

**MINUTES FOR TWO (2) PUBLIC HEARINGS
OF THE PLANNING & ZONING BOARD HELD
TUESDAY, JUNE 19, 2012; AT 7:30 P.M. AT THE
CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Mark Bender called the June 19, 2012 meeting of the Planning and Zoning Board to order at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Jeanne Cervin, Ben Gettinger, John Grant, Edward Mead, Michael Casey, Dan Rindos, Joseph DellaMonica, Tom Nichol, Ward Willis (7:50)

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

Chairman Bender: Made the announcement that Item C1, Cascade Boulevard Public Hearing will remain open until such time as the response from the Milford Department of Health regarding the mercury contamination report is received. The Applicant has granted the Board an extension of time to close the public hearing.

Item D4, Public Hearing for 475 New Haven Avenue will not be heard tonight. The Applicant has requested a postponement of the hearing, which the Board has granted. Rescheduling of the public hearing will be noticed.

C. PUBLIC HEARING CONTINUED - CLOSES BY 6/19/2012; expires 8/23/2012

1. **CASCADE BOULEVARD (ZONE CBDD)** Petition of Garden Homes Management Corporation for a Special Permit and Site Plan Review to construct a 36-unit multifamily development in accordance with Connecticut General Statute 8-30(g), of which Matrix Associates, LLC is the owner.

To be continued.

D. PUBLIC HEARINGS CLOSE BY 7/23/2012; expires 9/26/2012

2. **312 WOODMONT ROAD (ZONE ID)** – Petition of Vincent Della Rocca for Special Permit and Site Plan Review approval for a new garage addition to a truck sales and repair facility located on Map 91, Block 809, Parcel 4, of which Tri-State Rentals, LLC is the owner.

Monte Kroh, CFO, In-House Attorney, Tri State Diesel. Gave a brief history of the company. Tri-State Diesel was started approximately 30 years ago by one man working out of the back of his truck. The diesel engine repair and rebuilding facility grew into a full truck service operation. In 1996 this successful operation was awarded the Kenworth Truck Company franchise area for all of Connecticut, Rhode Island and half of Massachusetts. Tri-State Diesel replaced Mayflower Kenworth and is the Kenworth and auto car rep for three states.

The flagship dealership and corporate headquarters were built in 2001 in Enfield. It is an 80,000 SF on 16 acres of land. It is one of the largest truck dealerships in the US. This

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dealership won the North American Kenworth Truck Dealer of the Year Award in 2003 and 2004.

In 2006 another dealership was purchased in Massachusetts which extended the franchise into eastern Massachusetts. The franchise territory now includes all of CT, RI and MA and parts of New York State.

Two years ago the subject property at 312 Woodmont Road was purchased. This property had many owner/tenants in the past, most recently Peter Pan Bus Lines for twelve years. After this purchase a new dealer license was applied for and granted. They have the right to sell new and used trucks; parts and accessories and repair vehicles. Currently have six service bays and a parts distribution center is run out of that operation. Also just finished a \$400,000 environmental cleanup of that site that had been subject to a DEEP order dating back to 1987. Expecting a closure statement from the DEEP at this time. It was a mess and was voluntarily cleaned up by Tri-State Diesel.

Asking permission to add on to the rear of the building by expanding the service operation from six to twenty bays, which would include 7 drive through bays, which would service two trucks end to end, to equal 14 additional bays.

Vin Della Rocca, Project Manager. Explained the upper and lower levels and layout of the proposed building addition via the site plan on display and the information that was provided to the Board. The existing building will be upgraded structurally and esthetically. There will be seven bays on either side of the building.

Because of the use of the property, landscaping is limited to the perimeter of the area. He described where the plantings will be located via the site plan. Pruning will take place on the side of the property at the request of the Police Department for sight line purposes.

Mr. Della Rocca described where the new bays will be located and how they will be accessed for traffic flow. The office will have write-up people, parts people, a lounge for the drivers to wait for their vehicles, as well as an employee support area. There will be a wash bay for the trucks and another bay that is for the servicing of the natural gas vehicles that are coming into the market.

He noted the perimeter of the building is punctuated by doors, which leaves little area for landscaping against the building. He noted how plantings in those areas would lead to accumulation of debris and if that area is paved, there will be a better opportunity to keep the place clean.

The waiver requests were noted: 1. Sec. 5.4.2.3. At the southeast entrance of the property there is a 10-foot setback from the driveway to the property line requirement. One portion of that driveway is 9.5 feet. The total impact of encroachment is approximately 12 square feet. 2. Request for a freestanding sign. A separate permit will be obtained for this. 3. Question of Cape Cod curbs. The zoning regulations call for concrete curbs, which are usually vertical. The Cape Cod curve is slightly depressed and would lend itself to more durability with the large trucks that enter into this area.

