

**TOWN OF EAST WINDSOR
PLANNING AND ZONING COMMISSION**

REGULAR Meeting #1744 – July 24, 2018

MEETING MINUTES

*******Minutes are not official until approved at a subsequent meeting*******

The Meeting was called to order in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT. at 6:30 P. M. by Chairman Ouellette.

PRESENT: **Regular Members:** Joe Ouellette (Chairman), Michael Kowalski, Tim Moore, Dick Sullivan, and Jim Thurz.
 Alternate Members: Anne Gobin, Frank Gowdy, and Marti Zhigailo.

ABSENT: **Regular Members:** .All Regular members are present this evening
 Alternate Members: All Alternate members are present this evening as well.

Also present was Town Planner Whitten, and Assistant Planner Matt Tyksinski.

GUESTS: First Selectman Bob Maynard, Steve Dearborn, applicant, Attorney Louis Flynn, representing Steve Dearborn, Guy Hesketh, on behalf of Steve Dearborn, Attorney Peter Alter representing Gerry Wilcox, Gerry Wilcox, Tom Talamini, and Dick and Kathy Pippin.

ESTABLISHMENT OF QUORUM:

A quorum was established as five Regular Members were present at the Call to Order. Chairman Ouellette noted all Regular Members would sit in, and vote, on all Items of Business this evening. All Alternate Members were present as well and may join the Board regarding discussion on all Items of Business presented this evening.

LEGAL NOTICE:

The following Legal Notice, which appeared in the Journal Inquirer on Thursday, July 12, 2018, and Thursday, July 19, 2018, was read by Chairman Ouellette:

1. Application of North Road Materials, LLC and owner The Kement Family Limited Partnership & Isabella V. Kement for a Special Use Permit to allow Soil Management Facility with construction of material storage bins at existing construction yard located at 297 North Road. (A-1 & A-2 zones; Map 117, Block 36, Lots 43B & 43C).
2. Application of Newberry Road Enterprises, LLC for a Text Amendment to Section 816.1.B.3 Minimum Standards for Composting Wood Chipping Facilities, to change the required landscaped buffer from 100 feet to 50 feet.

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Chairman Ouellette advised the public the Application of North Road Materials, LLC and owner The Kement Family Limited Partnership & Isabella V. Kement will not be heard this evening; the Public Hearing has been postponed to the Commission's August 14th Meeting.

ADDED AGENDA ITEMS: None.

PUBLIC PARTICIPATION:

Chairman Ouellette queried the audience for comments regarding items/issues not posted on the Agenda. No one requested to speak.

APPROVAL OF MINUTES/July 10, 2018:

MOTION: To **ACCEPT** the Minutes of Regular Meeting #1743 dated July 10, 2018 as written.

Sullivan moved/Thurz seconded/DISCUSSION: None.

VOTE: In Favor: Moore/Sullivan/Thurz
Opposed: No one
Abstained: Ouellette/Kowalski

RECEIPT OF APPLICATIONS: None.

PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD ACCEPTANCE: Newberry Village – Request for final release of the bond for paving of the road cuts on Newberry Road:

Town Planner Whitten noted that Mr. Giorgio had not replaced some of the pavement near the road cuts on Newberry Road. Town Engineer Norton had withheld some of the bond for this project until that work was done. Town Engineer Norton is now satisfied with the repaving; he is recommending release of \$5,000 of the \$69,744 bond currently being held.

MOTION: To **APPROVE** the release of \$5,000 from the \$69,744 being retained for Newberry Village, amount to be released is due to the satisfactory completion of road cuts.

Sullivan moved/Kowalski seconded/DISCUSSION: None.

VOTE: In Favor: Unanimous (Ouellette/Kowalski/Moore/Sullivan/Thurz)

CONTINUED PUBLIC HEARINGS: None.

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NEW PUBLIC HEARINGS: Newberry Road Enterprises, LLC – Application for a Text Amendment to Section 816.1.B.3 *Minimum Standards for Composting Wood Chipping Facilities*, to change the required landscaped buffer from 100 feet to 50 feet. (*Deadline to Close Public Hearing 8/28/2018*):

Chairman Ouellette read the description of this Agenda item. Appearing to discuss this application was Steve Dearborn, the applicant, Attorney Louis Flynn, and Guy Hesketh, P. E.

Mr. Dearborn opened discussion by noting he is proposing this Text Amendment to allow a reduction in the buffer from 100 feet to 50 feet as he has outgrown where this operation is and he needs more room. Mr. Dearborn noted he had to shut the operation down in the Spring because he couldn't take in more wood – including the material which he takes in from the Town for free. Mr. Dearborn reported the business grows every year; after this year he wants to expand over the lagoon. The additional 50 feet he's requesting under this proposal would give him 50 more feet to store more product; the additional 50 feet will give him an additional 1 ½ acres of land. Mr. Dearborn submitted photos of the property, noting the area under discussion. He noted an access road goes around everything for emergency purposes. Mr. Dearborn reported he doesn't want to go any closer to Newberry Road as he wants to continue to grow corn, with the lawn in front of that. Mr. Dearborn repeated he's looking for the 50 feet, with the 25 feet of road access.

