

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
: :
APPLICATION OF CELLCO PARTNERSHIP : DOCKET NO. 355
D/B/A VERIZON WIRELESS FOR A :
CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED FOR :
THE CONSTRUCTION, MAINTENANCE :
AND OPERATION OF A WIRELESS :
TELECOMMUNICATIONS FACILITY AT 359 :
LITCHFIELD ROAD IN NEW MILFORD, :
CONNECTICUT :
: :
APPLICATION OF OPTASITE TOWERS INC. : DOCKET NO. 342
AND OMNIPOINT COMMUNICATIONS, :
INC. FOR A CERTIFICATE OF :
ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE CONSTRUCTION, :
MAINTENANCE AND OPERATION OF A :
WIRELESS TELECOMMUNICATIONS :
FACILITY LOCATED AT 425 LITCHFIELD :
ROAD, NEW MILFORD, CONNECTICUT : APRIL 1, 2008

BRIEF OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
REGARDING MUNICIPAL SITING PREFERENCES
PURSUANT TO PUBLIC ACT NO. 07-222

Cellco Partnership d/b/a Verizon Wireless (“Cellco”) submits this Brief in response to the request of the Connecticut Siting Council (“Council”) on the issue of the Town of New Milford’s location preference for the siting of a telecommunications tower in the Northville area, as described in Public Act No. 07-222.

I. BACKGROUND

Cellco filed an Application with the Council pursuant to Conn. Gen. Stat. Section 16-50g, et seq., for the construction, maintenance and operation of a wireless telecommunications facility

on property owned by the Northville Volunteer Fire Department at 359 Litchfield Road, New Milford, Connecticut. The Council issued the Cellco Application Docket No. 355.

Optasite Towers, LLC and Omnipoint Communications, Inc. (collectively "Optasite") also filed an Application with the Council for the construction, maintenance and operation of a wireless telecommunications facility on private property owned by the Estate of Edward J. Drzal at 425 Litchfield Road, New Milford, Connecticut. The Council issued the Optasite Application Docket No. 342.

The Council held a combined hearing on the Docket Nos. 355 and 342 Applications on March 11, 2008. The purpose of the combined proceeding was to allow the Council to hear and address issues that may be common to both applications and, consistent with its legislative charge, "promote tower sharing for fair consideration, whenever technically, technologically, legally, environmentally or economically feasible to avoid the unnecessary proliferation of towers in this State". (3/11/08 Council Transcript ("Tr.") p. 5).

Prior to the combined hearing on March 11, 2008, both Optasite and Cellco appeared, on separate occasions, before the New Milford Zoning Commission ("Zoning Commission") at an informational hearing. Each tower proposal was presented to the Zoning Commission and members of the general public. Following the informational hearings on both applications, the Zoning Commission issued a series of Findings and Recommendations on each proposal. Copies of the Zoning Commission's Findings and Recommendations, Staff Reports and Meeting Minutes are included in the record of both Docket No. 355 (Cellco Exh. 5), attached hereto as Exhibit 1 and Docket No. 342 (Optasite Exh. 7) attached hereto as Exhibit 2.

II. PUBLIC ACT 07-222

Through Public Act 07-222 (the "Act"), the Connecticut General Assembly amended the

provisions of Sections 16-50l and 16-50x(a) of the General Statutes relating to the Council's exclusive jurisdiction and its facility application evaluation criteria. Pursuant to the provisions of Section 2 of the Act,

[w]hen notifying a municipality pursuant to section 16-50l of the general statutes of an application for a telecommunications tower in said municipality, the Connecticut Siting Council shall request that the municipality provide to said council, within thirty days, any location preferences or criteria for the siting of said telecommunications tower.

Section 3 of the Act amends Conn. Gen. Stat. Section 16-50x(a), requiring the Council to consider, as part of its evaluation of a telecommunications facility application, the host municipality's preference for a particular tower location.

When evaluating an application for a telecommunications tower within a particular municipality, the council shall consider any location preferences or criteria (1) provided to the council pursuant to section 2 of this act, or (2) that may exist in the zoning regulations of said municipality as of the submission date of the application to the council.

III. ARGUMENT

A. The New Milford Zoning Commission Has Stated A Clear Preference For The Telecommunications Facility Proposed At The Northville Volunteer Fire Department

Pursuant to the requirements of Section 16-50l(e) of the General Statutes, both Cellco and Optasite, at least sixty days prior to filing their respective applications with the Council, consulted with the Town of New Milford and appeared before the Zoning Commission to present the Docket Nos. 355 and 342 tower proposals. The Zoning Commission issued Findings and Recommendations on each tower proposal.

It is clear from the Findings and Recommendations issued for both the Cellco and Optasite tower proposals that the Zoning Commission was aware of the fact that there were two competing tower proposals in the Northville section of New Milford. (See Exhibit 1, February

19, 2008 Zoning Commission Meeting Minutes, p. 12; and Exhibit 2, August 14, 2007 Zoning Commission Meeting Minutes, p. 3). Following its review of both telecommunications facility proposals, the Zoning Commission stated its preference for the Cellco facility at the Northville Volunteer Fire Department.

It is the understanding of the Commission that only one of the towers will be approved. Therefore, the Commission encourages the Siting Council to look into the merits of both applications to ensure a tower is placed in the most strategic location, but due to the benefits to emergency services, the Commission prefers the 359 Litchfield Road location. Cellco Exh. 5 (emphasis added).

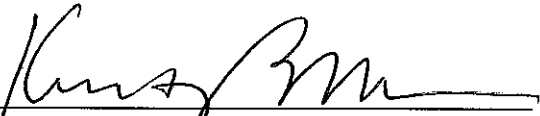
B. New Milford Zoning Regulations Do Not Contain Location Preferences As Described In Section 3 Of The Act

Section 150 of the New Milford Zoning Regulations includes provisions for the establishment of wireless telecommunications facilities. Such “facilities”, defined as “the tower, antennas and all associated equipment and equipment buildings” are permitted in all zones subject to the approval of a special permit. Cellco Exh. 1.c. – Zoning Regulations § 150-040. The Town’s Telecommunications Facilities Regulations do not, however, contain any specific location preferences as contemplated by the Act. The only provision of the Zoning Regulations that might be characterized as a location preference is found in item 5 of the General Provisions Section (Section 150-040). This section requires that, where possible, antennas should be located on existing towers, electric transmission line structures, telephone poles, water towers and high buildings if such existing structures are available and satisfy a carrier’s coverage objectives.

IV. CONCLUSION

The Act requires the Council to take into consideration, in its review of a telecommunications facility application, the specific location preferences of the municipality where the facility is to be located. The Town of New Milford, through its Zoning Commission, has made it clear that of the two proposals currently before the Council, it prefers Cellco's proposed tower location on land owned by the Northville Volunteer Fire Department.

Respectfully submitted,
CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS


By 

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Its Attorneys

CERTIFICATION

This is to certify that on this 1st day of April, 2008, a copy of the foregoing was mailed,
postage prepaid, to the following:

Carrie L. Larson, Esq.
Julie Donaldson Kohler, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
P.O. Box 1821
Bridgeport, CT 06604-4247



Kenneth C. Baldwin

TOWN OF NEW MILFORD



Town Hall
10 Main Street
New Milford, Connecticut 06776
Telephone (860) 355-6095 • Fax (860) 210-2664

Office of the Zoning Commission

February 28, 2008

Kenneth Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

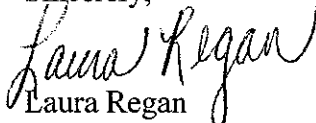
Re: Cellco Partnership Application for a Proposed Telecommunications Facility
359 Litchfield Road, New Milford, CT

Dear Mr. Baldwin:

Enclosed please find the Zoning Commission's Summary of Findings and Recommendations with regard to the Cellco Partnership telecommunications facility. In addition, I have enclosed the minutes from the informational hearing as well as the staff report.

Please contact me should you have any questions or require more information.

Sincerely,


Laura Regan
Zoning Enforcement Officer

Copy: File

**Town of New Milford Zoning Commission
Summary of Findings and Recommendations
Cellco Partnership Proposed Telecommunications Facility
Northville Volunteer Fire Department
359 Litchfield Road
February 26, 2008**

Background:

At the February 19, 2008 Special Meeting of the New Milford Zoning Commission the Commission held an informational hearing with regard to a proposed telecommunications facility at 359 Litchfield Road. A staff review from the Zoning Enforcement Officer, dated February 8, 2008, which was previously distributed to the Commissioners, was summarized. The applicant's legal counsel was present as well as engineers from the proposed tower occupant, Verizon Wireless. The proposal was discussed and the applicant's representatives answered questions from staff and the Commission. Members of the public also posed questions and presented concerns. The applicant attempted to answer all questions and respond to concerns. The hearing was closed.

Findings and Recommendations:

1. Since the tower's radius extends onto adjacent properties and the closest residence is only 199' away, the Commission strongly recommends that a yield point be designed into the tower structure.
2. During the hearing concerns were raised about Life Star's ability to land helicopters on a property that contains a telecommunications tower. Therefore, the Commission believes that Life Star should be contacted to see if they have any concerns and if there are any necessary precautions that should be incorporated into the design of the facility.
3. Several neighboring property owners stated that they have adequate cell phone coverage and questioned the need for the tower.
4. Two different applications for the Route 202 corridor have recently been submitted to the Siting Council for a telecommunication facility. Based upon the Visual Resource Evaluation Report submitted for this proposal on 359 Litchfield Road, and report that was submitted with an earlier proposal for 425 Litchfield Road, the Commission finds that the facilities will have similar visual impact.
5. It is the understanding of the Commission that only one of the towers will be approved. Therefore, the Commission encourages the Siting Council to look at the merits of both applications to ensure a tower is placed in the most strategic location, but due to the benefits to emergency services, the Commission prefers the 359 Litchfield Road location.

Sincerely,

William Taylor, Secretary
New Milford Zoning Commission
February 26, 2008



TOWN OF NEW MILFORD

Town Hall
10 Main Street
New Milford, Connecticut 06776
Telephone (860) 355-6095 • Fax (860) 210-2664

Office of the Zoning Commission

MEMO TO: New Milford Zoning Commissioners
FROM: Laura Regan, Zoning Enforcement Officer
DATE: February 8, 2008
SUBJECT: Cellco Partnership Public Informational Hearing

Applicant: Cellco Partnership D/B/A Verizon Wireless
Property Owner: Northville Volunteer Fire Department
Property Address: 359 Litchfield Road
Tax Assessor's Reference: Map 72, Lot 72
Zone: R-80
Lot Area: 3.85 acres

Cellco Partnership D/B/A Verizon Wireless has submitted an application to the Connecticut Siting Council for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a wireless telecommunications facility at the Northville Fire Department located at 359 Litchfield Road. I have reviewed the following documents:

1. Application for Certificate of Environmental Compatibility and Public Need dated December 7, 2007
2. Letter from Attorney Kenneth C. Baldwin of Robinson and Cole LLP, dated December 7, 2007
3. USGS Topographic Map showing proposed Verizon Wireless Telecommunications Facility, prepared by Vanasse Hangen Brustlin, Inc., undated
4. Aerial Photograph showing proposed Verizon Wireless Telecommunications Facility, prepared by Vanasse Hangen Brustlin, Inc., undated
5. Site Evaluation Report, preparer unknown, undated
6. Facilities and Equipment Specification, preparer unknown, undated
7. Environmental Assessment Statement, prepared unknown, undated
8. Title Sheet, Sheet T-1, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
9. Partial Site Survey Plan, Sheet C-1, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
10. Abutters Map, Sheet C-1A, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007

11. Landscaping Plan and Profile, Sheet C-1B, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
12. Compound Plan and Elevation, Sheet C-2, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
13. Site Details and Notes, Sheet C-3, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
14. Site Details and Shelter Elevations, Sheet C-4, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
15. Shelter Foundation Details and Notes, Sheet C-5, prepared by Natcomm, Inc., dated January 4, 2007, revised through December 5, 2007
16. List of Adjacent Property Owners
17. Existing Verizon Wireless PCS Coverage New Milford, CT and Surrounding Area Map, prepared by Vanasse Hangen Brustlin, Inc., undated
18. Existing Verizon Wireless PSC Coverage With Proposed New Milford Northeast Facility at 150 Feet AGL New Milford, CT and Surrounding Area Map, prepared by Vanasse Hangen Brustlin, Inc., undated
19. Site Search Summary and Site Search Summary Map, prepared by Vanasse Hangen Brustlin, Inc., undated
20. Visual Resource Evaluation Report and Viewshed Map, prepared by Vanasse Hangen Brustlin, Inc., dated November 2007
21. Letter from Anthony P. Tur, Endangered Species Specialist of the US Department of the Interior Fish and Wildlife Service, dated February 23, 2007
22. Sharp-shinned Hawk and Golden-winged Warbler Habitat Assessment, prepared by Dean Gustafson, Senior Environmental Scientist of Vanasse Hangen Brustlin, Inc., dated December 5, 2007
23. Wetlands Delineation Report, prepared by Vanasse Hangen Brustlin, Inc., dated December 22, 2006
24. Federal Airways & Airspace Summary Report
25. Lease Agreement between Cellco Partnership and the Northville Volunteer Fire Department, dated March 28, 2007
26. Tax Assessor's map
27. Tax Assessor's field cards
28. Zoning Office file

In accordance with C.G.S. Sec. 16-50 / (B)(3), the Town was notified with regard to the filing of this application on October 4, 2007, and at that time the Town had 60 days to conduct public hearings, hold meetings, and provide comment to the applicant with regard to their proposal. It is my understanding that the Mayor and Town Attorney met with the petitioner to discuss the proposal and offer comments. Unfortunately, however, the statutes do not require separate notification to the Zoning Commission. As a result, I was not aware of the official notification that was received in October, so no informational hearing was scheduled.

Although the deadline for commenting on the proposal has passed, the Zoning Commission has established a precedent of holding informational hearings on all telecommunication facilities, so as a courtesy to the neighbors in the area of the proposed site, the Commission felt it was important to schedule an informational hearing for this application as well. I recommend that the

Commission still submit comments to the Siting Council and if necessary make a special request that they consider those comments as an essential part of the process.

Existing Conditions:

The subject 3.85 acre parcel is located on the west side of Litchfield Road at the southern end of Big Bear Hill Road in the R-80 zone. The property is owned by the Northville Volunteer Fire Department and the southern portion of the site is currently improved with the Northville Volunteer Fire Department's station house and associated paved parking with access from both Litchfield Road and Big Bear Hill Road.