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The balance of the waiver requests pertain to landscaping: 1. Section 5.14.6 (1), which requires 10% of the parking area to be landscaped. He referred to the site plan and described the traffic flow and parking area for the various types of trucks. Having landscaped islands would not lend itself to the scale of the trucks that are being serviced.

2. Section 5.14.6 (8). Five foot buffer between the building and the pavement. He described on the site plan how the area has been paved for many years. This paving minimizes maintenance of the facility as the islands become dirt collectors. 3. Section 5.1.4.7(1) Screened Refuse Enclosure. Asked not to landscape this, again due to maintenance. This dumpster enclosure cannot be seen from the road due to the gradient.

Wes Wentworth, PE, and Soil Scientist, 177 West Town Street, Lebanon CT. He did the site design. This site is 3.8 ac. In the ID zone. He showed on the display the existing building. The remainder of the site going up both sides had been paved. The site is partially ground up at this time due to the DEEP cleanup. The same parking layout is being maintained with a slight reduction in pavement and impervious area than what was there before. There is City sewer and water. There is a private storm drainage system. There are catch basins going down the west and east sides. They converge and discharge into a town catch basin on the north side of Woodmont Road. Those drainage patterns will be maintained, however, portions of the drainage system will be upgraded and retrofit. There will be no increase in peak storm water flows off the site as a result of this development because the impervious surface will not be increased.

The City Engineer raised the issue of storm water quality. This is an existing site and there is not a lot of room to do things at the surface and could some storm water recharge be done for storm water quality. Did some soil boring and there is shallow ledge about three feet down. The site is not optimal for ground water recharge or storm water quality measures of any scale. On the last two catch basins coming off of each run an oil hood was added over the exit pipe, which will remove some of the floating oil and debris during smaller rainstorm events. Aside from this not much more could be done on the site. The City Engineer agreed.

The City Engineer also asked for an overlay of the old bituminous layout vs. the new, which was submitted and shows and a reduction in the pervious area on the site. Sewer Commission approved the application with one condition stating because there is a wash bay and floor drains inside the building that are connected to the sanitary sewer, per DEEP requirements, an oil/water separator needs to be designed, which has been included in the plans and it will conform to all DEEP regulations. After installation it will be registered under the appropriate general permit for discharge with the DEEP. Milford Police reviewed traffic flow. There are two existing entrances and an existing parking lot that is staying the same. One way in on the east side and one way out on the west side. Only comments were clearing of vegetation and no planting of landscaping that could obstruct sight lines. Those changes have been made to the plan and the police department has approved them. The Tree Commission, Fire Marshal and Inland Wetlands all approved.

Mr. Wentworth concluded that this application does not negatively impact the public's health, welfare or safety.

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Mr. Sulkis: The changes were made as recommended by the Police Department.

Mr. Rindos: How many employees will be working in total and what is the breakdown?

Mr. Kroh: Anticipating 20-25 employees. The breakdown would be 6 or 7 working in the Parts Department; 8-10 in the Service Department in various capacities; 1-2 truck salesman with an administrative assistant and a branch manager. The setup is very similar to a car dealership, but with large trucks.

Mr. Rindos: Is there a full time maintenance person on staff.

Mr. Kroh: Use an outside janitorial service but there is always a full-time maintenance worker. Sometimes that individual splits his time between maintenance and another job function in another department.

Mr. Della Monica: Asked if the parking lot will be repaved or repainted? The Police Department asked for handicapped spaces to be reconfigured and repainted with signage.

Mr. Wentworth: The rear of the site will be repaved and the reconfiguration of the handicapped area will be addressed.

Mr. Mead: Will there be a night shift?

Mr. Kroh: No. 7:00 am to 6:00 pm. Daytime only. Parts Department open from 7:00 am – Noon on Saturday. Depending on the necessity, some mechanics may work on a Saturday.

The present use of this truck servicing area is much less trafficked and intense than the former use by Peter Pan, which had the operation and buses running 24-7. He noted all the truck and heavy commercial use that has existed in Milford for many years.

Ms. Cervin: Appreciated the fact there would be no increase in the impervious area, however, there will be more vehicles and there may be increased oil drippings. Asked about the waiver for the buffer landscaping.

Mr. Wentworth: Described where the bays would be located on the site and the need for there to be access to the bays by very large trucks. On the north end of the building where there are no bays and the property can be landscaped and be maintained. That would be at the front of the building.