Commissioner Zhigailo questioned the width of the corn area from the setback allowance? Mr. Dearborn didn't know but noted the area where the corn is grown is the area he can use for the farm crop. Mr. Dearborn acknowledged receipt of a letter from someone he's never met (Aaron Turek, owner of Munick Sports, located at 54 Newberry Road); the letter suggests that dust and wood chips are flying over onto Mr. Turek's land. Mr. Dearborn disagreed that the wood chips would blow onto this gentleman's property; he suggested if any dust is blowing on this property it might be from the corn but the wood chips aren't dusty.

Mr. Dearborn suggested he's before the Commission because he feels we want to be a business friendly town. Mr. Dearborn felt the town will be growing so fast it'll be phenomenal. Mr. Dearborn reported everything he has touched as a business grows; people want his stuff. He needs this place to put wood to make more product. He suggested he's only asking for 50 feet, which will give him another 1 ½ acres.

Chairman Ouellette clarified that a consideration for the Commission is that if this Text Amendment proposal is approved for Mr. Dearborn it also applies for everyone else in an M-1 Zone. Mr. Dearborn noted he's the only mulch operation in town. He's compared to the Charbonneau property, which is a gravel pit. Mr. Dearborn stated the only one affected by this change is him. Commissioner Zhigailo suggested this Text Amendment would also apply to anyone else coming in for a similar operation. Mr.

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Dearborn disagreed; he suggested that the only property this will affect is himself. He noted he needs the space; he noted CRCOG didn't seem to have an issue with the proposal.

Chairman Ouellette opened discussion to the Commissioners.

Commissioner Kowalski questioned the wording “*a 50 foot buffer shall be created from abutting property lines. The buffer shall consist of a minimum 25 foot landscaped buffer and a maximum 25 foot access strip.....*” Mr. Dearborn indicated he's looking for the 50 foot buffer; the 25 feet is the access road to get around the property. Commissioner Kowalski suggested the way the Text Amendment is written it would require everyone to have the 50 foot landscape buffer and the 25 foot access road. Commissioner Sullivan interpreted the language to work out to a 75 foot buffer – the 50 foot buffer and the 25 foot access road; Mr. Dearborn suggested the access road was required by DEEP.

Commissioner Moore questioned that the only material stored within the 50 foot area would be ground mulch, not logs or stumps? Mr. Dearborn reported he doesn't take in stumps or pallets or construction materials – only the tree from the ground up. Commissioner Zhigailo questioned that the material to be stored in the 50 foot area would be processed material? Mr. Dearborn replied it would be the wood grindings; the piles sit for 2 years to age naturally to become the dark wood product. Mr. Dearborn noted Assistant Planner Tyksinski has been to the property; his property is clean as a whistle compared to other mulching companies; he hates a mess. Mr. Dearborn suggested someone had mentioned noise. He suggested you don't hear any noise from the machines because the piles ricochet the noise into the air. Mr. Dearborn explained the process to create the ground product; it takes 5 hours to complete the process.

Commissioner Gowdy indicated he believed everything Mr. Dearborn was saying but the problem is that with a Text Amendment will the next guy be as good about their business as Mr. Dearborn? He suggested the next guy could put chicken manure in the 50 foot buffer. A Text Amendment changes it for the whole town. Mr. Dearborn referenced the CRCOG comments – “*no conflict with regional plans and policies....*” Mr. Dearborn suggested if we have to think about what happens down the road that's crazy. Mr. Dearborn noted he pays a lot of taxes; he wants the town to be a business friendly town; he's been here 65 years. Mr. Dearborn restated he needs more space. He doesn't see another mulch business coming to town; he runs a clean ship; it's not that noisy; his wood doesn't fly onto anyone's property.

Discussion continued regarding clarifying the proposed Text Amendment, and the separation distances between business and residential uses within the various zones.

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Chairman Ouellette questioned if the Commissioners had any additional questions; no one requested to speak. Chairman Ouellette then opened discussion to the public.

Attorney Peter Alter, of Alter Pearson, LLC, joined the Board. Attorney Alter indicated he is representing Gerry Wilcox, owner of 50 Newberry Road, which is adjacent to Mr. Dearborn's property. Mr. Wilcox joined Attorney Alter at the table. Mr. Dearborn advised the Commission he must move and removed himself to a seat in the audience.

Attorney Alter questioned if the photos referenced earlier had gone into the record? Mr. Dearborn stated the photos were taken from 2012 through 2017; this is representative of what's there now. Attorney Alter reported he had asked Mr. Wilcox to take photos this week to put into the record to give the Commission an idea of the relationship of the mulch. Attorney Alter explained the black line superimposed on Mr. Wilcox's photos represents the property line; Attorney Alter submitted the photos for the record. Attorney Alter suggested Mr. Dearborn is already taking advantage of the application submitted tonight; he has a 25 foot grass strip and the access road and is less than 100 feet from Mr. Wilcox's property. Attorney Alter suggested this will give the Commission an idea of what it will be like as Mr. Dearborn hasn't maintained the 100 foot buffer as the current regulation requires. Attorney Alter reported the current plan that Mr. Dearborn should be operating under was approved in September of 2016; Attorney Alter is submitting that for the record as well. Attorney Alter suggested that as the Commission can see from the photos Mr. Dearborn has expanded his operation beyond the 100 foot minimum buffer.