A small lawn area is adjacent to the existing fire station parking lot and an upland forest dominates the western side of the subject property. Site topography is sloped from west to east and a small intermittent watercourse is located along the northern property boundary.

The property is surrounded by low density residential land uses to the north, east, and west, business uses along the Route 202/Litchfield Road traffic corridor, and several large tracts of undeveloped woodlands to the east and south.

Proposal:

The applicant plans to lease a portion of land, 100' x 100' in size in the northern forested corner of the subject property, roughly 400' away from the existing fire department building. The proposed facility would consist of a 150' tall telecommunications tower and a 12' x 30' equipment shelter, approximately 11' in height, located near the base of the tower. The tower and equipment shelter will be enclosed by an 8' high security fence. Antennas are proposed to be mounted at the top of the tower to accommodate multiple carriers, which will extend to an overall height of approximately 153' above ground level. A 160' long access road is proposed from Big Bear Hill Road. Clearing and grading of the area and access road will be required. No site lighting is necessary and minimal landscaping consisting of a row of 24 Mountain Laurels, 6' in height are proposed along the western side of the facility.

Questions/Comments:

Based upon review of the application materials, I have the following comments and questions:

1. The following alternative sites were considered during the site selection process:
 - Larose Property, 80 Upland Road
 - Town of New Milford Property, Upland Road
 - Town of New Milford Property, Geiger Road
 - Northville Baptist Church, 9 Little Bear Hill Road

Were any other tall structures in the area identified? Has the possibility of co-location been thoroughly investigated?

2. During the course of the site search, the applicant was made aware of Oposite Towers and T-Mobile's pending application for a new tower approximately ½ mile away on property located at 425 Litchfield Road. In the application, Cellco stated that they did not participate in this application and chose to present its own proposal for a tower site. Why is Cellco proposing a tower ½ mile away from another proposed tower? Has the

applicant contacted Oposite Towers or T-Mobile about tower sharing? Has the applicant investigated whether it could achieve its service objectives by co-locating on the tower proposed at 425 Litchfield Road? Can the applicant demonstrate why both of these towers are needed?

3. Although local land use regulations are pre-empted, the Commission has a very comprehensive zoning regulation, Chapter 150 regarding telecommunications facilities, which provides a good outline for what should be reviewed. Section 150-040(5), for example, requires that a tower be setback from all property lines a distance equal to 1.5 times the tower height. The tower height is proposed to be 150' in height, so to meet this standard the tower should be setback at least 225' from all property lines. In response, the applicant admits that "the proposed tower location does not satisfy the local regulation that a tower be setback 1.5 times its height from all property lines". It was difficult to scale the site plan as it has been significantly reduced to no particular scale, but it appears that the tower is less than 225' to *all* of the adjoining neighbors' property lines.

The applicant also states that the radius does extend onto adjacent properties. However, Cellco said that they were "willing to design, into the tower structure, a yield point to address this concern". What will designing a yield point into the tower structure accomplish and has this been done? No details have been provided. Can the applicant demonstrate that there are no safety issues for the neighboring properties that fall within 225' of the proposed tower?

4. According to the Abutters Map, Sheet C-1A, the closest residence is 199' away. However, on page 13 of the Application for Certificate of Environmental Compatibility and Public Need, it states that, "the closest residence is located approximately 259' to the north". Again, it was difficult to scale the site plan, so I was unable to determine if either of the above mentioned distances was accurate. How far away is the closest residence? This discrepancy should be explained and corrected.
5. Has a facility maintenance plan been prepared?

Summary:

In addition to the fact that the tower's radius extends onto adjacent residential properties, my biggest concern is that two tower sites are proposed on the same road, ½ mile from one another. Based upon a review of the materials received, the applicant, in my opinion has not demonstrated that they have explored the potential of co-locating on the tower proposed at 425 Litchfield Road nor have they demonstrated that there is a need for both towers.

TOWN OF NEW MILFORD



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NEW MILFORD, CT

2008 JAN -9 P 12:02

GEORGE C. BUCKBEE
TOWN CLERK

Office of the Zoning Commission

TO: New Milford Spectrum 350-6794
DATE: January 9, 2008
FROM: Laura Regan, Zoning Enforcement Officer

Please publish the following legal ad on February 1, 2008 and February 8, 2008:

LEGAL NOTICE

The New Milford Zoning Commission shall hold a public informational hearing for Cellco Partnership d/b/a Verizon Wireless, public informational hearing to construct a wireless communications facility including a telecommunications tower 150' in height, a 12' x 30' equipment shelter, and an access road at the Northville Volunteer Fire Department located at 359 Litchfield Road, Map 72, Lot 72 in the R-80 zone.

Said hearing shall be held on February 12, 2008 commencing at 7:00 PM in the Loretta Brickley Conference Room, Lower Level of Town Hall, 10 Main Street. At this time, all interested persons shall be heard and communications received. Copies of the proposal are available in the Zoning office for review for review.

Dated at New Milford, Connecticut, this 9th day of January, 2008.

BY: William Taylor
Secretary

Affidavit requested

359 Litchfield Road (Cellco)



TOWN OF NEW MILFORD
 Zoning Commission
 Town Hall
 10 Main Street
 New Milford, CT 06776

Date: 2/19/08

Public Hearing Participant Sign-In

<u>For/Against/?</u>	<u>Name - PLEASE PRINT</u>	<u>Address</u>	<u>Signature</u>
✓ Against	ERIC JONES	345 Litchfield Rd	<i>Eric Jones</i>
* For	Joe Tilman	Northville Fire Dept	<i>Joe Tilman</i>
For	WALIE JAHN	338 Weedsauce Ave	<i>Walie Jahn</i>
✓ For	John Kuck	NVFD	<i>John Kuck</i>
✓ For	John Kuck Sr	NVFD	<i>John Kuck</i>
For	Tim Lee	Zachary Rd.	<i>John U Bank</i>

OVER Participant sign-in continued on reverse

Participant sign-in continued

For/Against? Name - PLEASE PRINT Address Signature

Applicant Kenneth Baldwin Robinson & Co 280 Trumbull St Htd / Bk

Steve Paparano

Dorothy Chalker against 18 Big Bear Hill N.Y.

NEW MILFORD ZONING COMMISSION
SPECIAL MEETING MINUTES
FEBRUARY 19, 2008

NEW MILFORD, CT
2008 FEB 27 PM 10:43

Present: Eleanor Florio, Chairperson
Janice Vance, Vice Chairperson
Sharon Ward, Member
James Walker, Alternate
Walter Rogg, Alternate
Laura Regan, Zoning Enforcement Officer

Absent: William Taylor, Secretary
Mona Tito, Member
Donald Marsh, Alternate

1) CALL TO ORDER:

Mrs. Florio called the meeting to order at 7:02 p.m. in the Loretta Brickley Conference Room of Town Hall. Mrs. Florio seated Mr. Rogg for Mr. Taylor and Mr. Walker for Mrs. Tito.

2) PUBLIC PARTICIPATION:

Mrs. Florio opened the floor to the anyone from the public that would like to speak on an item that is on the agenda, but is not a public hearing for this meeting, or something that is not included in the agenda..

Mr. Harry Binsse, 469 Danbury Road approached the Commission about continued concerns with Galimonds Xtreme RC, located at 471 Danbury Rd.

Mr. Binsse expressed concern of exhaust fumes that are emitted from the racetrack to nearby homes. He submitted a letter from a neighbor to the Commission. Mrs. Florio suggested to Mr. Binsse that this was actually something that he needed to approach the Health Department with, rather than the Zoning Commission. Mr. Binsse referenced the performance standards, Section 010-070 of the regulations.

Mrs. Florio asked if there was anything Mr. Binsse wanted to add from what he has brought to the Commission at prior meetings. He submitted a letter from his neighbors, James and Margaret Delewski, about fumes from the race track. He submitted a second letter from Robert Maccaverna, reiterating the same concern.

Mr. Binsse also noted that the viewing stand was added without a permit. If it is permitted he would like it relocated to the west side of the track.

Mr. Binsse took issue items 5 and 6 of the draft resolution of approval and the test driving of cars. Ms. Regan responded that they are only allowed to test one car at a time, which limits the noise and fumes. Additionally she stated t large organized racing would not be allowed outside of the specified days and hours listed in the resolution. Outside of those hours testing

of cars that have just been repaired would be allowed to make sure the repair was complete. Ms. Regan also added that there are strict restrictions specifically on the use of gas powered cars. It was also noted that location of the track is next to Route 7, which also contributes noise, dust and fumes to the area.

Mr. Binsse expressed concern that should the conditions be violated he is not comfortable with approaching the owner or the track's patrons. Both Ms. Regan and Mrs. Florio stressed that he should not go over there, but rather he should call the Zoning Office if there is an issue.

Ms. Regan gave Mr. Binsse a copy of a letter that the applicant had drafted in response to all of Mr. Binsse's concerns.

Mr. Binsse was still upset over the noise from the track; however both Mrs. Florio and Ms. Regan noted that New Milford does not have a noise ordinance. Mrs. Florio again mentioned to Mr. Binsse that if there were any problems to please call the Zoning Office.

There were no additional speakers at this time.

3) PUBLIC HEARINGS:

- a. **Proposed amendment to the New Milford Zoning Regulations to add the following definition to Chapter 15, Definitions: Indoor Theater, to maintain the market presence of the Bank Street Theater and preserve and promote the viability of the Village Center, as proposed by Vincent Nolan, Jr., Economic Development Supervisor. Close by March 11, 2008**

Mrs. Vance read the legal notice. Ms. Regan read a memorandum from the Planning Commission, dated February 12, 2008 that the motion to recommend in favor of the proposed Zoning Amendment to Chapter 15, definitions to add indoor theatre failed. Ms. Regan also read a memo from HVCEO dated January 22, 2008, expressing they had no concerns with the proposed change and referenced a letter from the Northwestern Connecticut Council of Governments, dated January 17, 2008. She also added that she received a letter from Paul Szymanski, dated February 18, 2008, requesting that the Public Hearing be left open at least until the March 11, 2008 meeting.

Mr. Nolan was present but deferred to speak at this time to allow the Mayor to speak on this item first as she was scheduled to attend another meeting.

Mayor Murphy was in attendance, to speak in favor of the proposed amendment. She referred to Section 010-010: Statement of Intent and Purpose of the zoning regulations and stated that this amendment is in keeping with the Town's overall regulations. She noted that Section 010-010(3) addresses beneficial circulation of traffic throughout the town. The proposal maintains a certain size for any indoor theater, which she also supports. She voiced her concerns over the possible additional congestion that a large theatre may add to Route 7.

The next area Mayor Murphy noted was Section 010-010(5), which is to protect and conserve the existing, or planned character of all parts of the town and thereby aid in

maintaining their stability and value, and to encourage orderly development of all parts of the Town. Mayor Murphy noted this was especially important because the downtown movie theatre is truly an integral part of the character of the downtown area. She explained how as a resident and a parent in New Milford, the theatre is a special asset for all of the residents. As far as stability and value, the theatre is a key part of the success of the surrounding businesses and properties.

Next, she referenced Section 010-010(6) to provide a guide for public policy and action that will facilitate economical provisions of public development, investment, and other economical activity relating to uses of land and buildings throughout the town. Mayor Murphy noted that a multiplex theatre, that will generate very little taxes, low wages, and a huge parking lot, is not the most positive use of limited commercial property. The intent of adding this definition, however, is not to prohibit anyone from having a theater.

Mr. Vincent Nolan, wanted to reiterate some of the points that the Mayor had made. He noted that this proposed regulation change was not really a regulation change, but rather a definition that is currently absent in the regulations. The zoning regulations currently allow indoor theaters, but there is no definition of what an indoor theater is. He cited examples of other businesses that are specifically defined and quantified in our regulations, in terms of size, use and location. The intent as stated in his letter is to try to protect and preserve the Bank Street Theatre, which in turn will benefit the entire Village center.

The Bank Street Theatre is the single largest traffic generator in the downtown area. It brings thousands of people each year to Bank Street. Foot traffic generators, such as the theatre, matter to small retail shops and restaurants. It is also important to the character of the downtown, and brings everybody to the area, young an old.

Mr. Nolan stated that the previous owners came to him and the Mayor to inform them that they did not believe that they could make it much longer. The Mayor and Mr. Nolan were able to successfully find someone who would take a chance on making a go of the theatre.

Again Mr. Nolan explained that this definition will provide the theatre with time to become successful and continue to generate the foot traffic and draw people to the downtown area. This definition certainly does not exclude someone else from coming in, it does not give anyone a monopoly, rather it just states what New Milford defines as a theatre. Mr. Vance also noted that the Village center is a very large tax generator for our town, and it is important that it is protected.

Speaking in favor or against:

Keli Solomon, 43 Lake Drive, Chairman of the New Milford Film Commission stated that on behalf of the New Milford Film Commission she urged the Commission to help protect and preserve the Village center by implementing the requested amendment. The Film Commission as part of the economic development of the town, attracts print ads, commercials and major motion pictures to the Town of New Milford, so that the town benefits from his revenue derived from these productions. She cited multiple examples of productions that have contributed tens of thousands of dollars into our local economy. Ms. Solomon added that the downtown village is the predominant draw to these productions. She

explained that the viability of the Bank Street Theatre could be hurt by a multiplex. The theater, she said, is important to the charm and character and would slowly erode at all the downtown businesses. She hopes that these arguments are seriously considered on the future impacts to the town.

Pat Greenspan, 17 Terrace Place, spoke on behalf of the New Milford Trust for Historic Preservation, in favor of the proposed amendment. She said that since the restoration the theatre complies with Section 080-010 of the regulations. She also noted that the theater is an integral part of the walkability of the downtown. She added that in size, scale and setback it contributes to a pleasant streetscape in contrast to a big box theatre. Mrs. Greenspan also noted that the Bank Street Theatre is listed on the National Register of Historic Places. She submitted copies of the theater's nomination to the register of historic places for the Commission.

Wallie Jahn, 338 Wellsville Avenue, approached the commission in agreement of the amendment as a resident and business owner in New Milford. He spoke to the character of Mr. Goldring, and his intent with restoring and running the theater.

Julie Bailey, 144 Buck Rock Road, read three letters into the record. The first letter was from Karen Ross, the owner of Joe's Salon expressing support for the amendment to insure the survival of the theater. The second letter was from the people who had restored the flat iron building also expressing support for the proposed amendment. The letter discussed the positive affects that the theatre has had on their children as well as other children in town, who can find freedom through going to a movie there, in a safe environment. They believe to preserve the progress the downtown area has made, the theater needs to be protected.