Ms. Cervin: Was concerned about the storm water runoff and she would be in favor of them putting a five foot strip in the back to help to some degree with the water runoff.. Maintenance would be mowing.

Mr. Wentworth: Does not think there would be any significant change from a stormwater standpoint, either by quality or peak flows.

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Mr. Mead: Asked for a repeat of the waivers being requested.

Mr. Della Rocca: 1. Police Dept concerns. SE entrance, small encroachment. 10 foot requirement. One small portion encroaches. Total impact is 12 SF.

2. Signage had been included on the plan. Was told that this is a separate permit. Should be within the square footage allowed in the ID zone.

3. A waiver may not be required to use a concrete Cape Cod curb in lieu of the standard box curb. This type of curb is more sturdy and suitable for the heavy type of use it will get.

4. Landscaping 5.14.6 (1). Landscaping islands. Use will not lend itself to an island configuration. A fair amount of vegetation will be introduced and maintained.

5. Sec. 5.14.6(8). 5-foot buffer. East and west portions of the property have 14-foot overhead doors. There is only a small strip of masonry wall between the openings. A landscape area would be a trip hazard with the placement of the overhead doors. Maintenance would also be a problem.

6. Sec. 15.14.7 Dumpster enclosure to be screened. The location and limited sight line of the dumpster enclosure, would prefer not to plant vegetation around it. Would rather maintain it and keep it clean.

Chairman Bender: With regard to the City Engineer's report, he asked Mr. Sulkis if he knew if the Cape Cod curbs would be permitted.

Mr. Sulkis: The City Engineer's report does not mention the Cape Cod curbs.

Chairman Bender: Asked if anyone would speak in favor of this application? (No response) Asked if anyone was opposed to the application? (No response).

The public hearing was closed.

3. **475 NEW HAVEN AVENUE (ZONE CDD-4)** – Petition of Anthony Giordano & Associates for Special Permit, Coastal Area Management Site Plan Review and Site Plan Review approval to construct a restaurant with outside roof deck seating on Map 56, Block 506, Parcel 2, of which MCM Realty is the owner. **(POSTPONED)**

4. **PROPOSED TEXT AMENDMENT - ARTICLE III Direct Use Regulations**
Section 3.19 Corridor Design Development District – 4
New Haven Avenue Design Corridor District: CDD-4

JohnKnuff, Esq., 147 North Broad Street, Milford representing Robert and Maureen Bruneau, the owners of Robert's Service Station in their application to amend Milford Zoning Regulation Section 3.19. Robert's Service Center is located at 216 Buckingham

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Avenue in the CDD-4 zone. It abuts the Metro North railroad tracks to the south. A packet of information was submitted to the Board which was date stamped into the record. It was noted that Attorney Win Smith was provided with a copy of this information as well.

The purpose of the proposed amendment is to permit commercial garages in the CDD-4 zone under very strict restrictions, such that the purpose of the zone is not jeopardized in any way. In addition, the proposed amendment reflects the unusual nature of Buckingham Avenue and will render a nonconforming use as conforming.

History of Robert's Service Station: Family business located in Milford for 35 years. The service center was relocated to its current location on Buckingham Avenue in November 2000. At that time the property was located in the GI Zone, where commercial garages were permitted subject to Special Permit approval. (Referenced maps are in the information packet distributed.) Mr. Knuff discussed where Robert's Service Center is located on the maps. He pointed out that the zone map at the time was not in model uniformity with the wide assortment of industrial, commercial, residential and business owners in close proximity to one another. The railroad tracks provide a natural dividing line between zones, but New Haven Avenue is also a dividing line; industrial to the north and residential office, general business and single family attached to the south. When the Planning and Zoning Board amended its Plan of Conservation and Development, and thereafter overhauled the regulations and zone map in 2003, it remedied the "jigsaw puzzle" zones to make the New Haven Avenue corridor more uniform. He referenced Tab 4 which showed today's map with the 1992 map.

There are numerous references in the POCD to making the various corridors within the City more attractive. Tab 5 shows the beginning of the CDD-4 regulations. A portion of the CDD-4 regulations pertaining to Section 3.19 was read. At the time this regulation was put into effect in the north side of New Haven Avenue, commercial garages were deleted as a permitted use, even though the zone permits manufacturing and various other types of repair facilities. In most cases, commercial garages tend to have a look that is inconsistent with creating attractive corridors. In the case of Robert's Service Center, the property is not within any corridor and the goal of the regulation is to make the commercial garage look as good or better than a manufacturing facility or any other permitted use in the CDD-4 by prohibiting unsightly elements of most commercial garages.

