Nichol and Ms. Cervin, which should be captured in the motion.

7. **580 BRIDGEPORT AVENUE (ZONE CDD-3)** Petition of Key Hyundai of Milford for an Amendment to a Special Permit and Site Plan Review approval to delay constructing a building and establish a dealer parking lot in its place on Map 25, Block 385, Parcels 14 and 14A, of which J & J Milford, LLC is the owner.

**Chairman Bender:** The original thought was to handle this request administratively, but he thought it should be brought before the Board for the decision. The area will be permeable, which is a good idea; the time frame is critical. They will have to come back because if they get the property they want there will not be a building there. They will knock down but they will not put something in its place and use the area for parking. Thinks a time frame is necessary for them to come back with a new plan.

**Mr. DellaMonica:** Asked if the Board was waiting for the final sale of the property.

**Chairman Bender:** The in-between property is in negotiations as it appears the owner is becoming more amenable to selling the property through the efforts of his daughter. No one knows if and when a sale will take place, so Hyundai has to come back and ask again.



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if they don't get the property. Have to be clear as to how long the Board wants this approval for.

**Mr. Sulkis:** Based on the information they gave, at least a year.

**Chairman Bender:** They are knocking the building down up to the tennis court. There will be a permeable surface in that area. Mr. Mead asked for more landscaping in front of the tennis building., since there will not be a building in front of it any longer.

**Mr. Sulkis:** They were going to complete all the other site improvements conditioned in the last application. This included the off site improvements on the City property with public access.

**Ms. Cervin:** Suggested the Board give them a couple of years to come back with a site plan.

**Chairman Bender:** Agreed with the two year time frame.

**Ms. Cervin:** Made a motion to approve the petition of Key Hyundai of Milford for an Amendment to a Special Permit and Site Plan Review approval to delay constructing a building and establish a dealer parking lot in its place on Map 25, Block 385, Parcels 14 and 14A, of which J & J Milford, LLC is the owner with the following conditions: A two year time frame will be allowed in order for the applicant to return to the Board with a new site plan or request for an extension. Demolition of the building can take place; more landscaping in front of the tennis building; and all site improvements conditioned in the previously approved application.

**Mr. Mead:** Second.

All members voted in favor of approval.

8. **489 NORTH STREET (ZONE R-10)** Petition of Thomas Lynch, Esq. for approval to construct a two lot subdivision on Map 87, Block 801, Parcel 2, of which RKP Properties, LLC is the owner.

**Chairman Bender:** Realizes there are concerns from the neighbors, but upon review of the application, there are no variances requested. Denial of the application would most likely mean the existing house will come down.

**Ms. Cervin:** This is improved over the first site plan where the proposed house did not face the street. On this plan it does. Saving the Woodruff house is very important. Suggested a deed restriction be put on it in perpetuity, as well as make sure the house is rehabbed in a way that is appropriate for an historical house.

She appreciates the neighbors who spoke up and their input, but there were no variances required and they were able to make two legitimate lots. She is in favor of the Woodruff House preservation and in favor of this application.

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The question of whether a deed restriction was agreed to by the applicant, or an agreement to renovate the house in its historical era was discussed.

**Mr. Sulkis:** Thought the applicant said they would be willing to put a restriction, agreement, or something in place that would say the house would remain and be restored. Not sure if the Board could be more specific as to how the restoration is done and to approve it.

**Chairman Bender:** Noted there could be negative implications if there are deed restrictions in perpetuity on the house and if no one buys it or restores it, it will rot there because nothing can be done with it.

**Ms. Cervin:** Recalled the Applicant agreed to rehabilitate the Woodruff House before they constructed the new house.

**Mr. Mead:** Made a motion to approve 489 North Street, the petition of Thomas Lynch, Esq. for approval to construct a two lot subdivision on Map 87, Block 801, Parcel 2, of which RKP Properties, LLC is the owner with the conditions that the historic home on the property be restored to its historic era before construction of the new house with a deed restriction in perpetuity recorded on the land records.

**Ms. Cervin:** Noted the Tree Commission asked to save a 16" tree where a dry well was proposed.

The purview of the Board's jurisdiction to dictate how the reconstruction of the historic home would take place; the fact that the applicant stated they would relocate the dry well for the tree was discussed.