The third letter was a letter written by Mr. and Mrs. Bailey, also in support of the amendment. The letter discussed that the profits from large companies leave the town in great volumes and they would rather see profits stay in town, and invest the resources in the community.

Steve Paduano, spoke against the amendment. He stated he is in favor of anybody that has any kind of development in the downtown area, however takes issue with the way this is presented.

He noted that no numbers supporting this, such as demographics, or how many movie theatres this town can support, or how many other family entertainment centers there are have been presented. He believes this is an agreement made by our Economic Development Chairman that zoning is now supposed to assume responsibility for.

He stated his main concern however is about zoning. He noted that any amendment must clearly state intent, and believes the true intent and purpose is not as stated but rather to discourage and deter a prominent corporation, Bowtie, from presenting its ideas to this commission, without bias.

Mr. Paduano stated that it obstructs a developer from proposing its ideas to the Commission. Anything of this size must go under the special permit process, and urges that this is a statement of no confidence in the special permit process.

James Stewart, 467 Clearview Avenue, Harwington, Ct, spoke in favor for the amendment. Mr. Stewart is a partner in the theatre. He read a letter from Ed Zane, the president of Bank Street Associates also in support of the amendment. The letter noted the concern that if not passed it could lead to the demise of the downtown district.

Tim Lee, 2 Zachary Lane, also spoke in favor of the amendment. He believes it is a good idea to limit the size of an indoor theatre, and that it does not deny anybody the right to build a theater in town, it just stipulates it to be a similar size. He thinks the theatre is a huge draw to downtown, and can remember what downtown was like for the period of time when the theatre was not open.

Paul Schuyler, 26 Governors Lane, the Manager of the theatre spoke in favor of the proposed amendment. Mr. Schuyler explained how film distribution works. He explained that New Milford would only going get one print of a film because of its size. He said that as in many towns in Connecticut, a small theatre cannot compete with large chains. He does not think that Bank Street Theatre would be able to get movies if a large chain came into town and it would eventually close.

Larry Greenspan, 17 Terrace Place spoke to comment on what Mr. Paduano stated before the Commission. Mr. Greenspan noted that you can not have a special permit without a site plan application. He also stressed that this is not a regulation per se, rather it is a definition.

Bill Zampaglione, from Torrington, approached the Commission with a question about once this process is started where does it end? He wanted to know if they will protect the local hardware store or the local coffee shops. If not, he would like to know why the Commission chooses to protect one particular business over another. He added that he has owned a business in town for over twenty five years, and wanted to know that when they come to Mr. Nolan, that he would be afforded the same protection as the theater. If that was not the case, then he has issue with this amendment.

Erin Maguire, 24 Upper Valley Drive, the owner of the natural food store on Bank Street. Ms. Maguire stated that she did not want to see the theatre close, she agreed with Mr. Zampaglione and Mr. Paduano against this amendment. She wanted to know that if a new whole foods store wants to open, if there be a meeting like this for her business? It was her belief that no special privileges should be given for one business over another.

Dorothy Crocker, 18 Big Bear Hill, spoke in favor of the amendment because she thinks the theater is an important part of the town and believes that it draws people to and keeps people in town.

Gary Goldring, 48 Mill Pond Road, spoke in favor of the amendment as the owner of Bank Street Theatre. Mr. Goldring said he was approached by the Mayor and Mr. Nolan when the theatre was going to shut down. They expressed that it was very important to the downtown that the theater remain open. He said that he was not in the movie theater business, but believed that it was an important part of the downtown.

Mr. Goldring stated that the theater drew 60,000 people over the past year. These same people patronize the restaurants and the downtown stores. He said the renovations are complete and he is very proud of the theater.

The difference between the movie theatre business and other retail businesses is that if a multiplex opens, Bank Street will stop getting movies. A retail store, such as whole foods store can come in, it does not mean similar businesses will no longer be able to get their products.

Mr. Goldring also explained his financial reasons why the movie companies will not send two prints of a movie to New Milford. Small theaters cannot compete with multiplexes. He said that within a week of a multiplex coming in they will not have any movies at Bank Street to show, which will impact the rest of the downtown businesses. There was a small discussion about how many seats etc. were in the theater. Mr. Goldring also submitted an article called "Lighting Up Darkened Downtowns" from Box Office Magazine about this particular issue and how a small movie theater can help a an entire town survive.

Mrs. Florio noted that the hearing would remain open and asked Mr. Nolan if he would like to add anything.

Mr. Nolan stated that when he wrote the proposal, he wanted to do it correctly. He noted that the theater, unlike the other downtown businesses, brings 60,000 people to the village center. This anchor is critical to the other shops. Another distinction is that this definition does not preclude someone from competing, rather it defines what the rules of competition will be. In response to Mr. Paduano's comments about the Special Permit process, Mr. Nolan stated that the Special Permit promise is still out there if someone wants to make the case to the Commission that a multiplex is essential to the community's economic vitality.

Mrs. Florio had additional questions about movie distribution. Mr. Goldring explained that if another small movie theatre was to come in to town, it would need 70,000 to 80,000 customers to break even. Mr. Goldring said that nobody could open another movie theatre here, and hope to split the current 60,000 customers because both businesses would loose a lot of money.

Mrs. Florio asked if this amendment would give the Bank Street Theater the ability to be the only theater in town. Again, Mr. Goldring responded that there could only be one movie theater in town.

Mr. Nolan readdressed the issue about understanding the marketplace. The market pull is actually here and to the north. Business will not drive north from Danbury. He went on to explain how he believes that the downtown is in a very sensitive spot currently with the loss of one anchor. Therefore, while they are trying to replace it, the Bank Street Theatre is very important.

John Bochio, 616 Middlebury Road Turnpike, Woodbury owns a restaurant in Bank Street. He spoke in favor of the amendment and believes if the theatre closed it would eventually put him out of business as well.

There was no further public comment at this time.

Mrs. Florio stated that the Public Hearing would be continued to February 26, 2008.

- b. Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street, Map 28.4, Lot 159 in the B-2 zone. Request to waive topographic contours, soils classification, location of subsurface utilities, percentage of lot coverage and landscaping coverage, stormwater management report, and traffic report. Close by March 11, 2008**

Louis White was in attendance as was Kathy Castagnetta from Arthur H. Howland & Associates P.C.

Mrs. Vance read the legal notice.

Ms. Regan stated that she was in receipt of a memo dated, September 6, 2007, from the Wetlands Enforcement Officer stating that the property does not contain wetlands, watercourses or regulated area so the proposal will not require an individual wetlands permit.

Ms. Regan noted that the application was submitted last September and withdrawn. The applicant is requesting that the application fee for this submission be waived.

Ms. Castagnetta summarized the project explaining that Mr. White wants to add an apartment on the second floor as well and is proposing some additional smaller changes. The Commission had an issue with the lack of a sidewalk in the prior submission. From an engineering perspective she stated that there was no way to fit a sidewalk with the existing parking on the property. To address the safety concern this plan proposes a crosswalk to the other side of the road where there is currently a sidewalk.

Ms. Castagnetta addressed issues previously brought up by Ms. Regan. She indicated on the plan an area of encroachment caused by a new door. Ms. Regan had suggested that a lot line revision would eliminate the encroachment. Ms. Castagnetta said Mr. White did not want to incur the expense of a lot line revision. He does own the property next door and understands that it is something he might need to do should he sell the property. Zoning compliance, she said, is not effected.

In regard to Ms. Regan's comment about the deck on the back of the building that encroaches on the Railroad property not being shown on the survey, Ms. Castagnetta noted that the deck had been there possibly for a loading area and could be rebuilt as needed if it becomes deteriorated. The size would not be changed.

The last issue was with regard to paving and stormwater drainage. The applicant requested to waive any stormwater management plan because of the small size of the area. There will be some plantings but the majority of the lot will be impervious. Ms. Regan had previously suggested that the property owner work with the Department of Public Works if there are any sheet flow problem with the roadway.

Mrs. Florio asked what percentage of the lot was going to be landscaped. Ms. Castagnetta did not have the exact number. Mrs. Florio asked if that information could be provided at the next meeting. Brief discussion ensued about the calculation. In an estimate, Ms. Castagnetta said that the impervious surface was probably 90 to 95 percent. The landscaping, she said, was probably about 5 to 8 percent.

Ms. Castagnetta discussed the possible conditions of approval and said a letter would be provided stating that Mr. White would allow the roof drainage to drain to his abutting property. They will get permission from the Traffic Authority for the crosswalk and have already spoken to the Town Engineer who had no issues with the crosswalk. The applicant will work with Public Works on water drainage should there be an issue. As for limiting the number of bedrooms to one, Mr. White was fine with that.

Mr. White stated that had always intended to build the apartment. The zoning regulations have changed in the forty years he has owned the building. Mrs. Castagnetta added that Mr. White received a variance for the apartment.

Mrs. Florio opened the floor to the public. There was no public comment at this time. With that Ms. Regan added that the applicant had answered all her previous questions. A brief discussion followed about the conditions of approval as well as waiving various items.

Mrs. Florio moved to waive topographic contours, soils classification, location of subsurface utilities, stormwater management report, and traffic report for Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street. The motion was seconded by Mrs. Vance and the motion carried unanimously.

Mrs. Florio moved to waive the application fees for Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street. Ms. Ward seconded and the motion carried unanimously.

Mrs. Florio moved to close the Public Hearing for Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street. Ms. Ward seconded and the motion carried unanimously.

- c. **DE & SL Properties, LLC, application for a change to the boundary of the zoning district on property located at 51 Outlook Road, Map 36, Lot 23, more specifically depicted on a map entitled "Property Survey Showing Proposed Zone Change Prepared for DE & SL Properties, LLC, 51 Outlook Road, New Milford, Connecticut, Scale 1"=50', Certified Substantially Correct to Standards of a Class A-2 Survey by Richard A. Bunnell, RLS, dated December 7, 2007". Close by February 19, 2008**

Ms. Regan stated that she had referred this zone change request to the planning Commission and they had voted in favor of it.

Mrs. Florio asked the applicant if they had anything new to address.

Mathew Scully was present for the applicant. In response to Ms. Regan's prior comments with regards to notifications, he stated that after the last meeting it was brought to his attention that two of the property owners were improperly notified. He said that they sent out re-notification at the proper addresses. One was sent back and submitted to the record; the other was not returned. He also submitted a copy of the letter that was sent notifying the date of the second public hearing.

Mr. Scully briefly explained that an application for a three lot subdivision was before the Planning Commission. He explained the layout of the lots and noted that Planning required them to connect the front 65,000 square foot piece of land by a strip of land to the back piece. The zone change to R-60 will make the lot conform. He stated the property owner is not looking to increase density or change the three lot subdivision. They want to split the 50 foot access way in half giving each one of the rear lots a twenty five foot strip, which he stated would prohibit any further subdivision. He noted that the zone change application was submitted at the request of Planning.

Mrs. Florio noted that it was brought to her attention that the three lots were on the market. Mr. Scully responded that the entire 11 ½ acre property was on the market as one piece; the individual lots were not for sale.

Mr. Scully addressed the previous issue of the placement of the notification sign. He stated that it was placed properly, however upon visiting the site several days later the sign had been removed from the property. He said that the owner had called the Police Department and that they would not take a complaint about a sign. He said that the sign had not been put up again, but the sign was up for the notification period prior to the public hearing for the full fourteen days.

Mrs. Florio opened the floor to public comment.

Michael Sumple, 82 Second Hill Rd, expressed concerns about the environmental impacts that he believed could occur from the project. He noted that there was an appeal with the Wetlands Commission. He said there was a progression of problems in recent weeks because an existing pond was filled. He claimed that the water from the filled in pond has now moved onto his property.

Mr. Sumple indicated his property on the proposed subdivision map. Ms. Regan noted that this zone change would not change the number of lots; it only addressing the shape of the front lot.

Mr. Sumple said that there was still an environmental issue with building anything there. It was suggested that the environmental, water, and erosion problems that he was addressing would be better suited to be discussed at a Wetlands meeting.

Mr. Sumple continued saying that he believed the applicants were looking into affordable housing on the lots. Mrs. Florio explained that an affordable housing application comes before the Zoning Commission as a formality. Again it was stressed that this application is for a zone change only.

George Bauer, 80 Second Hill Road, showed the Commission the location of his property on the map bordering the subdivision. He expressed concerns with the water flow coming off the property towards his well head and any possible contaminates. He also noted he was concerned that eventually any contaminates will find their way into the Housatonic River

Karl Johanson, 84 Second Hill Rd, expressed concerns over the intent of the zone change. He said that he believes that the intent of this change is to make it easier to develop the back property. The additional strip of land will allow further access to the back lots.

Ms. Regan explained that the strip is 50 feet wide, each lot needs 20 feet which leaves ten feet which is not enough for another lot.

Mr. Johanson noted that the applicant has been discussing cutting in a driveway somewhere else as well. Ms. Regan noted that that would have to be done with the permission of another property owner.

Mr. Johanson was concerned with further development, because once the fifty foot piece is added, that it could be turned into a town road. Ms. Regan said that if they sell the three lots right now with the way things are on the proposal, they would not be able to make a town road, they would have to acquire the property back from anyone who had purchased it.

Mr. Johanson submitted to the Commission MLS listings for the three lots dated February 19, 2008 rather than his one 11 acre parcel as stated by the applicant.

Scott Lavelle, a partner of DE & S properties, noted that both he and his partner were away for ten days when his assistant put the properties on the market in error. As soon as the mistake was found they withdrew the properties from the market

Mrs. Florio noted the MLS listing was dated 2/19/08. Mr. Lavelle said that it was withdrawn over two weeks ago. Mrs. Florio said that she would check into the dates on when it was listed and when it was withdrawn. She noted that regardless, the applicant should have brought this error to the Commission's attention themselves.

Mrs. Florio asked the applicant at that point to explain where they own additional land and how large is it. The applicant showed the properties around the proposed subdivision. He said that they do have a fifty foot right of way to the back of the property and that they could build a road but were not doing so. He said that he prefers the zone change so they can make a 65,000 sq. ft. lot in the front of the property without having to create an irregularly shaped lot. He said that that is why Planning requested that they come to the Zoning Commission.

Mrs. Florio asked Ms. Regan if the Commission could request from the Planning Commission something in writing that states the intent and who asked for the change. A

transcript was offered from the public. Mrs. Florio noted that it should come from Planning, themselves. Ms. Regan will request that from the Planning Commission.