The rezoning created two issues. He states that Buckingham Avenue is not part of the CDD-4 corridor. It is an area unto itself. It is a narrow, one-way street that has a hodge podge of uses. There is no reason to travel down Buckingham Avenue unless you are specifically visiting one of the properties on the street. Therefore, eliminating commercial garages on Buckingham Avenue does not advance the goal of improving the New Haven Avenue corridor. In addition, the zone change in Buckingham Avenue also resulted in Robert's becoming a nonconforming use, which prohibits it forever from expanding in any way. The granting of this application will remove this nonconformity. In keeping with the CDD-4 regulations, Robert's continues to be a vibrant commercial area that provides services to residents and supports the City's tax base. Robert's hopes to continue its role but in an expanded version.

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The proposed amendment does not detract from the purpose of the CDD-4 zone. It will eliminate a nonconformity. It will require important esthetic concessions and will permit a business that supports the City's tax base to continue doing so.

Subsequent to rezoning in 2003, in 2008 the Bruneaus purchased a property located at 210 Buckingham Avenue, for the purpose of potentially expanding their business, not knowing that commercial garages were no longer a permitted use in the zone. They were surprised to learn that they could not use the abutting property for their business. Mr. Knuff was contacted in December 2011 with regard to this situation. There were subsequent meetings with City Planner, David Sulkis for his input, after which time the Bruneaus decided to seek a regulation amendment that would accomplish several goals:

1. To make their business conforming thereby allowing it to remain and expand and support the tax base as recommended under the regulations.
2. To still maintain the high degree of standards called for in the CDD-4, by making such facilities at least equal to or better than other permitted uses.

Mr. Knuff referred to the pristine manner in which Robert's Service Center maintains its property. It sets an excellent example as to how any business in the City should look. He referred to photos of the property contained in his handout.

Various departments of the City of Milford have done business with Roberts for many years: Public Works, Fire Department and Police Department.

The proposed text amendment (tab 8) was discussed. The bold language, "3.19.1.18 Commercial garage or vehicle repair and/or service garage provided the following standards are met. (This is adding as a permitted use, subject to Special Permit):

- (1) Such facilities shall not be located on a state highway;** (cannot be located on New Haven Avenue in the CDD-4 corridor)
- (2) Such facilities shall be located on property that abuts a railroad right of way;** (They can be located furthest to the north within the CDD-4 zone, away from the shoreline, which is an issue within the POCD and also closest to the industrial property which is located on the opposite side of the railroad tracks)
- (3) Such facilities shall be located on property that has a minimum lot width of 175 feet;** (many small lots on Buckingham Avenue cannot be utilized for this use)
- (4) A front yard setback of twenty-five (25) feet shall be maintained which shall be appropriately landscaped in its entirety;** (This pertains to a building setback.)
- (5) All repair bays and repairs shall be within an enclosed building and all vehicle repair bay doors shall not be visible from the street;** (They are not visible

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now and if the regulation is passed and Special Permit approval is received for an expansion, that will continue to be the case.)

(6) Outdoor storage of vehicles shall be appropriately screened from adjacent residential uses and the public right of way.

With regard to prohibited uses, the following bold language is proposed:

3.19.5 Prohibited Uses: The following uses shall be expressly prohibited.

Section 3.19.5.2 No commercial garage, gasoline station, vehicle repair and/or service garage, vehicle dealership, vehicle washing establishment, or other similar uses shall be permitted **unless otherwise permitted by Section 3.19.1.18.**

This is important because it specifically precludes vehicle dealerships and no car washes.

The legal test for a regulation amendment requires the Board to 1) Consider the Plan of Conservation and Development; and, 2) It must find that the regulation amendment is consistent with the comprehensive plan as found in the City's regulations, its zone map and its existing uses.

Tab 9 goes into some detail with regard to the Plan of Conservation and Development as to Robert's standards of upkeep and consistency with the Plan.

Consistency with the Comprehensive Plan: Referred to a Land Use Treatise authored by Judge Robert Fuller, which is considered by land use professionals as "the Bible". He quoted from Judge Fuller's treatise, which he believes substantiates that Robert's was rendered nonconforming and the change in 2003 was inconsistent with the Comprehensive Plan. (sec. 4:3 Pg. 64 Vol. 9) The purpose of this amendment is to render the existing use conforming, provided rigid guidelines can be met. This is also consistent because this is a commercial zone that also permits manufacturing, building materials or supplies provided they are in a completely enclosed building (Robert's), metal and woodworking shops or repair services, off-street parking garages or lots. These uses are very similar to the one that is being proposed and exist today. The fact that such a use has to abut the railroad tracks ensures that these uses are closest to the industrially zoned properties to the north, again consistent with the Comprehensive Plan.