Commissioner Gowdy questioned if the property lines represented by Attorney Alter had been surveyed? Attorney Alter submitted surveys of both properties. He indicated he wasn't telling the Commission the black line in the photos was shown absolutely on the property line but he felt it was reasonably accurate within a couple of feet.

Attorney Alter noted he had submitted a letter to CRCOG for Mr. and Mrs. Wilcox. Attorney Alter suggested that when Mr. Dearborn read the CRCOG referral he left out a sentence; Attorney Alter read the excerpt – *"...The proposed reduction in site buffering appears to be significant for the use and may lead to adverse offsite impacts."* Attorney Alter suggested this will lead to adverse impact to the Wilcox property.

Attorney Alter suggested it's not only Mr. Wilcox who has an issue with the mulching operation; he indicated he had a signed affidavit from the property owner at Munich Motors. Attorney Alter read the affidavit signed by Aaron Turek – *"I am the owner of Munich Sports located at 54 Newberry Road...I am opposed to 68 Newberry Road, LLC's, owned by Steve Dearborn, petition for a text amendment to the Town of East Windsor to change the setback regulation from 100 to 50 feet..."* (full affidavit contained in application file located in the Planning Office). Attorney Alter submitted the signed affidavit for the record.

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Attorney Alter reported he had questioned if the proposed change would have a detrimental effect on property values. Attorney Alter referenced a letter dated July 20th from Robert Gaucher, a commercial real estate broker with O, R&L Commercial; the letter was received in the Planning Office on July 23rd – Attorney Alter read the summary of the letter for the record – *“It is my opinion that reducing the setback would be very detrimental to the value of the Wilcox property and it would be a major obstacle in finding a tenant for his new building. I hope the town of East Windsor will seriously consider the negative affect on Wilcox property if the setback is reduced by any amount.”*

Attorney Alter indicated he respected Mr. Dearborn’s entrepreneurial spirit; by his own admission he’s outgrowing his space. But in order for Mr. Dearborn to continue to grow his business it will have an impact on everyone else around him. Attorney Alter suggested it’s not the function of this Commission to approve something for one property owner that will have adverse effects on surrounding property owners.

Attorney Alter suggested another responsibility of the Commission with respect to a change in the zoning regulations is that the Commission is obligated by Statutes to consider if the proposal is consistent with your Plan of Conservation and Development (POCD). Attorney Alter noted the Statute says, that with regard to zoning regulation changes, the Commission has to make a positive finding that this application is completely consistent with the POCD as it stands today. Attorney Alter indicated it’s the responsibility of the applicant to provide the Commission with that information but he hasn’t - because the information would indicate he isn’t consistent with the POCD.

Attorney Alter suggested the POCD is consistent and specific as to what the Commission wants to do with the M-1 Zone. Attorney Alter referenced pages 58 and 59 of the POCD regarding the M-1 Zone; Attorney Alter suggested one of the things the Commission is considering is to reduce the M-1 Zone. Attorney Alter suggested the Commission also wants to consider that there may be future potential for developing an area of offices or research facilities that are not dependent on large trucks. Attorney Alter indicated his suggestion is that the more the Commission allows operations like a large mulch manufacturing facility to expand, and not to be buffered from other properties, the less likely it is that an office or research facility is going to locate in this zone. Attorney Alter suggested it defeats one of the stated goals in the POCD. Attorney Alter suggested this proposal works against creating that kind of development in this zone. It forces the property owner that’s adjacent to create another buffer. Attorney Alter suggested the Commission is allowing one property owner to use the adjacent owner’s property and compel them to do a buffer if they want to create an operation or a facility that’s not consistent with a mulch creating operation.

Attorney Alter indicated that Mr. Dearborn has every right to continue his business, as long as he continues his zoning permit - but not to expand it to the detriment of adjoining properties. When the Commission adopted the 100 foot buffer you

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recognized that this was an operation that needed some space between it and the adjoining property owner. Attorney Alter reported Mr. Dearborn is now asking the Commission to cut that from a 75 foot vegetated buffer to 25 feet. Attorney Alter suggested it's a significant impact when you think about the impact on adjoining properties. Attorney Alter also suggested it's not fair to adjoining property owners for the Commission to expect those property owners to now put uses in their property that are only limited to ones that are only compatible with a mulching operation that's within 25 feet.

Attorney Alter suggested these are large trucks coming around within 25 feet of the property line when, in your original regulations, it should have been a 75 feet landscaped buffer from that access road and the next property owner. It's an imposition on all the properties around it - the BMW person and Mr. Wilcox who has a right to build a building within 20 feet of the side yard. If this proposal goes through part of the building will be within 25 feet of this operation. Attorney Alter suggested it isn't fair; it isn't equitable; and it doesn't speak to the POCD to promote other kinds of development. Attorney Alter suggested, in their opinion, this proposal restricts other kinds of development.