A discussion regarding the need for an extension followed with the property owner stating that he would prefer not to file an extension. He reiterated that the zone change came from Planning. He stated that he does not need the zone change. The Commission recessed briefly to allow for the applicants time to discuss the filing of an extension. When the meeting reconvened, they decided not to file the extension. Mrs. Florio explained that if the public hearing was to close, they still would wait to hear from Planning with the necessary information and that the Commission has 65 days to make a decision.

Mrs. Florio moved to close the Public Hearing DE & SL Properties, LLC, for a change to the boundary of the zoning district on property located at 51 Outlook Road. Mrs. Vance seconded and the motion carried unanimously.

- d. **Eric S. and Patricia A. Bailey, special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a 2 lot subdivision under Section 140-020(1), on property located at 159 Sunny Valley Road, Map 22.1, Lot 2.1 in the R-40 zone. Request to waive traffic study. Close by March 11, 2008 with 35 day extension**

Attorney Gregory Cava was present for the applicant as was Paul Lavelly from Dimar Engineering.

Mr. Cava respond to the previous engineering questions about the sight line on the driveway saying that they have modified the plan which seems to be okay both with engineering and traffic. The driveway location was revised. The existing driveway easement will not be used. A new driveway and entrance are proposed and the existing driveway easement will not be used.

Mr. Lavelly explained the requirements with respect to sight line distance. With the speed limit and road classification the sight line should be 350 feet. He stated that the distance is 150 feet for the southwest and 350 feet going along the existing roadway. He said there was a distance of 300 feet within the town right of way and noted that there were intermittent views back to a distance of 700 feet. He said that the Town Engineer felt that this was a safe enough position and that he felt the 300 feet was sufficient.

Both Mr. Cava and Mr. Lavelly spoke to how this excavation and grading would improve the buffer for the adjacent homeowners. A discussion ensued about the removal of materials and grading. Mr. Cava said that a precedent was set across the street at the SunVal property about grading and removal. The Commission noted that the property across the street was commercial and this application is for residential property.

There was discussion about the use of the existing driveway owned by Ms. Gerow, and if it would be used to remove the material from the property. Due to the amount of material that is proposed to leave the site, members felt it was important to get permission from Gerow.

Mr. Cava noted they have a right to pass and re-pass for the driveway which includes trucks. Ms. Regan expressed concern over any deterioration and asked who was responsible for that. Mr. Cava responded that was between the property owners. Mr. Lavelly clarified that trucks would not be use the existing driveway/easement. A separate construction drive would be installed. Only the resident's of the existing house would continue to use the existing driveway.

Mr. Cava submitted for the record a draft of an easement and discussed the shared access and grading rights and maintenance agreement. He said the Planning Commission requires the twenty foot strip for the rear lot.

Mr. Lavelly stated that it would take approximately 4 ½ weeks to remove the material from the site. However, he also said that this could be spread out over a longer time period with less truck trips per day if the Commission so desired.

Mrs. Florio moved to waive the traffic study for Eric S. and Patricia A. Bailey, special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a 2 lot subdivision under Section 140-020(1), on property located at 159 Sunny Valley Road. Mrs. Vance seconded and the motion carried unanimously.

Mrs. Florio moved to close the Public hearing for Eric S. and Patricia A. Bailey, special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a 2 lot subdivision under Section 140-020(1), on property located at 159 Sunny Valley Road. Mrs. Vance seconded and the motion carried unanimously.

- e. **Cellco Partnership d/b/a Verizon Wireless, public informational hearing to construct a wireless communications facility including a telecommunications tower 150' in height, a 12' x 30' equipment shelter, and an access road at the Northville Volunteer Fire Department located at 359 Litchfield Road, Map 72, Lot 72 in the R-80 zone.**

Mrs. Vance read the legal notice.

Kenneth Baldwin, of Robinson and Cole was present for the applicant. Mr. Robinson explained the project and the proposed location of the cell tower behind the Northville Fire Department. He explained the location and how cell phone coverage actually works. He noted the Town meeting for this application was scheduled for March 11, 2008. He said the afternoon of the hearing they will be doing a site visit as well as flying a balloon so that the Siting Council as well as the public and Commission members can have an idea of the visual impact.

Mr. Baldwin addressed the questions about a similar application for a tower by Optasite down the road from this tower. He explained that both would not be built or needed; at this point it was one or the other. The applications have been combined by the Sighting Council. Both applications will be heard at the March 11th meeting.

He discussed the proposal and various details. He noted that there would need to be a retaining wall because of the slope. The equipment shelter will be twelve by thirty with space for additional carriers. The site will be accessed from Big Bear Hill Road. They are looking into the wetland near by to make sure there is no significant impact.

Mike Liberteen, Vanasse Hangen Brustin, Inc. spoke about the visibility analysis. Mr. Liberteen explained how the analysis is prepared with respect to topography, tree height etc. He pointed out on the map where they believed the tower would be most visible.

Mrs. Vance asked the proximity of the tower to surrounding buildings. Mr. Baldwin stated that the tower is 199 feet from the nearest building. There was brief discussion about the possibility of the tower falling and Mr. Baldwin noted that in the rare chance of that happening towers are designed to fold upon themselves, staying within the property. This is referred to on the application as the yield point. Mr. Walker asked if the 150 feet they are proposing is the maximum height. Mr. Baldwin stated that it was.

Mrs. Florio opened the floor to the public.

Eric Jones, 245 Litchfield Road, stated where his residence was compared to the proposed tower and was speaking against this application. He noted that he has cell service in the area, so he felt there was not a true need for the tower. He said that he was aesthetically opposed as well and concerned about property values. He also questioned the possibility of harmonic resonance that would cause a humming sound. Mr. Jones was concerned with safety of the tower, as far as set backs, and the possibility of it falling. He also wanted to know if there are required safety checks regularly to make sure that its structural integrity is kept. He asked about electromagnetic radiation and any health effects from the towers. He also wanted to know if life star would be able to land in the area as it does now. Mr. Jones also questioned if it would interfere with radio reception.

John Kuck, from the Northville Fire Department wanted to just express support in favor of the application for the cell phone tower.

John Kuck, Sr., from the Northville Fire department was also in favor of the application.

Steve Paduano, 767 Candlewood Lake Road South, compared this project to Gaylordsville, and how in that application there had been no regard for the community or its residents. He also discussed the Optisite location which is hidden from view. It was his belief that the Zoning Commission wrote a letter of recommendation for the Optisite application to the Siting Council.

Dorothy Crocker, 18 Big Bear Hill Rd., was speaking against the Cellco tower. She stressed the views that the residents of this area have and expressed concern with the aesthetics of the tower. Mrs. Crocker also is concerned with the tower falling, health risks, and having two towers in her view. She was not convinced of the need for a tower at this location. Mrs. Crocker said she would like to see the balloon prior to March 11th. She read from a New Milford Times article about how the scale of the tower is unclear at this point.

John Kuck, 5 McNulty Drive, re-approached the Commission and stated that he was at the Optisite meeting and there were members of the public who spoke against it. He did not think that the Commission wrote a letter to the Siting Council recommending that application. He also believed that they possibly filed as an intervener. Ms. Regan clarified that they filed as an intervener for the Gaylordsville site. The Commission will look into the letter for clarification about recommendation of the Optisite location.

Joe Tillman, 53 Walker Brook Road, representing the Northville Fire Department and speaking in favor of the application, explained that the fire department understood that there would be a cell phone tower built in this area of Route 202, but was unclear of the exact location. The department felt that the money and benefits from the tower should go back into the community rather than a private property owner. He also stated that their antennae was currently in disrepair and this would give them an antennae for their department.

Mr. Baldwin stated that in his experience he has never encountered resonance. As for setbacks he said that the Siting Council preempts any local zoning setbacks and the local setbacks in his case have been met except to the west. He said that upon construction of the tower there are safety checks and building permits that the facility has to comply with. He did not offer information as to future and regular checks once the tower is built. Radio frequencies were under the jurisdiction of the FCC. To address the health and safety issue he said this facility meets the safety standards set by the FCC for radio frequency emissions. He also noted that there will not be an issue with life star as long as they are aware of the location of the tower.

Mr. Liberteen readdressed the Commission with respects of the visibility analysis of the Cellco and the Optosite location. He said they are very similar and noted that the balloons would be flown at both sites so everyone can see the difference.

A discussion ensued about cell phone coverage and the need for the towers in New Milford rather than Washington. Mrs. Florio also noted that the Siting Council supersedes Zoning and stressed that while the Commission can write a letter in favor or against, public attendance at the Siting Council meeting is very important.

Mrs. Florio moved to close the Public Informational Hearing for Cellco Partnership d/b/a Verizon Wireless, public informational hearing to construct a wireless communications facility including a telecommunications tower 150' in height, a 12' x 30' equipment shelter, and an access road at the Northville Volunteer Fire Department located at 359 Litchfield Road. Ms. Ward seconded and the motion carried unanimously.

5) NEW BUSINESS:

- a. **Tree Monsters Land Clearing, LLC, site plan application to allow the construction of a 2,340 sq. ft. building to be used for office space and storage of equipment in connection with a tree clearing and landscaping businesses under Section 066-020(2) on property located at 55 Pickett District Road, Map 22.2, Lot 25 in the Restricted Industrial Zone. Request to waive traffic study. Decision by April 8, 2008**

Mark Kornhaas of Artel Engineering was present.

Mr. Kornhaas stated that a variance had been granted, effective February 11th, 2008. The property is connected to the sewer and will maintain the private well. Ms. Regan noted that prior issues regarding dumpster location and loading zones have been addressed. She acknowledged receipt of a letter from Tom Sprong, Town Engineer about stormwater management, but had not received comment on the driveway. Mr. Kornhaas said that in speaking with Mr. Sprong, he did not think the driveway was an issue. He submitted building plans for the record and discussed the details of the building. There was a brief discussion of the equipment that would be stored at this location.

Mrs. Florio moved to waive the traffic study and application fee for Tree Monsters Land Clearing, LLC site plan application to allow the construction of a 2,340 sq. ft. building to be used for office space and storage of equipment in connection with a tree clearing and landscaping businesses under Section 066-020(2) on property located at 55 Pickett District Road. Ms. Ward seconded and the motion passed unanimously.

- b. John Carr, application for site plan modification under C.G.S. §8-30g to allow site plan modifications to a previously approved site plan for an affordable housing development at 95 Kent Road, Map 35.1, Lot 5 in the B-1 zone. Request to waive traffic study, topographic contours, drainage, and interior layout. Decision by March 11, 2008**

Mr. Carr was present and reviewed the plans and the current phase of construction. He noted that the sewers were extended. An under course is in place and will be paved and lined when construction is completed. The recent disturbance at the front of the property was United Water rectifying an issue across the street at a private residence. The larger landscaping will be implemented this spring.

Mrs. Florio questioned how many units were affordable. Mr. Carr responded that there are 8 affordable housing units. Ms. Regan noted that for affordable housing 30% must be affordable, which would be 10.8, which means he needs to have 11 units of affordable housing. Mr. Carr asked that ten rather than the eleven units be affordable.

In respect to the issue of the handicap parking, Mr. Carr believes that since the first two buildings are at grade there is no need for a wheelchair ramp. He asked for a waiver on the traffic study and contours.

Nicolle Burnham from Milone and MacBroom noted that she had submitted a letter dated February 12th, 2008 that describes the existing conditions. She had reiterated the issues with the structures and recommended a condition of approval that requires a structural engineer to complete a peer review. She said it is unclear if that had been done. The applicant's responses to the structural issues indicate that structural integrity is a building department concern.

Ms. Burnham discussed grading of the project. A drainage swale was mentioned but not shown on the plans. She requested clarification on the swale location and assurance that it would not erode the neighboring property.

Ms. Burnham expressed concern that there were no light poles or lighting. This potentially poses a safety issue as does the lack of sidewalks. Rod residents needing to access a school bus stop or public transportation, a sidewalk would provide a safer environment. Ms. Regan noted that she spoke to Mr. DiBella about these concerns which can be included as conditions of approval.

Mr. Carr noted that there is temporary lighting; permanent lighting will be installed after construction is complete. With regard to the drainage issue he said there is a drainage swale that is going to be there even if they did not show it on their drawing.

Mr. Carr felt that the demographics did not support the need for a sidewalk. He said that the current residents are young single girl, a young couple, a divorced woman, and elderly single woman, a retired couple, a single man, two more young couples, and a young single man. There are no children. Mrs. Florio asked what happens when the young couples have children. Mr. Carr said that he believes they will all move out because these are only two bedroom condos. He said that he did not design them specifically for kids. He said none of the owners who have bought units so far have children. Sixty percent of the residents are single women of varying ages. So he believes that there will not be kids living here and if there were they will only have to walk 200 feet down a private drive to a bus stop. He thinks it would be a liability to the association to add the sidewalks.

- c. **Stephen Schappert, application for site plan modification under Chapters 175 and 80 to allow site plan modification to a previously approved site plan to allow the construction of a new building to be used for mixed use retail/office/residential on property located at 72 Railroad Street, Map 35.2, Lot 237 in the Village Center Zone. Request to existing conditions map, stormwater management plan, lighting plan, landscape plan, soil erosion and sediment control plan, waste management plan, and traffic study. Decision by April 8, 2008**

Mr. Schappert was present and stated that he is in the process of purchasing a thirty foot strip of land from the neighboring property that would allow for the two staircases required.

Mrs. Florio asked if the fire department would be able to access the back of the building. Mr. Schappert suggested they could use the Post Office Parking lot above and behind his property. Mrs. Vance expressed a concern about the location of the two exits by stairways that are in very close proximity to each other which could be an issue in the case of a fire. Mrs. Florio added that she believed the two staircases met the fire code regardless of their location.

Ms. Regan noticed that the property lines as shown include an encroachment on neighboring properties which could not be allowed without a lot line revision. A survey of the property after acquisition of the additional property should be provided. The Commission concurred.

There were remaining questions about landscaping, construction fencing and sidewalks. Mr. Schappert stated that he was looking at Mr. Posthauer's letter that indicated the changes but

failed to see that the plans were revised with regard to these items. Mrs. Florio suggested that he meet with Ms. Regan.

6) OLD BUSINESS:

- a. **Gallimods Xtreme RC, application for site plan modification under Chapters 175 and 60 to allow site plan modifications to a previously approved site plan for a retail hobby shop and remote car racetrack, on property located at 471 Danbury Road, Map 7, Lot 15 in the IC zone. Request to waive Class A-2 Survey, location of utility lines, soils classification, location of subsurface utilities and septic system, percentage of lot coverage and landscaping coverage, building floor plans and renderings, stormwater management report, lighting plan, and traffic report. Decision by March 11, 2008**

Mrs. Florio stated that this item was tabled.