**Mr. Gettinger:** Suggested keeping it simple: Approval; save and refurbish the house and keep the 16" tree.

**Ms. Cervin:** Amended her motion to approve the application with conditions of a deed restriction on the land records to maintain and preserve the historic house; save the 16" diameter tree and relocate the dry well.

**Mr. Mead:** Second.

All members voted in favor of approval.

9. **109 SEASIDE AVENUE aka 70 KINLOCH TERRACE (ZONE R-7.5)** Petition of Thomas Lynch, Esq., for an Amendment to a Special Permit and Site Plan Review approval to construct a new supplemental parking lot on Map 35, Block 427, Parcel 14, of which the United Presbyterian Church is the owner.

**Chairman Bender:** Commented there were a lot of comments on this application. There seem to be a lot of issues going on with the people living in that area. He thinks putting additional parking there would help but because there are other issues going on he is not sure how it could be related to the parking lot.

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**Mr. Gettinger:** Asked if the Board had authority to limit the hours that the parking lot can be open.

**Mr. Sulkis:** The Board can modify the request by establishing conditions. Whether the conditions can be realistically enforced is another matter.

**Chairman Bender:** Whether the parking lot is there or not is not solving the bigger issues they are having over there, such as; 6:am arrivals and parking, with the thought being that more parking spaces, will increase the problems the neighbors are having. However, whether it increases or not, there is still a problem because the lot is there.

**Mr. Mead:** Noted the problem with the red truck that parked outside the lot might be solved if he could park in the parking lot. The Board's purpose is to rule on the parking lot and not the way the Church uses its building. If the Church can do something with the neighbors to change the time of the meetings, then the Church and the neighbors should get together and try to iron it out. But the Board's issue is the parking lot.

**Chairman Bender:** Recalled the red truck parked outside the parking area deliberately. He thought with this parking lot it brings it closer to the neighbor's house. Not sure what could be done with hours but a buffer could be put there.

**Ms. Harrigan:** Two waivers for the buffers were requested; one adjacent to the Church lot and the other was adjacent to the residential lot where a fence will be placed.

**Ms. Cervin:** The Board looks out for the integrity of the residential area surrounding something like this. She is concerned about the waivers and that there will not be an appropriate waiver between the house on Kinloch Terrace and the parking lot. She also remembers the lot will not be used if there is snow because it will not be plowed because of the permeable surface. There are only 9 spaces here.

**Mr. Mead:** Viewed the property. There is already a fence between the residents and where the grass area is for the parking that they want to use. Perhaps shrubs next to that area to make it bigger would work.

**Ms. Harrigan:** After discussion about potential solutions, the decision was made to orient the lot the way that it was with the separate curb cut and that was the only way to maximize the adequate maneuvering aisle needed.

**Chairman Bender:** Asked if reconfiguring the buffers would work.

**Ms. Harrigan:** The tree commission was pleased with the number of trees that were proposed and there were existing trees in the buffer area that would have to be relocated to the satisfaction of the tree commission on the other side if there is adequate space to do so.

**Chairman Bender:** He believed that would help the residents.

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**Mr. Casey:** Made a motion to approve the petition of Thomas Lynch, Esq., for 109 Seaside Avenue for an Amendment to a Special Permit and Site Plan Review approval to construct a new supplemental parking lot on Map 35, Block 427, Parcel 14, of which the United Presbyterian Church is the owner with the condition to change the buffer five foot buffer between the parking lots and move it the residential side to make it a large buffer per the Tree Commission's recommendations.

**Mr. Mead:** Second.

**Chairman Bender:** Stated he hoped that Mr. DellaMonica's recommendation to call Sgt. Richards of the Traffic Commission to work with the pastor and the neighbors to rectify all the other issues that are outside the parking lot, which seem to be a major concern to the area.

**Mr. Gettinger:** Stated he will vote against the application because he would like to see some hour restrictions. Thought the Board could formulate a motion that satisfies the neighbors' concerns about the over use of the parking lot and give the applicant the extra space they are looking for.