Attorney Alter suggested he doesn't begrudge Mr. Dearborn's right to do business as long as he does it in accordance with the zoning regulations. Attorney Alter suggested that right now, he isn't in accordance with the zoning regulations as he doesn't have the 100 feet separation or the 75 foot landscape buffer, and he's asking the Commission to make it less. That doesn't satisfy the requirements of the Statutes that it be consistent with the POCD. Attorney Alter suggested Mr. Dearborn's hardship, which is that he can't make more money, isn't a reason for the Commission to change this regulation to the M-1 Zone which would impose much greater impact on surrounding properties. Attorney Alter concluded, for all those reasons we would ask you to deny this application.

Attorney Alter and Mr. Wilcox returned to their seats in the audience; Mr. Dearborn returned to his seat before the Commissioners at the table.

Chairman Ouellette queried the public again for comments; no one requested to speak.

Commissioner Gobin referenced the argument she's hearing that the proposal isn't consistent with the POCD relative to pages 58 and 59; she clarified that language talks about the railroad in relation to the M-1 Zone. She noted the reference to Plantation Road and Apothecaries Hall Road; she suggested the narrative is about the South Windsor border. Commissioner Gobin suggested she isn't sure what she heard about the lack of consistency with the POCD is correct. Town Planner Whitten concurred; she noted when the Commission considered that in the POCD they were looking at the Charbonneau property which is surrounded by residences.

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Mr. Dearborn referenced one of the groups of photos, noting he was told he's in violation. Mr. Dearborn reported Assistant Planner Tyksinski has been out to the property and has found him NOT to be in violation. Mr. Dearborn questioned if Attorney Alter was referring to the millings which are within the fence north of the boundary line? Mr. Dearborn referenced the swale and the water quality basin DEEP wanted; he noted the black line superimposed on the photos is on the other side of his swale. Mr. Dearborn indicated that truck is just parked there out of the way; you can't get around the corner with a 65 foot trailer because the access road is made for smaller trucks.

Regarding Attorney Alter's comments that he's expanding into the buffer, Mr. Dearborn suggested he took a farm and made it back into a farm property. Mr. Dearborn referenced the photos he submitted which go through 2017. He noted there are no trees on Mr. Wilcox's side; they're all gone. Mr. Dearborn indicated in July of 2011 he complained about the way Mr. Wilcox was expanding at his property. Mr. Dearborn suggested all the trees in this photo are on Mr. Wilcox's property. Mr. Wilcox cut all the trees down up to the boundary line and now Mr. Dearborn has to look at the old trailers with the tires taken off sitting on Mr. Wilcox's property. Mr. Dearborn suggested that wasn't a good sight for someone looking to buy his property to look at. Mr. Dearborn suggested there's as much dust on Mr. Wilcox's property. He has tractor trailers going in and out behind the recycling facility all day long and shuttling trailers all night long to the mattress place. They have big spotlights to light up the yard; the snorkel lift is up in the air all the time. Mr. Dearborn felt this isn't about property values, or dust, or any of this. This has to stop. He has a business to run. All he's asking for is 50 feet.

Commissioner Sullivan suggested Mr. Dearborn is claiming a hardship. He questioned if there's a reason Mr. Dearborn is not in front of the Zoning Board of Appeals rather than going for a Text Amendment that will affect many other people besides yourself? Mr. Dearborn reiterated they're only talking about an M-1 Zone for a mulch facility. Commissioner Sullivan countered it might be that way today but it might not always be that way in the future. Mr. Dearborn felt the Commission can't look at things that way. He suggested the Commission has a business appearing before them that's growing and pays a lot of taxes and is looking for 50 feet of land.

Chairman Ouellette questioned Town Planner Whitten that in this zone for a Site Plan approval a building could be constructed within 20 feet of the side yard? Town Planner Whitten replied affirmatively. Chairman Ouellette theorized that the applicant could submit a Site Plan application for a structure, Town Planner Whitten indicated the structure could be 20 feet from the side yard and 30 feet from the rear yard. Chairman Ouellette suggested you would think that a building that close would have a greater impact on an adjacent property than a business with a greater buffer distance.

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Commissioner Gobin referenced Franklin Mulch, which was a long running composting facility which utilized manure and other things not being used here. She suggested you could put in an air handling system to handle that issue. Mr. Dearborn clarified he isn't running a composting operation. Chairman Ouellette concurred that you would have more environmental controls if a structure were allowed. Commissioner Gobin suggested she doesn't read this section of the regulations as being only for wood mulch, it's also for composting. Commissioner Gobin felt alternative language would be more clear for what Mr. Dearborn is proposing. Mr. Dearborn described his drainage system, noting that none of his run off leaves his property.

Commissioner Kowalski questioned if there was a definition for a buffer? Town Planner Whitten referenced the definition in the Zoning Regulations, which is "*a strip of land, unoccupied by buildings, structures or pavements of any kind, and maintained as a landscaped area with grass and other plantings*". Commissioner Kowalski recalled that the access road was required by DEEP. Mr. Hesketh clarified that the original approval for this operation included a 100 foot buffer for the activities but there is the 75 feet with no activity within it and the 25 foot strip for access around this site. Commissioner Zhigailo noted that sometimes people have wanted things like trees in the buffer; she questioned if the mulch piles could be considered to be similar? She noted it's organic material. Town Planner Whitten felt the biggest problem is farming has been allowed which isn't a permanent buffer. She felt that may have caused some of the anguish of the neighbors. Commissioner Moore questioned amending the Text Amendment to have something permanent with a 25 foot strip of mulch, which he found preferable to a building. Discussion continued regarding if the 25 foot access is considered within or outside of the buffer area.