- b. **Candlelight Farms Aviation, LLC, site plan application under Chapters 75 and 175 to allow construction of two airport hangers and a caretaker's cottage on property located at 5 Green Pond Road, Map 26, Lot 1.2 in the Airport Zone. Request to waive traffic study, topographic contours, drainage, and interior layout. Decision by March 25, 2008**

Ms. Regan noted that she had drafted a resolution of approval as the applicant had submitted all the remaining outstanding information.

Ms. Ward moved to waive the traffic study, topographic contours, drainage, and interior layout for Candlelight Farms Aviation, LLC site plan application under Chapters 75 and 175 to allow construction of two airport hangers and a caretaker's cottage on property located at 5 Green Pond Road. Mrs. Vance seconded and the motion carried unanimously.

Mrs. Florio moved to adopt the resolution of approval for Candlelight Farms Aviation, LLC, site plan application under Chapters 75 and 175 to allow construction of two airport hangers and a caretaker's cottage on property located at 5 Green Pond Road. Mrs. Vance seconded and the motion carried unanimously.

- c. **Donald L. Wharton II, site plan application to allow a 23 unit affordable residential condominium complex under C.G.S. §8-30g, on property located at 38-46 Lanesville Road, Map 14.1, Lot 84 and Map 14.2, Lot 11 in the Multiple Residence District. Decision by February 26, 2008 with extension**

Mrs. Vance recused herself during the discussion of this application.

Nicolle Burnham of Milone and MacBroom indicated that since the original submission the plans have evolved considerably. She summarized the basic issues that are still outstanding. She believes additional controls for sediment and erosion should be included as a condition of approval. She questioned the drywells at the rear of the site that have open gate tops. The

town engineer agreed with Ms. Burnham and would prefer to see catch basin tops or manholes. Ms. Burnham said one of the biggest issues she continues to have relates to site grading and traffic management. The grading plan does not show the garage slab elevations as being different. The feasibility of exiting the garage with a vehicle was discussed. The applicant has provided vehicle traffic layouts for passenger cars, but Ms. Burnham noted concern about how tight this was. Sidewalks and the lack of a landscape buffer between the walk and the pavement are also concerns.

Mrs. Florio asked if Ms. Burnham thought there were too many units on the site. Ms. Burnham responded that there are a lot of units. Visibility within the complex is an issue because it is obscured by buildings in some areas.

Ms. Burnham stated that there is very little room to pull straight out of a garage and have room to turn. She stressed that this plan assumes that the residents will park in their garage at all times. If someone wanted to park their car outside the garage to wash it, or change the oil, they would be blocking access to all the other units. The traffic engineer also asked about school bus access. Mr. Wharton said busses would turn around at the fire station as the do now.

Ms. Burnham also noted that at the westerly lot line, the turning radius extends over the neighboring property line. If the neighbor was to develop the property there would be conflict. She noted that the town may want to have the full fifty foot right away at the front lot line and suggested that the Commission ask the applicant if they would be willing to give some of the frontage to the town right of way.

There was a discussion about the feasibility of The Fire Department being able to access all the units. Ms. Burnham had indicated that the Fire Department submitted a letter indicating that they had no concerns. Ms. Burnham reiterated that it is tight, and there is a lot of density. Mrs. Florio asked if this were a regular condominium complex, would this be allowed. Ms. Burnham said she would strongly encourage that it not be allowed because of safety. She believes there are potential safety issues from visibility, and pedestrian movement on the site may present a potential safety hazard.

Ms. Ward asked about the driveways and grading and a discussion ensued about the difficulty of use. Ms. Burnham stated that sometimes a wall between the units to adjust the grade can be implemented, but on this site, it would be an obstruction.

Don Wharton and Pat Hackett were present to answer questions. Mr. Wharton noted that Mr. Hackett had drafted a ten page response and Mr. Wharton had prepared a list of changes from the January 16th meeting. He submitted these to the Commission. Regarding sediment and erosion control, the Wetlands Commission has implemented conditions for ensuring proper sedimentation and erosion control as well as conditions ensuring the stormwater management and maintenance plans are followed as proposed.

Mr. Hackett detailed the erosion control plan and discussed the six phase construction plan. He noted that the area of disturbance for this project is minimal. As far as the drywells, Mr. Hackett prefers open basins. The soil data was submitted. Ms. Burnham clarified that she had

a copy from the Wetlands submission. Mr. Hackett will provide the Zoning Commission with a copy.

Mr. Hackett addressed the traffic issues saying he has shown there is no impact to traffic. He said the turning radius of a Suburban was used. The steepest grade is ten percent and there is no need for walls. The garage is perpendicular to the grade and meets the DOT manual. He said that as far as the safety of pedestrians, there is six more feet here than in retail spaces that have been approved in town. Sight distances he said are ample and calculations were provided. Brief discussion about the town right of way followed. Mr. Hackett also responded to the ladder truck tracking. They have accounted for the full size of the truck and ladders not just wheel tracks. He said that it was field measured by Arthur Howland and Associates.

Ms. Burnham said she is still concerned that backing up will place rear bumpers over the sidewalk which presents a safety hazard. The reality and functionality of that is questionable. Mr. Hackett stated that it will work and referred to Fort Hill Gardens which was previously approved. This plan is more conservative than that. Ms. Burnham noted that the fire truck that services that site is different and there is also mountable curbing at that site.

7) ZONING ENFORCEMENT OFFICER'S REPORT:

There was no written report submitted.

8) ACCEPT FOR PUBLIC HEARING:

- a. Linda Cioffoletti, special permit and site plan application to allow construction of a 4' x 8' guard station house to monitor and charge for parking, under section 080-020, on property located 7-15 Main Street, Map 28.4, Lot 32 in the Village Center District. **Suggested Date: March 11, 2008**
- b. Joseph Galante, special permit and site plan application to allow an accessory apartment under Section 025-090, on property located at 54 Hine Hill Road, Map 19, Lot 15B in the R-60 zone. **Suggested Date: March 11, 2008**
- c. Paul and Ingrid Totten, special permit and site plan application to allow a 3,200 sq. ft. accessory building under Section 025-110(B)3, on property located at 41, 43, and 45 Candlewood Shore Road, Map 21.1, Lots 78 and 79 and Map 21.3, Lot 32 in the R-20 zone. **Suggested Date: March 11, 2008**

Mrs. Florio moved to accept for Public Hearing items a – c as posted on the agenda with the hearing dates suggested. Mrs. Vance seconded and the motion carried unanimously.

9) BUSINESS MEETING:

a. Discussion and possible decisions on the evening's agenda.

Tree Monsters Land Clearing, LLC, site plan application to allow the construction of a 2,340 sq. ft. building to be used for office space and storage of equipment in connection

with a tree clearing and landscaping businesses under Section 066-020(2) on property located at 55 Pickett District Road, Map 22.2, Lot 25 in the Restricted Industrial Zone. Decision by April 8, 2008

Mrs. Vance moved to approve Tree Monsters Land Clearing, LLC, site plan application to allow the construction of a 2,340 sq. ft. building to be used for office space and storage of equipment in connection with a tree clearing and landscaping businesses under Section 066-020(2) on property located at 55 Pickett District Road with the stipulation all trucks and equipment be stored inside the building as space allows and if it is necessary to temporarily store any equipment outside it be located behind the building. Mrs. Florio seconded, and the motion carried unanimously.

b. Discussion and possible decision on the following closed public hearings:

1. Linda Cioffoletti, special permit and site plan application to allow construction of a 4' x 8' guard station house to monitor and charge for parking, under section 080-020, on property located 7-15 Main Street, Map 28.4, Lot 32 in the Village Center District. ***Request to waive traffic study, drainage, topographic contours, and interior layout. Decision by March 25, 2008.***

Ms. Regan read the letter of withdrawal.

Mrs. Vance made a motion to accept the letter of withdrawal for Linda Cioffoletti for a special permit and site plan application to allow construction of 1 4'x8' guard station house to monitor and charge for parking, under section 080-020, on property located at 7-14 Main Street. Mrs. Florio seconded and the motion carried unanimously.

2. Trust Realty Corporation, application to amend the New Milford Zoning Regulations to add Chapter 119, Mixed Use Zone #2 Overlay District to allow an economically diverse combination of housing types and compatible commercial uses in the area bordered by Bridge Street to the north, the Housatonic River to the west and south, and the railroad right-of-way east of West Street. **Decision by March 11, 2008**
3. Proposed Amendment to the New Milford Zoning Regulations to establish a Village District Overlay Zone pursuant to C.G.S. §8-2 and §8-2j to protect the distinctive character, landscape and historic structures within the Village District Overlay Zone in accordance with the goals set forth in the New Milford Plan of Conservation and Development as proposed by the New Milford Zoning Commission. **Commission initiated, no time limit for decision.**

Mrs. Vance made a motion to withdraw the Proposed Amendment to the New Milford Zoning Regulations to establish a Village District Overlay Zone pursuant to C.G.S. §8-2 and §8-

2j to protect the distinctive character, landscape and historic structures within the Village District Overlay Zone in accordance with the goals set forth in the New Milford Plan of Conservation and Development as proposed by the New Milford Zoning Commission. Mrs. Florio seconded and the motion carried unanimously.

4. Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street, Map 28.4, Lot 159 in the B-2 zone. ▸

The Commission discussed that Ms. Regan should draft a resolution of approval with conditions to include a lot line revision.

10) ACCEPTANCE OF MINUTES:

- a. January 22, 2008

Mrs. Florio made a motion to approve the minutes from January 22, 2008 as filed. Ms. Ward seconded and the motion carried unanimously.

11) BILLS AND COMMUNICATIONS:

There was no discussion at this time.

12) ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION:

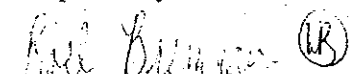
- a. Faith Ministries sign permit application for a 39.36 square foot freestanding sign

Ms. Regan explained that an application for a freestanding sign had been submitted. The property currently contains a freestanding sign for which there is no permit. She asked if the Commission felt a permit could be issued for a sign when a sign, without a permit, already exists. The Commission requested that Attorney DiBella be contacted with that question. There was no further discussion at this time.

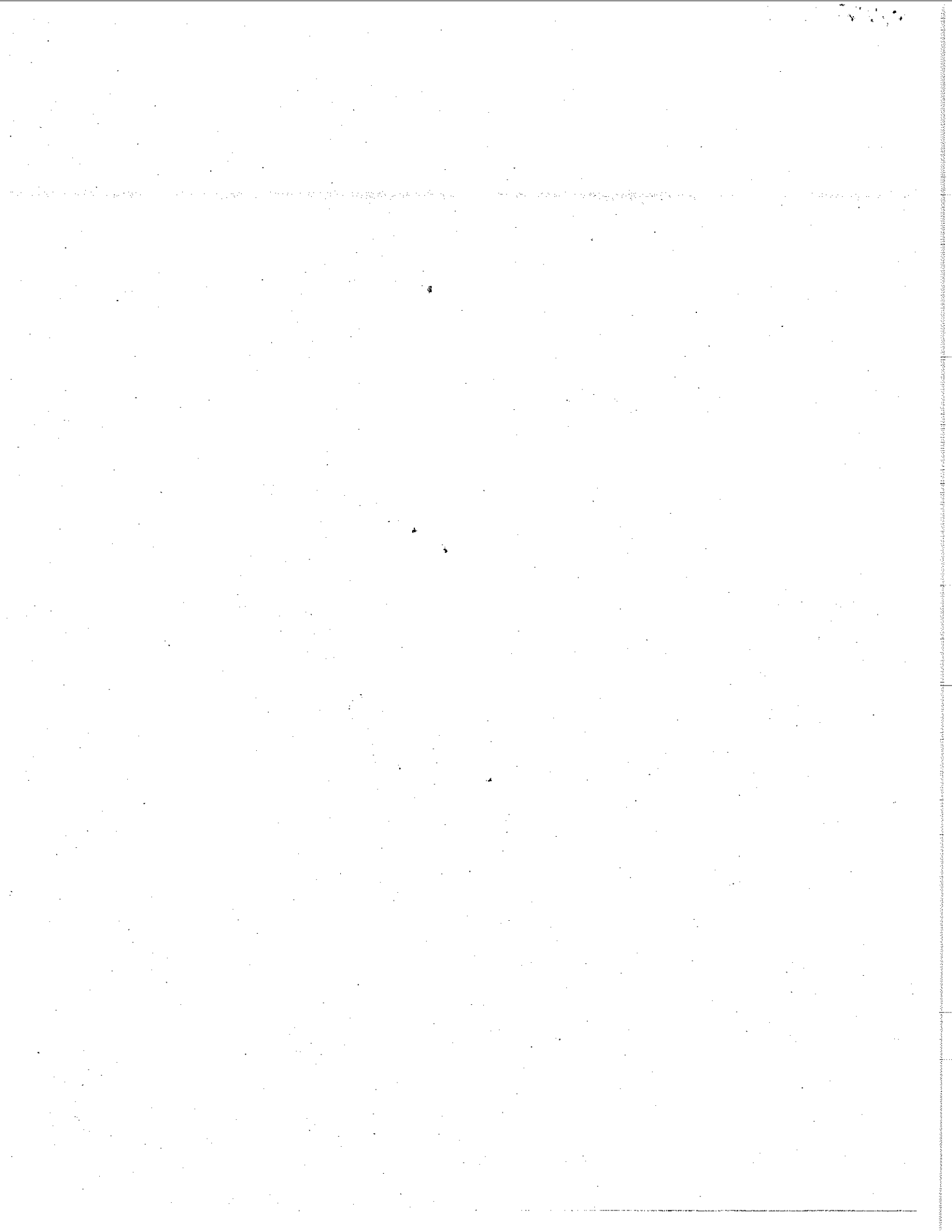
13) ADJOURNMENT:

Mrs. Florio moved to adjourn the meeting at 11:54 p.m. The motion was seconded by Mr. Rogg and the motion carried unanimously.

Respectfully Submitted,



Roel Brennan
Recording Secretary



NEW MILFORD ZONING COMMISSION
REGULAR MEETING
MINUTES
FEBRUARY 26, 2008

NEW MILFORD, CT
7:03 FEB 28 P 4: 11

SPRING 2008
TOWN CLERK

Present: Eleanor Florio, Chairperson
Janice Vance, Vice Chairperson
William Taylor, Secretary
Sharon Ward, Member
Walter Rogg, Alternate
Laura Regan, Zoning Enforcement Officer

Absent: Mona Tito, Member
Donald Marsh, Alternate
James Walker, Alternate

1. **CALL TO ORDER**

Mrs. Florio called the meeting to order at 7:01 p.m. in the Loretta Brickley Conference Room of Town Hall.