Attorney Knuff referred to the memo from Assistant City Attorney Debra Kelly, dated May 23rd, speculating as to whether this regulation amendment would be considered spot zoning. This is not spot zoning because: 1. Spot zoning can only occur when you are proposing a zone change. A zone change is not being proposed; a regulation change is being proposed. All cases cited in the memo are references to zone changes. He could not find an instance of a case in Connecticut where anyone alleges that a regulation amendment constitutes spot zoning. 2. The memo does not get to the second part of spot zoning which is whether or not the proposal is consistent with the Comprehensive Plan.

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This application cannot be considered spot zoning because it is not for a zone change.

Mr. Knuff noted that Attorney Win Smith is representing the Bruneau's neighbor to the east, Donna Dutko. He noted that the complaints from the Bruneau's neighbors started shortly after they moved into that property in 2000. There is a claim that a fence that was erected for the purpose of shielding their neighbors was located in the wrong position. Surveyors came out and it was determined that the fencing was on the Bruneau's property. That was the first of many claims made by Ms. Dutko against the Bruneaus, none of which have any validity as far as the Bruneaus are concerned. Many allegations have been made to the zoning enforcement officer. No enforcement action has been made. Any allegations are irrelevant to the application, except for the fact that the purpose of this application is to allow the expansion of the use and to remedy any issues with the property next door.

The Commission was invited to visit the Bruneau site, as well as Ms. Dutko's property, and compare the two.

Chairman Bender: Asked for Staff's comments.

Mr. Sulkis: Referred to the report he sent to the Board. Mr. Knuff did a fine job explaining the applicant's intention.

Chairman Bender: Noted he and the Board members did not receive the City Attorney's comments. Asked that this memo be provided to the Board members.

Mr. Casey: Asked why, for clarity purposes, New Haven Avenue was not stated instead of a "State highway".

Mr. Knuff: New Haven Avenue and State highway are interchangeable.

Mr. Casey: Asked for clarification as to whether the property was legal nonconforming and this would be an expansion under the regulations.

Mr. Knuff: Looking to amend the regulation, so they can subsequently come in with a Special Permit and Site Plan Application.

Ms. Cervin to Mr. Sulkis: This is a proposed regulation formulated or crafted to fit a particular application. Asked if the Board ever had anything like this in its history to his knowledge.

Mr. Sulkis: All regulations were created for a reason.

Ms. Cervin: This specific reason?

Mr. Sulkis: There are many zones that have very specific regulations that pertain to maybe one or two properties, i.e. the Mall as an example, which zone is specific to that property.

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Mr. Knuff: Views this as an oversight that occurred ten years ago. It can be understood why it is prohibited along New Haven Avenue, but it did render an existing business nonconforming. The CDD-4 is a very shallow zone, north to south. Does not believe that Buckingham Avenue belongs there by way of use, aesthetics, or any of the other factors.

Mr. Grant: They purchased the property to the west?

Attorney Knuff: Noted where the (red) house was located.

Mr. Grant to Mr. Sulkis: Asked what the specific reasons for omitting repair facilities from this zone.

Mr. Sulkis: That was before his time in the City.

Mr. Grant: There are seven repair services on New Haven Avenue and two service stations.

Attorney Knuff: He was aware of the history. There was a strong preference for taking certain uses out of the five different corridor regions within the City. At the time the POCD was being prepared, the greatest emphasis was on the MCDD downtown district. He does not think that anyone at the time gave Buckingham Avenue any thought, attention or focus back in 2003, because it did not warrant it in the overall concept of rezoning the entire city.

Mr. Casey to Mr. Sulkis: Is there a chance that any other facilities in this zone will meet the requirements of this application change?

Mr. Sulkis: If they meet the requirements as specified.

Mr. Grant: There are seven repair centers and two service stations in that zone now that are on New Haven Avenue. Yes, this would affect other properties in that zone.

Mr. Sulkis: It would only affect them as far as them meeting the requirements stated in the proposed amendment. If they do not meet those requirements it wouldn't. If they do then it would. It has nothing to do with the use.

Mr. Mead: Has the area been surveyed to make sure there are no other properties that can be developed in the way this one is asking to be?

Mr. Knuff: No existing parcels that could meet this requirement unless adjacent properties were acquired, especially the 175 foot requirements.

Mr. Mead: Asked if the Bruneaus had already purchased the property.