Attorney Flynn, representing Mr. Dearborn, requested to say two things. One, as part of the permitting process every year there's an As-built of the property as it exists today. Secondly, we're talking about trucks and an access road, which is required for safety and a lot of reasons but nobody says anything about Mr. Wilcox's trucks – truck after truck after truck right up against the boundary line. Attorney Flynn suggested he guesses it's ok for Mr. Wilcox to have the trucks against the property line. The use of the access road by Mr. Dearborn going around seems to be a problem and that seems to be incongruous to Attorney Flynn. It doesn't make any sense; it's just another reason to argue. Attorney Flynn suggested if you look at the pictures the trucks are right up against the boundary line.

The Commission reviewed the definition of a buffer again. Town Planner Whitten questioned if Mr. Dearborn would consider planting trees in the buffer? Mr. Dearborn suggested his engineer has suggested planting a row of white pines within the 25 foot area. Commissioner Moore suggested that would then apply to other mulch operations across the board.

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Commissioner Gobin questioned if the Commission could review the DEEP General Permit Mr. Dearborn is operating under? Chairman Ouellette clarified the Commission isn't modifying any conditions of the Special Permit at this time. Commissioner Gobin suggested as far as setback requirements, and the road requirements, they seem to be driven by a DEEP General Permit so it would be worth taking a look at it. Mr. Dearborn indicated that DEEP didn't have any set back requirements; you pay a fee for what you want to do. If you want to do compost, like Green Cycle, they add tomatoes and lettuce to their compost, that's another permit. Mr. Dearborn indicated his permit is just processing of clean wood; we don't do stumps or construction materials or pallets. Mr. Hesketh, the applicant's engineer, suggested Mr. Dearborn does operate under a clean wood permit; it doesn't allow composting of leaves or anything like that; it's just natural, clean wood. Mr. Hesketh reported the permit was applied for a year and a half ago and is valid for five years. He noted that the applicant was the first person in Connecticut to go for operator's training for the DEEP permit.

Chairman Ouellette queried the Commissioners for comments.

Commissioner Gowdy had no additional comments.

Commissioner Zhigailo thought everybody needs to be allowed be in business and not have too many hardships. Commissioner Zhigailo suggested she just needs to emphasize some clarity on procedures that are fair across the board for all neighboring industrial and M-1 Zone participants, and she doesn't want to be wedged in between what appears to be contention between two parties. She agrees that a mulch business is probably a little less obtrusive than a building 20 feet away. And, if people get irritated just by looking at each other she apologizes that they just can't get along, so if a tree buffer could be offered and a little more manners could be put in there she'd be happy to see that. Commissioner Zhigailo indicated she'd like to see some resolution. She indicated she knows she's not a voting member tonight but it upsets her that we have to go through these lengths – hire lawyers and engineers and start spitting in the wind so ...she'd like to see some resolution and she'd like to see people get along. Commissioner Zhigailo thought Mr. Dearborn has a good point about some of the issues where it's a zoning enforcement problem on the other party's side as well so it's sort of like how can you throw rocks and not look at your own operation? Commissioner Zhigailo questioned if there's a way to just make some peace here? She feels that's where we're wedged in now. Commissioner Zhigailo reported she understood there's a hardship about trying to get some more space. Commissioner Zhigailo noted Mr. Dearborn does run a good, clean operation; he is a community member for many years and she'd like to respect that. Commissioner Zhigailo noted she understands both sides of that situation; she hoped we can come up with something that's fair and amicable.

Commissioner Kowalski suggested that if the Commission proceeds with this he'd like to see a better explanation of exactly what we want to see for a buffer and how it's to be constructed.

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Commissioner Thurz is good.

Commissioner Moore doesn't know anything about the actual dispute but as far as the Text Amendment and the site it makes sense to use what land you have for something; he questioned if we could have some kind of buffer other than grass?

Mr. Dearborn suggested he'd like to make an offer; Chairman Ouellette requested for the Commission to complete their comments. Mr. Dearborn agreed.

Commissioner Sullivan questioned that we're going to do a Text Amendment for this. He really doesn't feel that's necessary nor is it in our best overall interest to do a Text amendment. Commissioner Sullivan thought there are other ways to accomplish the same thing. Chairman Ouellette noted that's not what's before the Commission; discussion continued regarding approval as written vs. modifications.

Chairman Ouellette noted the Public Hearing is continuing; he queried the audience for additional comments.

Attorney Alter joined the Board again, noting his name for the record. Mr. Wilcox joined Attorney Alter at the table; Mr. Dearborn removed himself to the first row to join Mr. Hesketh.