**Chairman Bender:** The Board can only act on the nine parking spots. It does not have further jurisdiction over the lot.

Eight members voted in favor of the application. Mr. Gettinger voted against the application. The motion passed.

[Mr. DellaMonica left the meeting at 10:10 p.m.]

**G. TABLED ITEM FOR DISCUSSION**

10. **142 WEST TOWN STREET/65 SPRING LANE** – Order by Director of Public Works to waive Subdivision Sidewalk Requirements.

**Chairman Bender:** The City Attorney gave the Chair some reasons why sidewalks were not required on this property: There are no sidewalks there; they would be in the middle of the street and they would be ripping them up anyway. Did not want to belabor this. There was talk that there could be a trade-off and do some other areas instead. He would agree to that.

**Mr. Sulkis:** Agreed there could be a trade off on the Spring Lane side because the Engineering Department recommended that the sidewalks go across the street where they are contiguous and they had some issues with some sidewalks there. They asked and he agreed that those sidewalks can go there.

The issue on the other side again is that was under the jurisdiction of the Public Works Director to say no. The fundamental question that the Board has to decide on, which it has a right to pursue, is the Board can appeal the decision of the Public Works Director to the Public Safety Committee of the Board of Aldermen for all the reasons he set forth in his memo to the Board on this matter, which states public sidewalks are what the City wants to see, but that is the Board's call.

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The original proposal was to have sidewalks in front of 142 West Town Street and 65 Spring Lane. The Engineering Department made a good case for switching on to 65 Spring Lane but the Board required the sidewalks be installed at 142 West Town Street.

**Chairman Bender:** The distance to place the sidewalks in the alternate area seems longer than the section of sidewalk they were required to do before.

**Mr. Sulkis:** There are sidewalks that are there but they are very old and in disrepair and will be replaced.

**Chairman Bender:** Recommended the corner section across the street (83 Tower Street and Spring Lane) be connected and the corner section of 163 West Town Street have sidewalks that will be connected, thereby getting more sidewalk area.

**Mr. Sulkis:** Stated he would propose that to the developer.

**Mr. Mead:** Inquired if there was or is a sidewalk fund similar to the Open Space fund.

**Mr. Sulkis:** Not sure of the status of the sidewalk fund the Board had and where it went. The Open Space fund is statutory with regard to subdivisions and resubdivisions.

**Mr. Mead:** In this instance the Board found an alternate place to put the sidewalks, but if it was not feasible to do so, money for that purpose could be placed in a fund where the City could use it for sidewalks where needed.

**Mr. Sulkis:** Ms. Harrigan just told him it was an ordinance that was removed. Will look into what can be done with regard to sidewalks in the future.

**Chairman Bender:** Summarized: No sidewalks will be constructed on 142 West Town Street. Will find out if the two other properties discussed can get contiguous sidewalks constructed by the developer with Engineering Department approval.

**Mr. Sulkis:** Will discuss this with the developer.

#### **H. REGULATION CHANGES – Update -**

The Board discussed the four regulations that will be brought to a public hearing on December 3, 2013:

1. Definition of Family
2. Section 3.1.3.4 Keeping of Poultry
3. Section 5.17 Special Events/Tents (new)
4. Section 5.6.13 Gas Station Numeric Signs -

The proposed Section 2.5.5 Rear Lot text change was distributed to the Board for discussion at the next meeting.

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**I. REGULATION SUBCOMMITTEE – Update - None**

**J. LIAISON REPORTS - None**

**K. APPROVAL OF MINUTES – (10/15/2013)**

**Mr. Nichol:** Made a motion to approve the minutes of the 10/15/2013 meeting.

**Mr. Casey:** Second.

All members voted in favor.

**L. CHAIR’S REPORT - None**

**M. STAFF REPORT – None**

Due to lack of time, the Board voted to discuss the Marijuana Moratorium at the next meeting.

**Mr. Grant:** Made a motion to adjourn the meeting.

**Mr. Willis:** Second.

All members voted to adjourn the meeting at 10:50 p.m. The next meeting will be held on November 19, 2013.

**Phyllis Leggett**\_\_\_\_\_  
Phyllis Leggett, Board Clerk