Mr. Knuff: They had. They, through their attorney, did not check the zoning. They had an existing commercial garage. The woman next door offered to sell her property and they thought they would be able to expand into that space. Imagine how they felt when they learned they could not.

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Chairman Bender: Outlined the procedure for speaking at the public hearing. Anyone to speak in favor?

Robert Zimmermann, 177 Bridgeport Avenue, Helmut's Foreign Car Service, in favor of the proposal. Their property is kept meticulously for a commercial business.

Greg Broderick, Milford Auto Supply. A supplier to Bruneau's. Very professionally run business. Meticulous. Deals with other dealerships and garage facilities. Bruneau is a model garage facility.

Greg D'Agostino, Bel-Air Auto Sales & Service in Devon. Doing business with Robert's over 25 years. The Bruneaus have been an asset to the community. As a business owner he knows it is difficult to keep this type of business so clean. In favor of the application and for the Bruneaus to expand their business.

Thomas Hayes, excavating company on Buckingham Ave. He has been a customer for 25 years. They upgrade the neighborhood. Invite the public to visit their properties on Buckingham Avenue.

Chairman Bender: No one else to speak in favor. Anyone opposed to the application?

Win Smith, Esq., 9 Depot Street, Milford, representing Donna Dutko, an adjoining property owner to Bruneau's Service Center. Two reasons why this proposed text amendment should not be granted. 1. Legal and 2. Policy. A 9-tab handout was distributed to the Board members and date stamped into the record.

He referenced the Assistant City Attorney's memo to the Board in which she basically states that this is spot zoning. He concurs with all the cases cited. She states that this kind of spot zoning is a change that seeks a very narrow effect to a handful of properties. In this zone the property has to adjoin the railroad right-of-way and cannot be on a State highway. There are possibly 5 to 8 properties that this would apply to. The further definition is limited in such a way that there is only one property that this property can be applied to. That is classic spot zoning. This seeks to advantage one person to the detriment of everyone else. As a matter of law it should be turned down.

The handout was referred to which showed the site plan submitted by the Bruneaus when they opened their business in 2000. He referred to photographs that showed the property when the business started and how it looks today. They bought the house next door and incorporated the entire backyard into their operations. Upon reviewing the zoning file there were no requests or applications or anything submitted. Substantial construction and revision has been made to the property within an existing zone and no applications have been made for that. As a matter of policy the Board should not be assisting them now in remedying the violations which they have created. They ignored Milford law and Milford zoning amendments and regulations. They may have done so unwittingly, but it is still a violation. They are asking the Board to remedy all that they did without getting the Board's permission.

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Tab 4 was referenced the complaints Ms. Dutko filed with the zoning office which complaints were not acted upon. Upon checking with the Secretary of State's website, it appears that Robert's was dissolved in 2001 and not reactivated until 2004. Their permits may not even be valid for 216 Buckingham Avenue.

He referred to Tab 6 which shows the light stanchion that was erected in what used to be the grassy backyard of 210 Buckingham Avenue, which is pointed at his client's property creating light and noise pollution.

Tab 7 shows large containers that are stored in the yard. This is in violation of the Special Permit they had.

Tab 8 shows advertising that shows they have a 24-hour towing service.

Tab 9 shows the lawsuit that his client has filed in this matter.

It would be bad policy for the Board to adopt these amendments to bail these people out of the very mess they have created by ignoring the City's laws. He reiterated as a matter of law this is spot zoning. As a matter of policy this a bad area for this board to get into; helping people get out of messes that they created on their own without doing the things they should have done, even if it was done unwittingly.

Donna Dutko, 236 Buckingham Avenue. Distributed information to the Board and reviewed its contents. Photographs and a petition was circulated among the board members and date stamped into the record. Photos showed what is going on behind and around their building. Showed photos of homes on Buckingham Avenue and where these properties have been used for the benefit of Robert's business. Discussed the Plan of Conservation and Development in relation to commercial businesses in this area and the need to upgrade the area as to streetscape, increase residential areas and preserve the natural resources of the area. She read that New Haven Avenue is the gateway to downtown Milford. The attractive residences such as Patchen Mews should not have to face automotive service centers. The increase of these types of businesses would dissuade further residential development in the area.

Ms. Dutko described the photos contained in her packet. She and her neighbors do not want this application for a text change to be allowed.

Frank Tondora, Patchen Mews, 289 New Haven Ave. Noted Attorney Knuff mentioned wreckers. He says wreckers are diesel powered. He referred to an article in the Connecticut Post on June 13th, the headline of which stated "Diesel fumes linked to cancer", wherein it states that diesel fuel is as great a health threat as second hand smoke.