2. **PUBLIC PARTICIPATION**

Mr. Harry Binsse of 469 Danbury Road read a letter from him and his neighbors noting the problems they have had with noise, gas fumes, dust, and the need for landscaping and fencing. They felt the container stand should be removed as it has no permit. They also wondered if the track would be open Monday through Wednesday. There have been drainage problems on the site.

Mrs. Florio noted that all the neighbors didn't sign the letter and she asked that he take the letter back and get the neighbors to sign the letter and put their address to it.

3. **PUBLIC HEARINGS**

A. **Proposed amendment to the New Milford Zoning Regulations to add the following definition to Chapter 15, Definitions: Indoor Theater, to maintain the market presence of the Bank Street Theater and preserve and promote the viability of the Village Center, as proposed by Vincent Nolan, Jr., Economic Development Supervisor. Close by March 11, 2008**

Mr. Vin Nolan stated he had nothing to add at this time. Mayor Murphy spoke in support of the proposed amendment. She cited Section 010-10, numbers 3, 5, and 6 of the zoning regulations as to why she thinks it speaks to what zoning exists for. She gave an example of the "Adult Entertainment" definition and how the

Zoning Commission came to this definition. Since the Zoning Commission can't prohibit the use of anything, they described what adult entertainment is and specified where it could be located. It meets the letter of the law. She felt it to be more far reaching. This amendment says that a new theater use must conform to the character of what the town thinks of itself. It speaks to what the town wants to retain and what it thinks is special.

Speaking in favor:

Mrs. Janet Olsen-Ryan of 50-52 Bank Street spoke on behalf of the amendment because it helps preserve existing businesses. Businesses in town are not against competition, but they won't be able to function if they are taken over by giant megaplexes and such.

Mr. Paul Schuyler submitted an example of what can happen to downtown theaters. The Bank Street Theater just wants to be sure that it can get movies if another theater came to town. Competition is not necessarily a bad thing. Multiplexes can make it hard to get movies to smaller theaters. The standard is five miles apart. He just wanted to be sure that he made himself clear.

Mr. Trip Rothschild of 140 Stilson Hill Road spoke on behalf of the Village Center Organization (VCO) in support of this amendment because the theater draws a lot of people to the downtown area. The town invested heavily in its downtown area and the VCO feels it is important to protect it. He felt the amendment would not prohibit a multiplex, but would give the town greater scrutiny and make an applicant "jump through more hoops" to acquire an approval.

This agenda item was left open to March 11, 2008.

B. Indian Field Limited Partnership, C/O Women's Institute special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a previously approved multifamily housing complex under Section 140-020(1), on property located at Fort Hill Road, Map 28.3, Lot 12 in the Multiple Residence District. Close by March 25, 2008

Mr. Taylor read the legal notice. Mr. Brooks Temple and Mr. Robert Rush were present for the New Milford Affordable Housing (NMAH). Ms. Wendy Fitzgerald was present for the Women's Institute whom the NMAH has teamed up with. Return receipts were surrendered

Mr. Temple noted there are no changes to the approved site plan, but upon digging some test holes, it was found that the soils are unsuitable for structural fill. The NMAH proposes to remove the unsuitable fill and bring in new fill that it can use. Mr. Temple noted that these units would provide workforce housing.

The previous plans showed no material being brought on or off the site. However, they now find they need to remove and bring in fill to be able to build the units. The NMAH proposes 40 units (5 buildings of 8 units each). They can have up to 80 units, but felt that to be too dense a number.

Test borings show questionable materials which are structurally insufficient. The site used to be a gravel mine. All the good materials were taken off, leaving clay like materials on the site. Although there is nothing wrong with the material, it is not suitable for building. Mr. Temple proposes 7,800 to 8,300 yards to be removed in the worst case scenario. The NMAH looked at other options, but they would not work.

In response to the questions raised by the Zoning Enforcement Officer, Mr. Temple stated he does not know what a best case scenario would be but it could be 4,000-5,000 yards. The fill would come from a site as close to New Milford as possible. The removed fill would be taken to different New Milford sites. The number of trucks per day could be as little as 2.5 per day to 10 per day depending upon the amount of fill to be removed and brought on the site and the time frame. No processing of material will be done on site. NMAH is in agreement with having restrictions placed on the times and days of work. The trucks would leave at the north end of the road, not Peagler Hill Road.

Members stated they will want a revised, detailed phasing and construction plan, however, Mr. Temple stated he could not do so at this time because they don't know how much materials will have to be removed. They won't know that until it is tested. Mr. Taylor stated that this is asked of other applicants and it would be asked of NMAH as well. Mrs. Florio stated it could be done using the 8,300 yard number as the most that would come out. Ms. Fitzgerald stated she would get one.

The NMAH would build one building at a time starting with Building #2. The soils are okay around buildings 2 and 5. Buildings 1, 3, and 4 would have to have new fill brought in. There were 5 to 6 test borings done for each building area. NMAH is now moving forward after having to change the plans to allow for removal of material.

Members stated they would like to see documentation from the engineers and contractor stating what the NMAH is proposing to do in regards to the soil material. Mr. Temple took note of this and stated that the change in plans would cost NMAH an additional \$350,000 more than they had anticipated. He then submitted a report from the soil testing company dated December 27, 2007. Ms. Fitzgerald stated they would get more information for the commission.

Speaking in favor:

Mr. Robert Rush of NMAH stated that they will know exactly how much soil will be leaving and enter the site as they must pay someone to watch the trucks and log all this data. NMAH is using Merritt Associates as their contractor.

Mr. John Carr spoke in support of the project. He understands the issues with the soil and noted it easy to deal with.

This agenda item will be kept open to the next meeting.

Mrs. Florio moved to waive the traffic study for Indian Field Limited Partnership, C/O Women's Institute special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a previously approved multifamily housing complex under Section 140-020(1), on property located at Fort Hill Road. The motion was seconded by Mrs. Vance and carried unanimously.

5. **NEW BUSINESS**

A. **Animal Welfare Society, Inc. site plan application to allow construction of a 3,200 sq. ft. addition and parking lot modifications under Chapters 66 and 175, on property located at 8 Dodd Road, Map 18.4, Lot 37 in the Restricted Industrial Zone. Request to waive traffic stud, architectural drawings and elevations. Decision by April 22, 2008**

Mr. Dainuis Virbickas of Artel Engineering was present for the discussion. He noted the Society proposes an addition of 3,200 sq. ft. (40 x 80) to the existing building to expand its training facilities. The site has septic, water, and gas utilities. There is no proposed increase in water usage and the septic can remain as is. There is room on the site if the septic should ever need to be expanded. The addition is proposed on a level area on the site. Excavation will be minimal. An additional six parking spaces are proposed. Landscaping is also proposed.

Upon discussion with the members and the former Zoning Enforcement Officer, Mr. Virbickas stated that it was determined that Pickett District Road could be used as the front yard, allowing the addition, extra parking, and still having a lot of open space on the site.

In response to the Zoning Enforcement Officer's questions, Mr. Virbickas stated the Dodd Road frontage issue has been addressed. Lighting is sufficient on the

site with lights on either end of the building shining out into the parking lot. No further lighting is proposed, but if the Zoning Commission wants more lighting, that request could be accommodated. The facility would be used in the evenings during the winter months as it gets dark early. The building is proposed to be 20 feet tall. No architectural plans have been drawn to date. Parking is proposed and landscaping has been addressed.

Ms. Regan asked about the parking space where the dumpster is located. Mr. Virbickas stated that the company vehicle is parked in front of the dumpster. When the garbage truck comes for pickup, the van is moved.

No new bathroom facilities are proposed. The flooring to the new additional will be made of a material so it can be hosed off and would drain out to the lawn area. Ms. Regan stated that although all of the landscaping was proposed in the side yard and not the front, it meets the intent of the regulations. When asked about overflow parking during fundraising events, he stated that the Society has a deal with the bus company to use their parking area if necessary.

6. OLD BUSINESS

- A. **Gallimods Xtreme RC, application for site plan modification under Chapters 175 and 60 to allow site plan modifications to a previously approved site plan for a retail hobby shop and remote car racetrack, on property located at 471 Danbury Road, Map 7, Lot 15 in the IC zone. Request to waive Class A-2 Survey, location of utility lines, soils classification, location of subsurface utilities and septic system, percentage of lot coverage and landscaping coverage, building floor plans and renderings, stormwater management report, lighting plan, and traffic report. Decision by March 11, 2008**

Mr. Paul Szymanski was present for the application. He stated that he and the applicant have responded to the neighbors concerns as best they can. No one party will be completely satisfied, but it should be something that all parties can live with.

Ms. Ward moved to waive the traffic study Class A-2 Survey, location of utility lines, soils classification, location of subsurface utilities and septic system, percentage of lot coverage and landscaping coverage, building floor plans and renderings, stormwater management report, lighting plan, and traffic report for Gallimods Xtreme RC, application for site plan modification under Chapters 175 and 60 to allow site plan modifications to a previously approved site plan for a retail hobby shop and remote car racetrack, on property located at 471 Danbury Road. The

motion was seconded by Mrs. Florio and carried unanimously.

Several changes to the resolution were noted by the Zoning Enforcement Officer. (Item #6). The track would be used for single car testing Monday through Wednesday. No two cars can test at the same time. It was also noted that gas cars would be used three days per week.

Mrs. Vance moved to adopt the resolution of approval for Gallimods Xtreme RC, application for site plan modification under Chapters 175 and 60 to allow site plan modifications to a previously approved site plan for a retail hobby shop and remote car racetrack, on property located at 471 Danbury Road as amended by the Zoning Enforcement Officer and dated February 11, 2008. The motion was seconded by Ms. Ward and carried unanimously.

B. Donald L. Wharton II, site plan application to allow a 23 unit affordable residential condominium complex under C.G.S. §8-30g, on property located at 38-46 Lanesville Road, Map 14.1, Lot 84 and Map 14.2, Lot 11 in the Multiple Residence District. Decision by February 26, 2008 with extension

Mrs. Vance recused herself from this agenda item. Mr. Donald Wharton and Mr. Patrick Hackett were present for the application. Ms. Regan noted that there were questions regarding grades as people back out of garages.

Mr. Hackett has prepared a supplemental sheet modifying four garage elevations. These changes were reviewed on the plans. Mrs. Burnham had expressed an interest in having walls put up. Mr. Hackett disagreed, but has subsequently prepared a plan addressing her concerns. He explained the changes using the plans. He noted there is more room in turning around. Ten M.P.H. signs will be posted to slow vehicles.

One building has some site line issues. Mrs. Burnham recommended narrowing an area and shifting it westward and use the extra four to six feet to extend the curb line at the edge of both buildings giving people in the alley more room to edge out. Mr. Hackett referred to the plans and showed how the movements work.

Mrs. Florio felt that the commission should act on the suggestions from their consultant. Ms. Regan stated that the changes could be a condition of approval. She also noted on the plans where a split rail fence could be put to avoid traffic going over the curb.

Mrs. Florio asked if the commission has architectural drawings and Ms. Regan stated she is in receipt of them. Ms. Regan briefly discussed the option of giving some land at the end of the development to the town. Mr. Wharton seemed uncomfortable with this suggestion.

A special meeting is set for February 28, 2008 at 6:30 p.m. in the Zoning office to discuss this application.

Mrs. Vance was reseated at this time.

C. John Carr, application for site plan modification under C.G.S. §8-30g to allow site plan modifications to a previously approved site plan for an affordable housing development at 95 Kent Road, Map 35.1, Lot 5 in the B-1 zone. Request to waive traffic study, topographic contours, drainage, and interior layout. Decision by March 11, 2008

Mr. John Carr was present for the application. He addressed the concerns by Mrs. Burnham of Milone and MacBroom.

Ms. Regan stated that the drainage should be shown on the plans. Mr. Carr noted there is an existing swale there and is on the approved drawings. Ms. Regan told him she needs revised drawings.

Ms. Regan then asked about existing conditions. Mr. Carr stated he hasn't had the site surveyed where the dirt pile is. This pile will not remain as it would be used to backfill the remaining foundations. He stated the plans and details for erosion controls are part of the original application and shown on the plans. He can put them on revised plans. The fence details up near the retaining walls will also have to be shown.

Mrs. Burnham also expressed concerns for the piece that connects the two buildings. Ms. Regan referred to cracks. Mr. Carr stated there are no cracks and showed on the plans what Mrs. Burnham was referring to (top of utility building). Ms. Regan stated there must be something in writing addressing the structural engineering.

Mrs. Vance asked about the mafia blocks. Mr. Carr stated they are structural and will stay there. He would be adding latticework to the walls and some sort of ivy. He is also proposing evergreens, Alaskan Cedars, and a stone wishing well.

The Zoning Commission asked for and was granted a 65 day extension from Mr. Carr. He asked that some sort of decision be made soon to work with his financing. He can have the plans done ASAP. There was brief discussion about the plans.

Mrs. Florio noted that the Zoning Commission would need final grades and plans that show the site with the buildings and all improvements. Mr. Carr also noted that he would make 11 of the units as affordable as per the request of the Zoning Commission and three as 80% because there is a larger pool of people who would qualify. Ms. Regan noted that the Zoning Commission would need a letter stating he complies with C.G.S. Section 8-30g. Mr. Carr noted that the commission has total flexibility in this area to make modifications. Ms. Ward asked Ms. Regan to get an opinion from Attorney DiBella.

D. Stephen Schappert, application for site plan modification under Chapters 175 and 80 to allow site plan modification to a previously approved site plan to allow the construction of a new building to be used for mixed use retail/office/residential on property located at 72 Railroad Street, Map 35.2, Lot 237 in the Village Center Zone. Request to existing conditions map, stormwater management plan, lighting plan, landscape plan, soil erosion and sediment control plan, waste management plan, and traffic study. Decision by April 8, 2008

Mr. Steven Schappert was present for the application. Ms. Regan noted she got the revised plans late in the afternoon of the day of the meeting and hasn't had a chance to look at them.

Mr. Schappert gave an overview of the plans including a second stair case and reconfiguration of the halls and elevator. His closing on the property is scheduled for February 29, 2008. Members reviewed the plans denoting the revised lot lines and easements. The parking lot will continue to operate as it currently does.

Mrs. Florio asked that Mr. Schappert bring in the new deed and land records after the closing.