Attorney Alter felt there was a significant distinction between a setback for a structure and an operation such as Mr. Dearborn's and a well-designed, well-constructed building located on a piece of property is less likely to create offensive activities than the encroachment of a significant mulch operation. It makes sense to him to have a larger buffer for an outdoor mulch operation than a permanent building which creates its own buffer by the way it's situated on the property. Attorney Alter felt the regulation, as it's constructed, makes sense; that permanent buildings approved as part of the site plan or special use process whereas an outdoor manufacturing operation such as this by its nature expands to fill all available sites and, as it does, it intrudes on other properties. He suggested the regulation is well done as it makes a distinction between gravel operations, quarries, like mulch manufacturing operations – they're significantly different than operations which occur within buildings and therefore require a different buffer – and to reduce that from a 75 foot landscape buffer to a 25 foot landscape buffer is a significant change.

Attorney Alter also pointed out that if the Commission significantly alters a Text Change Amendment then they would need to re-notice it, and the Commission can't impose conditions. Town Planner Whitten concurred, noting she had mentioned to the Commission to consider the degree of modification should they choose that option. Attorney Alter also noted the Commission's acknowledgement that this Text Amendment applies to all M-1 Zones; it's not specific to Mr. Dearborn's property.

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Chairman Ouellette queried the audience for comments again; no one requested to speak. Chairman Ouellette then queried the Commissioners if they felt they had enough information to take action?

Commissioner Moore questioned if there was a way to have a Text Amendment to require a 50 foot buffer with trees or a 100 foot buffer without trees? Town Planner Whitten suggested that would need to be part of the regulation; you can't put conditions on the Text Amendment. Commissioner Kowalski questioned if you kept the 100 foot buffer unless you construct hardscape or you're allowed to go into the 50 foot? As an example Commissioner Moore cited property on Tromley Road (Southern Auto) which has bushes or just a straight line of trees. Mr. Dearborn felt that was an unfair comparison. Commissioner Gobin suggested this would set precedence; Commissioner Zhigailo suggested it's the bigger picture, not just Mr. Dearborn. Commissioner Kowalski suggested this discussion of buffer options still fits the Commission's standard, and gives an avenue if an applicant wants to be closer. Commissioner Moore suggested it allows the 100 foot buffer or 50 foot buffer with a line of trees or 50 feet of corn. Mr. Dearborn questioned that if he got his 50 feet and he has the access road, which is 25 (feet) and now we have 25 feet of dirt if he planted a row of pine trees down there would that suffice? Commissioner Moore indicated that was his opinion. Mr. Dearborn suggested that's his offer.

Commissioner Gowdy didn't feel that discussion was really pertinent. Commissioner Gowdy cited it's a Text Amendment; it's not specific to Mr. Dearborn's site. Commissioner Kowalski concurred. Discussion continued; Mr. Dearborn clarified he operates the only mulch operation in town; the 100 feet applies to a gravel pit which is not his operation. The Commission felt the Text Amendment wasn't the correct approach as it applies to any M-1 Zoned property throughout town. Town Planner Whitten clarified that should the Text Amendment be approved Mr. Dearborn would still need to come in for a Site Plan Modification for his operation. Mr. Dearborn was ok with that; he also suggested he would throw in the line of pine trees as well.

Commissioner Sullivan cited that Mr. Dearborn had so much other land; he questioned why Mr. Dearborn needed to expand in this direction? Mr. Dearborn suggested the other land is for sale and people are looking at it. He doesn't want to use that land because it's for sale. He wants to keep his operation in this one location.

Chairman Ouellette raised an administrative question. He suggested that if the Commission approves the Text Amendment as written the Applicant would need to return to the Commission for approval of a Site Plan Modification; he questioned if at that time the Commission could set reasonable conditions on the plan? Town Planner Whitten felt that would only apply if the conditions were part of the Text Amendment or existing text. She suggested either the Applicant could alter his Text Amendment proposal, or the Commission could propose modification of the Text Amendment. She suggested if the Commission is considering language changes you shouldn't take action

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tonight; you need to consider options. Town Planner Whitten suggested those changes most likely would require a re-advertisement of the altered Text Amendment.

Chairman Ouellette suggested that typically, in a situation such as this, he would refer action back to the Applicant. That could entail continuing the Public Hearing, giving the Applicant an opportunity to regroup to propose any necessary changes if appropriate, or the Commission could vote with the information/data before them. Mr. Dearborn wanted a vote; Attorney Flynn requested a short break.

MOTION: TO TAKE A TEN MINUTE BREAK.

Moore moved/Sullivan seconded/DISCUSSION: None.

VOTE: In Favor: Unanimous (Ouellette/Kowalski/Moore/Sullivan/Thurz)

The Commission RECESSED at 7:55 p.m. Chairman Ouellette RECONVENED the Meeting at 8:19 p.m.

Mr. Hesketh continued to offer language amendments to clarify the buffer requirements. Discussion continued redefining what constitutes a buffer. Town Planner Whitten reiterated her concern that if the modifications/revisions significantly changed the proposal as previously reviewed by CRCOG, or as advertised, then the process should be completed again.