John Meuser, Patchen Mews. New Haven Avenue. Concerned about the traffic, especially at the corner of Buckingham Avenue across from Patchen Mews, especially turning right from Buckingham Avenue. Further believes it would be wrong to allow what has taken place to be washed under the rug.

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Fred Palmieri, real estate appraiser. In the immediate vicinity of the property there are 8 residential properties; of 8 properties 5 are single family dwellings. If this amendment change is passed it will have a further negative impact on the residential market values for the properties in that area and the surrounding area. Given the current state of the economy and residential housing market, Milford would not want to add to this weight that is going on in terms of residential market values.

Charlie Kreidler, 12 Harborside Drive. Concerns that permitting commercial garages will affect the quality of life and safety of his family. The existing zoning regulations were written to protect his neighborhood exactly from this type of activity. Quoted the POCD as it relates to the creation of the New Haven Avenue Design Corridor District, wherein expressly prohibited activities are: commercial garages and freight truck terminals. The applicant is requesting a business expansion, not simply a remedy of nonconforming use. The higher amount of traffic and less predictable traffic patterns around the commercial garage and towing service make the roads less safe. The increased noise affects the residents' quality of life. Residential property values may suffer. The character of the neighborhood will permanently change. The regulations were written to prevent this. He asks that the Board reject the request that would put the quality of life second to a commercial interest's desire to expand in an inappropriate area.

Rebuttal:

Attorney Knuff: Responding to Attorney Smith's comments as to spot zoning. There is no such thing as spot zoning for a reg change. He has not provided any analysis, any case, any opinion from a planner. There is nothing to support the allegation. He noted the Assistant City Attorney's memo is irrelevant because it only deals with zone changes, not regulation amendments.

With regard to the policy argument, this is the way issues like this are resolved. When a landowner makes an honest mistake they come before ZBAs, Inland Wetlands Commission and Planning and Zoning Commissions and try to remedy their mistake. This is the first step in his client's attempt to remedy the minor violations. The trucks may be on the property during the day but they go inside at night. The photos of the trucks were taken during the day.

References were made to complaints not acted upon. Why is that? Either they have no validity or because they are tied to this application. The staff has decided not to create an enforcement action against the Bruneaus. In terms of light and sound pollution, the light that is referenced is several hundred feet from Ms. Dutko's property and the light would have to go through the existing building. Also, this is a commercial zone. Ms. Dutko's residence is in a commercial zone. It was a commercial zone for many years before the CDD-4. The zone map from 1992 shows it has been general industrial the whole time. The reason this area was zoned GI was to create a tax base, which is what his client is trying to do.

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This is a towing and repair facility. It is not a trucking terminal. Just because someone says it is does not make it so. If a car needs to be towed or repaired, Bruneaus is called. This is not a truck station off Exit 40. He stated he does not know what Ms. Dutko was referring to when she made her presentation of the handout she gave. He did not provide him with a copy. He asked that he be given the opportunity to review this material so he could respond, if necessary.

This is not a Special Permit application or Site Plan application. Bruneaus will not have the ability to do anything if the amendment is granted other than to submit an application. Issues of traffic, environmental impact, safety and quality of life are not relevant to this application. References to residential properties being affected do not apply. This is a commercial zone and those residences are in a commercial zone. Property values have no bearing on a regulation amendment application.

Asked the Board to keep the public hearing open so he can review the material that was submitted by Ms. Dutko.

Rebuttal by Mr. Smith:

Attorney Smith: Tales issue with Attorney Knuff's statement that this is not spot zoning. Quoted from the Assistant City Attorney's comments with regard to spot zoning. This is an attempt to amend the regulations for the benefit of one business. Towing is an ancillary business to a repair facility. The towing is done on a 24-hour basis.

Final Rebuttal:

Attorney Knuff: With regard to spot zoning, he read from the Assistant City Attorney's memo and how it did not apply to this application. No cases were offered by the City Attorney or Mr. Smith where spot zoning was found on a regulation amendment. There is no case cited where they found a zone change application was spot zoning. Also, this is in compliance with the Comprehensive Plan. In terms of repair or towing, it has been operating there since 2000. They got their permit to be a repair facility and a towing facility because there is only one way a broken down car can get to a repair facility and that is to have it towed.

Mr. Knuff invited the Board to visit the two properties in question and see the dilapidated nature of her property and determine if that is an effective look for a gateway. Also, the properties are not in the gateway or in the corridor of New Haven Avenue. The properties are far off. No one can see them. They are insulated. Look at Ms. Dutko's property and see if that is the standard she wants Robert's to hold to.