In regards to the alleyway and landscaping, Mr. Schappert stated he would put window boxes on all of the western and northern windows and awnings on the front of the building. Planters on the ground would not allow for walking under the awnings. The neighbors have also asked that the alleyway be gated off to avoid people loitering in the alley.

Ms. Regan reminded him that the Zoning Commission needs a new survey and a revised full site plans showing the new property lines. Mrs. Florio noted that the Zoning Commission cannot make any decision until the closing is complete and filed.

This agenda item was carried over to the next meeting.

7. ZONING ENFORCEMENT OFFICER'S REPORT

There was no report submitted for review this evening.

8. ACCEPT FOR PUBLIC HEARING

There were no public hearings to accept this evening.

9. BUSINESS MEETING

A. Discussion and possible decisions on the evening's agenda.

Animal Welfare Society, Inc. site plan application to allow construction of a 3,200 sq. ft. addition and parking lot modifications under Chapters 66 and 175, on property located at 8 Dodd Road, Map 18.4, Lot 37 in the Restricted Industrial Zone. Request to waive traffic stud, architectural drawings and elevations. Decision by April 22, 2008

Members agreed that they would like the architectural drawings showing color etc. prior to any approval. A lighting plan should be submitted as well as corrections to the plans.

Mr. Taylor moved to waive the traffic study, for Animal Welfare Society, Inc. site plan application to allow construction of a 3,200 sq. ft. addition and parking lot modifications under Chapters 66 and 175, on property located at 8 Dodd Road. The motion was seconded by Mrs. Vance and carried unanimously.

B. Discussion and possible decision on the following closed public hearings:

- 1. Louis C. White, special permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street, Map 28.4, Lot 159 in the B-2 zone. Decision by April 22, 2008**

Mrs. Florio noted that the use would not make the site more non-conforming. She also stated for the record that the regulations state there should be 30% lot coverage of landscaping and it is not the case in this instance due to the site being non-conforming.

Members reviewed pictures of the site and felt the use should fit into the neighborhood. The site should be constructed as per the plans submitted by Daniel Lamb and Item 4C of the resolution was amended to include "Building materials should be submitted before a zoning permit will be issued".

Mrs. Vance moved the Zoning Commission adopt the resolution of approval as submitted and amended this evening for Louis C. White, special

permit and site plan application to allow a combined residential and B-1 use under Section 040-020(4)E and 040-020(4)D, on property located at 25 West Street. The motion was seconded by Ms. Ward and carried with a 4-0-0 vote. Mrs. Florio, Mrs. Vance, Ms. Ward, and Mr. Rogg voted in favor of the motion. Mr. Taylor was not seated for this agenda item.

2. **Trust Realty Corporation, application to amend the New Milford Zoning Regulations to add Chapter 119, Mixed Use Zone #2 Overlay District to allow an economically diverse combination of housing types and compatible commercial uses in the area bordered by Bridge Street to the north, the Housatonic River to the west and south, and the railroad right-of-way east of West Street. Decision by March 11, 2008**

Members stated their concerns for the record which included their concern for only one ingress/egress; the flooding on West Street; the boundaries of the zone being too extensive, the regulation being too long; the zone not fitting into the area; the regulation not working as written and being too cumbersome; the potential for too much traffic; safety issues with the site entrance; the reference to the mixed use 1 and 2 zones; too many exception clauses in the regulation; the proposal being specific to an area and favoring an individual property. Members also felt they should write their own mixed use zone.

Mr. Rogg felt that this type of development would be desirable in this area but would not be voting on this item as he was not present for the public hearings.

Mr. Taylor moved to approve the application for Trust Realty Corporation, application to amend the New Milford Zoning Regulations to add Chapter 119, Mixed Use Zone #2 Overlay District to allow an economically diverse combination of housing types and compatible commercial uses in the area bordered by Bridge Street to the north, the Housatonic River to the west and south, and the railroad right-of-way east of West Street. The motion FAILED unanimously. Mrs. Florio, Mrs. Vance, Ms. Ward, and Mr. Taylor all voted against the motion.

3. **DE & SL Properties, LLC, application for a change to the boundary of the zoning district on property located at 51 Outlook Road, Map**

36, Lot 23, more specifically depicted on a map entitled "Property Survey Showing Proposed Zone Change Prepared for DE & SL Properties, LLC, 51 Outlook Road, New Milford, Connecticut, Scale 1"=50', Certified Substantially Correct to Standards of a Class A-2 Survey by Richard A. Bunnell, RLS, dated December 7, 2007". Decision by April 22, 2008

Ms. Regan noted that it was the Planning Commission's suggestion to the applicant to change the zone because the lot is irregularly shaped and sits across two different zones.

Mrs. Florio moved the Zoning Commission approve the zone change for DE & SL Properties, LLC, application for a change to the boundary of the zoning district on property located at 51 Outlook Road, Map 36, Lot 23, more specifically depicted on a map entitled "Property Survey Showing Proposed Zone Change Prepared for DE & SL Properties, LLC, 51 Outlook Road because the boundary of the zoning district complies with the intent of the zoning regulations as well as the POCD. The motion was seconded by Mrs. Vance and carried with a 3-0-0 vote. Mrs. Florio, Mrs. Vance, and Ms. Ward voted in favor of the motion. Mr. Taylor and Mr. Rogg did not vote at this time due to their not being present at all of the public hearings.

- 4: Celco Partnership d/b/a Verizon Wireless, public informational hearing to construct a wireless communications facility including a telecommunications tower 150' in height, a 12' x 30' equipment shelter, and an access road at the Northville Volunteer Fire Department located at 359 Litchfield Road, Map 72, Lot 72 in the R-80 zone. Siting Council Hearing opens on March 11, 2008**

The Resolution of Findings and Recommendations should include Item #5: "The Zoning Commission feels that 359 Litchfield Road is a better location for the tower because it will benefit emergency services.

Mr. Taylor was not seated for this agenda item.

Mrs. Florio moved to adopt the amended Resolution of Findings and Recommendations for Celco Partnership d/b/a Verizon Wireless, public informational hearing to construct a wireless communications facility including a

telecommunications tower 150' in height, a 12' x 30' equipment shelter, and an access road at the Northville Volunteer Fire Department located at 359 Litchfield Road as amended by the Zoning Commission. The motion was seconded by Mrs. Vance and carried unanimously.

5. **Eric S. and Patricia A. Bailey, special permit and site plan applications to allow earth excavation in excess of 700 cubic yards of material in conjunction with a 2 lot subdivision under Section 140-020(1), on property located at 159 Sunny Valley Road, Map 22.1, Lot 2.1 in the R-40 zone. Decision by April 22, 2008**

No action was taken on this agenda item as there were changes to the plans and the applicant was not present.

10. ACCEPTANCE OF MINUTES

A. February 12, 2008

Mrs. Florio and Mr. Rogg were not seated for this item.

Mr. Taylor moved to accept the minutes of February 12, 2008 as submitted. The motion was seconded by Mrs. Vance and carried with a 3-0-0 vote. Mrs. Vance, Ms. Ward, and Mr. Taylor voted in favor of the motion.

11. BILLS AND COMMUNICATIONS

- A. **Bill: Economy Printing, dated 2/12/08, regarding Dunham Farms verbatim transcript copies (approx. 2,737 pgs), \$167.**
- B. **Bill: Cramer & Anderson, dated 2/1/08, regarding Professional Services, \$536.50.**
- C. **Bill: Cramer & Anderson, dated 2/1/08, regarding Tripp vs. Zoning Commission, \$152.18.**
- D. **Bill: Cramer & Anderson, dated 2/1/08, regarding Dunham vs. Zoning Commission, \$1,398.50.**
- E. **Bill: Cramer & Anderson, dated 2/1/08, regarding Mixed Use Zone Overlay #2, \$717.50.**
- F. **Bill: Cramer & Anderson, dated 2/1/08, regarding Lanesville Rd. Affordable Housing, \$208.00.**
- G. **Bill: Cramer & Anderson, dated 2/1/08, regarding Shaw Matter, \$3,673.40.**
- H. **Bill: Milone & MacBroom, dated 2/13/08, regarding Lanesville Rd. Affordable Housing, \$825.00.**

- I. **Bill: Milone & MacBroom, dated 2/13/08, regarding 204 Danbury Rd., \$493.75.**

Mrs. Florio moved to approve and pay the bills as listed as Items A-I on the agenda this evening. The motion was seconded by Mrs. Vance and carried unanimously.

12. **ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION**

A. **Faith Ministries application for a 39.36 square foot free standing sign.**

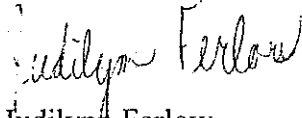
Ms. Regan stated she has not gotten an opinion from Attorney DiBella to date. She has asked for an opinion because the applicant already has one free standing sign on the property that a zoning permit was never issued for and because the applicant feels that the site is two separate lots and thus does not think that an additional sign would violate the regulations.

No action was taken this evening.

13. **ADJOURNMENT**

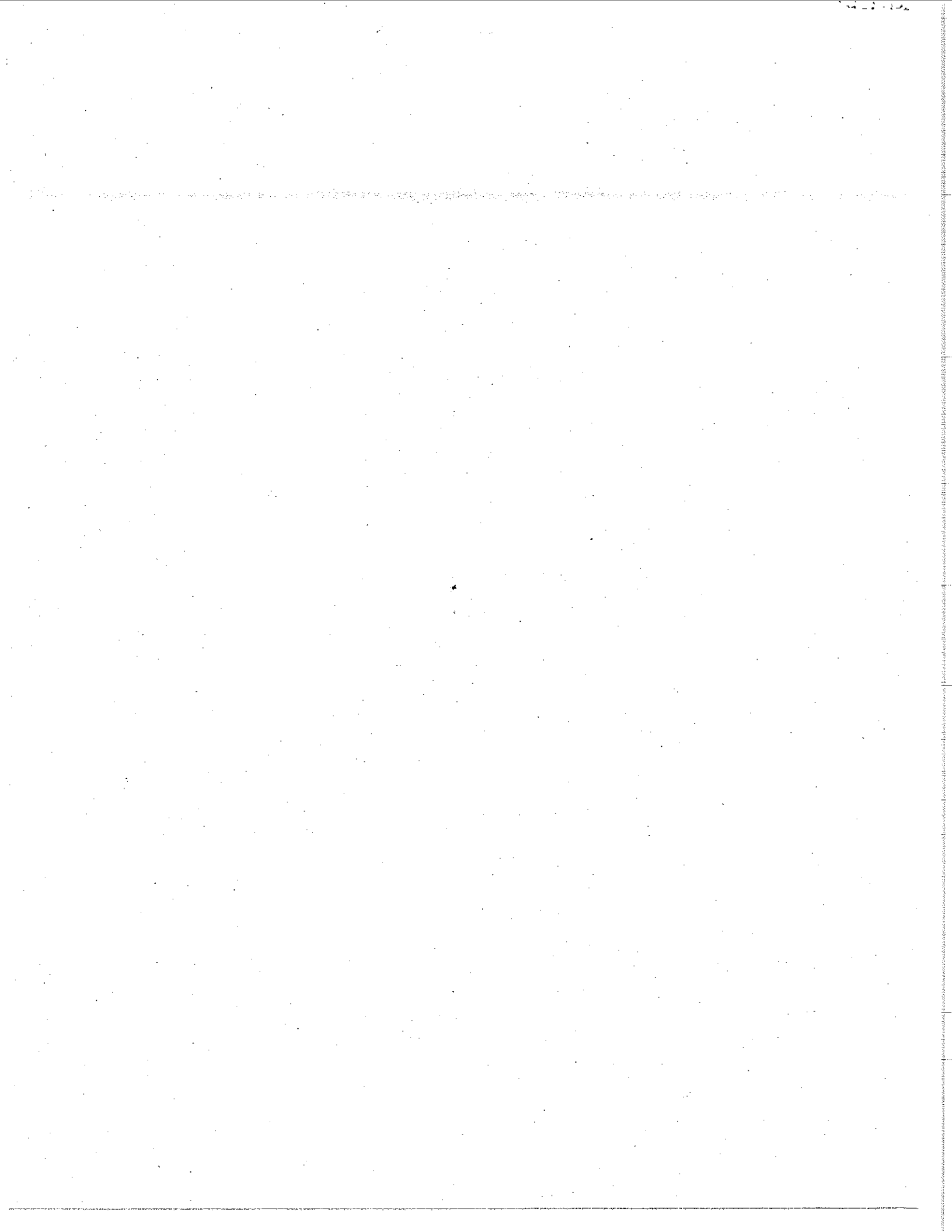
Mrs. Florio moved to adjourn at 9:20 p.m. The motion was seconded by Mr. Taylor and carried unanimously.

Respectfully submitted,



Judilyn Ferlow
Recording Secretary

/jlf



TOWN OF NEW MILFORD



Town Hall
10 Main Street
New Milford, Connecticut 06776
Telephone (860) 355-6095 • Fax (860) 210-2664

Office of the Zoning Commission

August 29, 2007

Julie D. Kohler, Esq.
Cohen and Wolf, PC
1115 Broad Street
P.O. Box 1821
Bridgeport, CT 06601-1821

Re: Optasite Towers, LLC Proposal
425 Litchfield Road, New Milford

Dear Julie:

Enclosed please find the Commission's Summary of Findings and Recommendations with regard to the Optasite Tower proposal. In addition, I have enclosed the minutes from the informational hearing, staff report, and a letter submitted by a neighbor.

Please contact me should you have questions or require more information.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy", is written over the typed name.

Kathy Castagnetta
Zoning Enforcement Officer

Copy: File


**Town of New Milford
Zoning Commission
Summary of Findings with regard to Informational Hearing
Optasite Towers, LLC proposed Telecommunications Facility
425 Litchfield Road
August 28, 2007**

Background:

At the August 14, 2007 regular meeting of the New Milford Zoning Commission the Commission held an informational hearing with regard to a proposed telecommunications facility at 425 Litchfield Road. A staff review from the Zoning Enforcement Officer dated August 3, 2007 which was previously distributed to Commissioners was summarized. The applicant's legal counsel was present as well as engineers from the proposed tower occupant, T-Mobile. The proposal was discussed and the applicant's representatives answered questions from staff and the commission and presented more detailed information. Members of the public posed questions and presented concerns. The applicant attempted to answer all questions and respond to concerns. The hearing was closed.