Attorney Flynn indicated that someone had said the intent of the original permit was to have a buffer between the mulching operation and the neighboring property; Chairman Ouellette concurred. Mr. Hesketh offered this language revision– “seeded to establish grass cover, a suitable natural vegetative buffer or evergreen plantings”. Mr. Hesketh felt that language would cover a property that has suitable natural vegetation there that could be maintained. That would be a decision that the Commission would make upon submission of the Site Plan Approval. Mr. Hesketh felt it would cover his (Mr. Dearborn’s) case - the abutting property line which is located further to the east which is a significant amount of cornfield that might go for 1,000 feet and then there’s some natural woodland. Mr. Hesketh felt that simple modification would meet the intent of what is proposed here, it’s just clarifying what those plantings are. Commissioner Kowalski questioned if the cornfield meets the definition of a buffer? Town Planner Whitten suggested it meets the definition of a buffer in that there are plantings there but they’re plantings that don’t remain there; the effect of that buffer changes.

Commissioner Gowdy suggested it seems to him that the applicant came in for a Text Amendment, which was sent to CRCOG. Commissioner Gowdy felt the Commission should consider what CRCOG said; Commissioner Gowdy then read CRCOG’s comments - “...finds no apparent conflict with regional plans and policies, however, the proposed reduction in buffer area may be of concern to neighboring municipalities. The

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proposed reduction in site buffering appears to be significant for the use and *may* lead to offsite impacts”. Commissioner Gowdy felt the Commission must consider the public’s health, safety and welfare, not the individual’s. Commissioner Gowdy noted Mr. Dearborn has an operation that’s impeccable; he’s a hard-working gentleman; he’s done a lot for the Town; he’s a very generous gentleman. Commissioner Gowdy noted he isn’t a voting member tonight but he felt the Commission has to consider that this is a Text Amendment; we’re not talking trees or whether the corn is a cover crop; what we’re dealing with is a Text Amendment. Commissioner Gowdy felt CRCOG’s input and the public’s general health, safety, and welfare is a big consideration.

Chairman Ouellette queried the Commission for their opinion regarding action on this proposal.

Commissioner Kowalski questioned if there was a way the Commission could put this on the Site Plan – that provided a buffer is established? Town Planner Whitten replied negatively, noting not if that language isn’t in the regulations; you must clarify it in the regulations first. Chairman Ouellette clarified that the applicant isn’t required to do anything. If the Text Amendment is approved as proposed the applicant would have to come in for Site Plan approval and show the area of activity; that’s just a revision to the drawings. They’re under no obligation to do anything else. If they want to be generous and provide plantings or berms the Commission can consider that, but that’s not required. Mr. Hesketh referenced the language “establish a vegetative cover and suitable grass plantings”; he questioned if that language would cover the discussion of plantings? Town Planner Whitten felt the issue was where the plantings would have to go rather than what they were – do they go along the adjacent properties, are they along the road, are they outside the mulching area?

Discussion continued whether the language regarding the vegetative plantings addressed the issue of buffer content, and the buffer reduction requested. Chairman Ouellette noted the Commission’s need to consider all possible options prior to making a decision. Town Planner Whitten advised the Commission that under Section 900.7 – Text Amendment Applications – “No petition for a text amendment which has been rejected by the Commission shall be heard again within one year from the date of rejection except that the Commission may grant a rehearing before one year if it finds, on facts presented in writing, that a material change in the situation justifies this action in the interest of the public as well as the petitioners”.

Chairman Ouellette offered anyone, including the audience members and the Commissioners, the opportunity for final comments; no one requested to speak. Chairman Ouellette questioned Attorney Alter for final comments; Attorney Alter replied negatively. Chairman Ouellette queried Attorney Flynn for final comments; Attorney Flynn replied negatively as well.

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Chairman Ouellette called for a motion to close the Public Hearing.

MOTION: To CLOSE the Public Hearing on the Application of Newberry Road Enterprises, LLC – Application for a Text Amendment to Section 816.1.B.3 Minimum Standards for Composting Wood Chipping Facilities, to change the required landscaped buffer from 100 feet to 50 feet.

Sullivan moved/Moore seconded/DISCUSSION: None.

VOTE: In Favor: Unanimous (Ouellette/Kowalski/Moore/Sullivan/Thurz)

Chairman Ouellette noted the Public Hearing was closed. The Commissioners expressed interest in voting on the proposed Text Amendment tonight. Chairman Ouellette cited in accordance with the regulations the Commission needs a super majority - 4 out of 5 voting in favor- for a successful Text Amendment; he noted the Commissioners are required to state the reasons why you voted for or against the Text Amendment.

MOTION TO APPROVE

- 1. The application of Newberry Road Enterprises, LLC, proposing a text amendment to modify section 816.1.B.3 of East Windsor regulations to reduce the stated 100 foot landscaped buffer between abutting properties to 50 feet.**

Sullivan moved/Moore seconded/Discussion: None.