Ms. Cervin to Mr. Sulkis: Mr. Knuff made a surprising statement when he said Staff has agreed not to enforce zoning violations.

Ms. Harrigan: Responded that based on the time line of the complaints that were received, it is her understanding that the prior zoning enforcement officer had spoken to Ms. Dutko. The office has very limited zoning enforcement staff so there are several

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expansions for motor vehicle uses where enforcement actions have not been done because it is a very long, detailed process. A new zoning enforcement officer has been hired. He has been following up with some of the zoning enforcement actions that were in progress for a case like this, where the applicant is trying to rectify the situation by moving forward. It is not in the City's best interest to expend resources to pursue this enforcement, not if there is a potential solution available via the Board. If this application does not get approved, it is likely that zoning enforcement action would be pursued.

Chairman Bender: The information that Ms. Dutko submitted is now part of the file, so it can be provided to the applicant.

Mr. Sulkis: Mr. Knuff may have some questions on the information and he has requested the opportunity to examine the evidence that was presented to the Board. By keeping the public hearing open, he can pursue getting answers to that which can be entered into the record.

Ms. Cervin: Can new material be presented that is not related to Ms. Dutko's information.

Mr. Sulkis: Yes.

Chairman Bender: The public hearing will be left open to be continued at the July 3, 2012 meeting.

4. **PROPOSED TEXT CHANGE TO SECTION 5.5 ALCOHOLIC LIQUOR REGULATIONS** - Section 5.5.1.2 Restriction of Permit Locations: Clarification of Definition of Schools

Mr. Sulkis: The new language is underlined and is very specific as to what is meant by schools. They are: day care center, nursery, elementary, middle or high school. In the past there were questions regarding karate schools, bartending schools, etc. This regulation is now clarified as to what the Board will consider a school in this context.

Chairman Bender: The proper notification has been sent to the necessary agencies. Asked the public if anyone wished to speak in favor of the text change. (No response) Asked if anyone wished to speak against the text change.

Joseph Agro, 55 Brewster Road. Not against the text change. Has a question. The change speaks about those things that might be previously exempt from this. Asked if there is an exemption for the downtown properties in the downtown zone.

Mr. Sulkis: The only change in language was for schools. No other language has been changed.

Ms. Harrigan: Asked if Mr. Agro was referring to restaurants in the downtown.

Mr. Agro: Yes.

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Ms. Harrigan: Yes. In the MCDD district, if a restaurant is a minimum of 2,000 SF in size, then distance criteria does not apply. That is the same in other commercial districts in the City.

Mr. Agro: This change does not affect that exemption?

Mr. Sulkis: No.

Mr. Agro: That is the clarification he was looking for.

Anyone opposed? (No response)

Chairman Bender: Closed the public hearing.

Mr. Mead: Made a motion to approve.

Mr. Grant: Second.

All members voted in favor of the amendment change. The change will become effective on July 2, 2012.

E. PROPOSED ZONING REGULATIONS

Sec. 3.1.4.2 Building Height in Residential Zones

Sec. 2.5.5 Lot Access and Rear Lots

Sec. 9.2.3 Prohibited Variances

Mr. Sulkis: Nothing new to report.

F. PLAN OF CONSERVATION AND DEVELOPMENT - Update

Mr. Sulkis: A press release was issued to inform the general public about the Plan of Conservation and Development meetings that will be taking place next week. Monday, June 25th at 6:00 at the Milford Library. The topic will be proposals for Fowler Field and Cherry Street. Next meeting will be held on Wednesday, June 27th at 6:00 at the Library. The topic will be zoning issues for the coastline. Thursday, June 28th at 6:00 at the Margaret Egan Center, Room 159, the topic will be Walnut Beach improvements. All presentations will be made by the consultant, Alan Plattus.

G. LIAISON REPORTS

Chairman Bender: Attended the South Central Regional Council of Governments meeting. New Haven is going through some development changes around Route 34. Open Space grants were being applied for by Guilford, Branford and Meriden.

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H. APPROVAL OF MINUTES – (6/5/2012)

Ms. Cervin: Motion to approve.

Mr. Casey: Second.

All members voted in favor.

I. CHAIR’S REPORT

Asked the Board to notify him if they would like additional training in any particular areas.

J. STAFF REPORT – None.

Mr. Della Monica: Made a motion to adjourn.

Ms. Cervin: Second.

The meeting adjourned at 9:33 p.m. The next Planning and Zoning meeting will be held on July 3, 2012.

Phyllis Leggett, Board Clerk

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