VOTE: In Favor: Ouellette/Moore
Opposed: Kowalski/Sullivan/Thurz
Abstained: No one

REASONS FOR VOTE: Chairman Ouellette voted for the proposed Text Amendment; in his opinion he personally didn't see where it would be a hardship or a detriment to the abutting property owners. Personally, he felt the original buffer was established kind of in line with something like a similar use; we didn't have any experience at the time; we were thinking 100 feet - which you said was an arbitrarily determined number - for the earth excavation activities. Chairman Ouellette indicated he certainly would have had a different opinion if this had abutted a different type of zone but not in this particular case, and that's why he couldn't find a detriment to abutting property owners. Commissioner Sullivan indicated he voted no in that in this particular case it does not really harm any other property owners but again, it was for all of the M-1 zones and many of those zones have residential property owners and many other different properties abutting them; they aren't just industrial to industrial. Commissioner Sullivan felt there's another way that you could achieve this without a Text Amendment. Commissioner Moore indicated he voted in favor for all the reasons that Chairman Ouellette said and also because I just think not to use certain sections of a property because you need a buffer isn't right. Commissioner Thurz indicated he voted no because he thought it was too site specific for

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a Text Amendment change for the whole town. Also, if he wanted to, Mr. Dearborn could take a couple of acres of land from the other side. That's why he voted no. Commissioner Kowalski indicated he voted no because he didn't think it was very well defined exactly how this buffer would have been established; it didn't take into account screening for abutters.

Chairman Ouellette announced again that the Application of North Road Materials, LLC and owner The Kement Family Limited Partnership & Isabella V. Kement for a Special Use Permit to allow a Soil Management Facility wouldn't be heard tonight as it's been postponed until the Commission's August 14th Meeting.

NEW BUSINESS: None.

OLD BUSINESS: None.

OTHER BUSINESS: None.

CORRESPONDENCE: None.

BUSINESS MEETING/(1) TOD Smart Growth Grant for Warehouse Point:

Town Planner Whitten noted she and Assistant Planner Tyksinski recently met with people from the TOD Smart Growth Grant and OPEM; the ball is now in their court to get this project rolling. Chairman Ouellette questioned if there was a cutoff date for submission of material for this grant; Town Planner Whitten felt not.

BUSINESS MEETING/(2) Zoning Compliance Issues:

Town Planner Whitten indicated they had no updates to report.

BUSINESS MEETING/(3) Discussion on Aquifer Protection Regulations:

Town Planner Whitten reported this is now Assistant Planner Tyksinski's project.

BUSINESS MEETING/(4) Signing of Mylars/Plans, Motions:

Mylars:

Nothing presented for signature.

Motions:

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- **Crane Properties, LLC** - Special Use Permit for Site Plan Modification to regrade and stabilize the area where excess material is stored, and associated improvements at 118 Prospect Hill Road. Zone M-1, Map 112, Block 17, Lot 000PA & 2A1.
- **Recycled Concrete Products of CT and owner Herb Holden Trucking, Inc.** - Property located at 33 Apothecaries Hall Road for renewal of existing Special Use Permit under Section 809 to fill in an area of the site to create additional area for future commercial use in association with existing volume reduction facility. [M-1 zone; Map 57, Block 48, Lot 38]
- **Apothecaries Hall Enterprises, LLC and the East Windsor Sportsmans Club** - Property located on the south side of Apothecaries Hall Road for renewal of existing Special Use Permit for earth excavation. [M-1, R-3 & A-1 zones; Map 57, Block 49, Lot 3; Map 57, Block 65, Lot 1 and Map 48, Block 65, Lot 7]
- **International Brotherhood of Electrical Workers, Local Union No. 42** - Site Plan Review for construction of commercial development consisting of buildings, parking areas, and driveways at 20 – 22 Craftsman Road. Zone A-1, Map 093, Block 19, Lot 12-05 and 12-06.
- **MMCT Venture, LLC** – Site Plan Approval in connection with development of a proposed new casino at 93, 105, 113, 115 and 119 Prospect Hill Road. All properties located within the HIZ. [Map 102. Block 14, Lots 8 & 1; Map 112, Block 14, Lots 5, 4 & 3]
- **Laird Building, LLC** - Special Use Permit / Site Plan Approval for modification of use to allow natural gas fueling of fleet vehicles at 3 Shoham Road. [M-1 zone; Map 113, Block 17, Lot S003]

EXECUTIVE SESSION: In accordance with CGS Sec. 1-210 (b-4) to discuss Pending Litigation:

MOTION: To GO INTO EXECUTIVE SESSION at 8:45 p.m. to discuss pending litigation. Attending the Executive Session were Chairman Ouellette, Commissioner Gobin, Commissioner Gowdy, Commissioner Kowalski, Commissioner Moore, Commissioner Sullivan, Commissioner Thurz, Commissioner Zhigailo, Town Planner Whitten, Assistant Planner Tyksinski, and First Selectman Maynard.

Sullivan moved/Thurz seconded/DISCUSSION: None.

VOTE: In Favor: Unanimous (Ouellette/Kowalski/Moore/Sullivan/Thurz)

The Commission came out of Executive Session at 8:55 p.m. No action was taken.

ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 9:05 p.m.

Sullivan moved/Kowalski seconded/VOTE: In Favor: Unanimous

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Respectfully submitted,

Peg Hoffman, Recording Secretary, East Windsor Planning and Zoning Commission