Findings and Recommendations:

1. The Commission finds that based upon the Visual Resource Evaluation Report presented by the applicant, that the proposed telecommunications facility will have minimal visual impact.
2. The Commission recommends that the site cleanup which has begun involving removal of old construction and farm equipment, miscellaneous debris, dilapidated structures, and slabs of stone must continue and requests the applicant continue to work with the property owner and to continue to encourage this cleanup.
3. The Commission finds that based upon testimony from the public it appears there are other telecommunications facilities proposed for the Route 202 corridor which have the potential to provide the coverage which it is anticipated the subject tower will provide. The Commission recommends the applicant and the Siting Council closely review the telecommunications facility proposals for this corridor so as to minimize the numbers of towers and to ensure they are placed in the most strategic locations so as to avoid construction of unnecessary facilities.


William Taylor, Secretary
New Milford Zoning Commission
August 28, 2007



TOWN OF NEW MILFORD

Town Hall
10 Main Street
New Milford, Connecticut 06776
Telephone (860) 355-6095 • Fax (860) 210-2664

Office of the Zoning Commission

MEMO TO: New Milford Zoning Commissioners
FROM: Kathy Castagnetta, Zoning Enforcement Officer
DATE: August 3, 2007
SUBJECT: Optasite Towers, LLC Public Informational Hearing

Applicant: Opatasite Towers, LLC and Omnipoint Communications, Inc.
Property Address: 425 Litchfield Road
Map 80 Lot 1
Property Owner: Estate of Edward J. Drzal, Jeanne Anne Campbell, Fiduciary
Lot Area: 29.50 acres
Zone: B-2/R-40

Optisite Towers, LLC and Omnipoint Communications, Inc. have submitted an application to the Connecticut Siting council for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a wireless communications facility at 425 Litchfield Road. I have reviewed the following documents:

1. Application for Certificate of Environmental Compatibility and Public Need dated June 22, 2007.
2. Copy of Memorandum of Lease dated 12-7-06.
3. Copy of tax map with sketch of proposed tower area.
4. Warranty Deed, filed in land records, Volume 195 page 646.
5. Abutters Map, prepared by Clough Harbour and Associates LLP revised through 6/11/07.
6. Site Access Sheet, prepared by Clough Harbour and Associates, LLP, revised through 3/21/07.
7. Compound Plan, prepared by Clough Harbour and Associates, LLP dated 3/1/07.
8. Tower Elevation, prepared by Clough Harbour and Associates, LLP dated 3/21/07.
9. Aerial Photo, prepared by Clough Harbour and Associates, LLP dated 3/1/07.
10. USGS Topo Map, prepared by Clough Harbour and Associates, LLP, dated 3/1/07.

11. **Untitled List of Miscellaneous Information on stationary of Clough Harbour and Associates, LLP.**
12. **A summary of "Application Guideline" and "Location in Application", untitled, undated.**
13. **Certification of Service.**
14. **"Notice" prepared by Julie D. Kohler, Esq. And Carrie L. Larson, Esq.**
15. **Map entitled "Existing T-Mobile On Air Coverage", undated, preparer unknown.**
16. **Map entitled "Existing T-Mobile On Air Coverage with CTNH370A @137", undated, preparer unknown.**
17. **Existing Tower Listing, undated.**
18. **Map entitled "Topo USA", date and preparer unknown.**
19. **Report entitled "Site Search Process and Selection", preparer unknown, undated.**
20. **Another Topographic Map, undated, preparer unknown.**
21. **Visual Resource Evaluation Report, prepared by VHB dated June 2007.**
22. **Memo from Mike Libertine of VHB dated June 18, 2007.**
23. **Memo from Scott Heffernan, Radio Frequency Engineer, of T. Mobile, dated March 20, 2007.**
24. **Letter from Carrie L. Larson, to Mayor Murphy dated March 16, 2007.**
25. **Photos of the property dated January 25, 2007.**
26. **TOWAIR Determination Results, undated, preparer unknown.**

On or about June 22, 2007 the zoning office received notification of the pending application for a telecommunications facility as noted above. In accordance with CGS Sec. 16-50 / (B)(3), the town was notified with regard to the filing of this application in mid March, and at that time the town had 60 days to conduct public hearings and meetings and provide comment to the applicant with regard to their proposal. It is my understanding the Mayor met with the petitioner and discussed the proposal, and offered comments. The deadline for commenting on the proposal has passed. I was not aware of the official notification, and so scheduled this informational hearing as we have done with all other telecommunications facilities in the past of which we were made aware. Previous petitioners for telecommunications facilities have provided the Zoning Commission with separate notice early in the process to allow the commission to conduct informational hearings, although it appears the statutes do not require this additional early notification. Since the informational hearing notice has been placed in the newspaper, I would recommend the commission hold the hearing and discuss the matter, and if it so chooses, provide comment, for what its worth.

The subject property is currently classified as vacant by the assessor's office. The property is heavily wooded with slopes averaging approximately 30%, and some as steep as 56%. The property was mined for gravel many years ago. In 2001 dozens of large granite blocks were dumped on the property, and many still remain. The property also contains many pieces of rusted commercial vehicles and equipment which do not appear to be operational.

The applicant plans to lease a portion of land, 100' x 100' and will be granted a 25' wide access and utility easement. Numerous trees are proposed for removal with excavation and regrading to bring the pad site to elevation approximately 642'. The roadway is currently at elevation 498'. The fenced in portion of the facility will be 70' x 70' and the proposed fencing is chainlink, 8' in height. The tower is proposed to be a height of 140' above grade. The application information states that the tower is proposed to be several hundred feet to all property lines, with the shortest distance being 272' to the south, and 665', the longest distance to the north. It will be 405' to the west/rear, and 598' to the east/front.

Based upon a review of the application materials, I have the following comments and questions:

1. What other tall structures in the area have been evaluated with regard to potential co-location other than the "Existing Tower Listing"? I could find no other information regarding tall structures?
2. The propagation maps provided do not appear to give all the information necessary to determine the need for this facility. The "Existing Tower Listing" states "Not one of the below existing towers would provide adequate coverage to the target area". A propagation map should be provided for each of these towers to prove this statement. The propagation map provided to the Commission in 2002 with regard to the 399 Chestnutland Road facility indicated this corridor would be adequately covered when that facility was constructed. Why can't T-Mobile co-locate on that tower? I think a propagation map should be provided depicting coverage if T-Mobile were to co-locate on the Chestnutland Road facility. It should be noted that the "Existing T-Mobile On Air Coverage" map is strictly T-Mobile existing coverage, and that it appears, based upon the 2002 map, that coverage is available to other carriers in the Route 202 corridor.

In summary, I believe the site is probably a good location for a tower. The "Visual Resource Evaluation Report" depicts and concludes minimal visual impact and the site is located a good distance from homes in a heavily wooded area. My biggest concern is that the need for the tower has not been adequately proven based upon the materials provided to the Zoning Commission.

Copy: Carrie L. Larson

My name is Molly Leonard and I am a property owner at 35 McNulty Drive, which is the ^{one of} property that abuts the land where this company wants to erect tower.

First, I want to say that my husband and I bought our property for two reasons. One is that the land in front of our home ^{is} ~~was~~ deemed undevelopable land by town zoning standards. Your proposing that a road can now be put on it and a tower erected on land ^{that is} ~~deemed~~ undevelopable. The other is that we have the most beautiful southern view. We can see clear to Danbury airport and this tower will now obstruct it. This visual impact would impair our use and our enjoyment. It should be also noted that there is no photographic documentation of the tower at our residence.

Secondly, I feel that the tower company has not found reasonable options other than this one stop. This spot sits at the base of a mountain, trust me a very steep mountain as I run up it every morning. To put the tower at the base, I would think would limit service for the providers, I would think common knowledge would lead anyone to think that the top of the mountain would be ideal. But has anyone higher on the mountain been approached. Along with our beautiful view, ^{top of} the tower will be at the same level as our house, approximetly 600 feet from where my children sleep and play in the yard. Is it not the top of the tower in which the radiation blows from. Also, in the fall, we can see a tower at 399 Chestnut land road, when this tower was proposed, the coverage maps showed coverage in all the places that this tower proposal shows not covered. I think it should also be mentioned that there are already 7 existing towers within 4 miles of this proposed tower.

Washington also has an apphization in to the city council for a tower 167 N Main Turnip approx 1.5 miles
Aside from all these other reasons, I have full coverage at my house and I personally checked with 2 different cell phones the coverage within a 3 mile radius around my house. In my opinion, to put a cell tower up where there is sufficient coverage makes this request all about the revenue, and not about sufficient coverage.

This proposal is also stating that the tower is to be built in a b 2 zone, which is a business zone. This is not true. Though some of this property is a b 2 zone, the actual tower would be put in an R 40, or residential, zone.

On a completely personal note, I know from doing loads of research, that the health risks argument holds no water with you, but I think anyone with any common sense knows that

*the
city
council*

that is insane. Any object that's radiates poison is of obvious health risks. The list of examples of ignoring health risks for revenue goes on and on. Asbestos started as a cost effective building material in the early 1900's and by the 1970's, the world finally knew that it caused cancer. That was seventy years of exposure. I hope in seventy years, you are not the cause of countless deaths. These towers belong in industrial areas, it is completely unnecessary to put anything blowing radiation in residential areas.

**NEW MILFORD ZONING COMMISSION
REGULAR MEETING
MINUTES
AUGUST 14, 2007**

Present: Janice Vance, Vice Chairwoman
 William Taylor, Secretary
 Stephen Paduano, Member
 Sharon Ward, Member
 Kathy Castagnetta, Zoning Enforcement Officer

Absent: Eleanor Florio, Chairwoman
 Walter Rogg, Alternate
 Donald Marsh, Alternate
 James Walker, Alternate

1. CALL TO ORDER

Mrs. Vance brought the meeting to order at 7:00 p.m. in the Loretta Brickley Conference Room of Town Hall.

2. PUBLIC PARTICIPATION

There was no public participation at this time.

3. PUBLIC HEARINGS

- A. Candlewood Trails Association, special permit and site plan applications to allow construction of a water system pump station under section 025-100 on property located at 29a Cedar Drive, Map 13.3, Lots 87, 89, 94, 95 in the R-80 zone. Close by August 28, 2007.**

Mrs. Castagnetta stated the surveys have been done and the applicant is currently working on a site plan.

- B. Optasite Towers, LLC public informational hearing to construct, maintain and operate a wireless telecommunications facility consisting of a 140 foot, self-supporting monopole, antennas, associated equipment and other site improvements integral to a wireless telecommunications facility on property owned by the Estate of Edward J. Drazil at 425 Litchfield Road in the B-2 zone.**

Attorney Julie Kohler, Mr. Keith Toppins of T-Mobile, and Mr. Scott Heffernan were present for the application.

Mr. Taylor read the legal notice. Mrs. Castagnetta noted that the Zoning Commission has no jurisdiction in regards to this agenda item, but it is on the agenda for public information. Mrs. Castagnetta confirmed with members that they had reviewed the staff report, and summarized her concerns from this report, which were that the applicant has not provided sufficient information to prove the tower is necessary.

Mrs. Kohler stated that her team had previously met with the Mayor about the proposal and she expressed a concern over the state the property is in and asked the applicant to "oversee" the cleanup on this site.

The proposed tower would allow co-location for all licensed FCC carriers and the New Milford Emergency Services equipment.

Mr. Heffernan gave a brief overview of a table noting why the current towers in New Milford would not work for this company and the coverage threshold maps. It was noted that building a tower is a last resort for communications companies. They would co-locate on another tower before building a new facility.

T-Mobile needs coverage heading north and the proposed tower site is advantageous to them in regards to terrain. Brief discussion ensued as members spoke of other tower sites and Mr. Heffernan tried to explain how threshold models are made and change. He noted that Optasite fine tunes their models by constantly having people out driving the area and trying to get signal.

At this time there are four different cell phone carriers in Connecticut and two more have just applied for and received licenses.

Mrs. Kohler noted for the record that although there are a lot of towers around and carriers to co-locate on them, there are big differences in what heights they need to be on a tower. The proposed tower will have four carrier positions and a position for the emergency services equipment.

Mr. Paduano expressed concerns for how this would affect the neighborhood and asked if the tower could be higher than the proposed 140 ft. Mrs. Kohler stated that the applicant is not proposing anything over 140 ft., however, if it wanted to go higher, it would have to put in another application with the Siting Council and take its chances on whether or not it would be approved. The Siting Council would determine if there is a need to go higher.

The proposed tower would be located in the middle of the site property. The property owner is continuing the site cleanup, but it will take a lot of time. The applicant figures it will take eight months to one year to fully remedy the problems on the site. Mrs. Kohler stated that the applicant is getting behind the cleanup to make sure it gets completed.

When asked about a stealth tower (such as those shaped like trees) Mrs. Kohler stated that the applicant has no inclination towards that end. They have found that they do not fit into the landscape well.

Speaking for/against/questions:

Mr. Larry Stillman of 9 Saddle Ridge Road asked if the coverage for the proposed tower would cover the Bee Brook and Steep Rock areas of Washington. There is no cell coverage there and there is a definite need.

The applicant did not think that that area would be entirely covered.

Mrs. Molly Leonard of 35 McNulty Drive read a letter expressing her displeasure with the proposed tower. She spoke about concerns regarding health, her view from her property and that there is no need for another tower in the area. She felt the applicant is putting revenue over health.

Mr. John Kuck of the Northville Fire Department spoke against the tower stating there was no need for it when there are others in the area. He also noted that there would be one being erected on Northville F.D. property in the future.

Mr. Robert Gambino, speaking for the Northville Residents Association stated that there is a dead area in Marbledale and that would be the better place to have a tower than the proposed site. He felt the Siting Council should look at dead areas first. He also expressed concerns for the right of way through the property and the time frame for the clean up.

Ms. Cynthia Battista of 9 Sand Pit Road did not feel the proposed tower would help her area. She also thought that if a tree looks bad, the tower would look equally as bad. She also expressed concerns for the right of way. When she asked when the Siting Council would meet, Mrs. Kohler told her that there would be a public hearing on this matter by the Siting Council to be held on September 10, 2007 at the New Milford High School from 3-5 p.m. and from 7-9 p.m.

Mrs. Kohler addressed some of the concerns of the public. She stated that a photo simulation is not possible from every house, but a property owner can look at the view shed that was submitted with the application to see if a property would see the tower whether year round or seasonally.

The tower is offered to the New Milford Emergency Services for its use free of charge. At this time, she has not heard back from them.

The right of way is not a regulatory issue. It is a leasing issue. The applicant has no control over the balance of the property. It is the property owner's business. The applicant is only interested in the leased area. The right of way ends at a stream and is just an access way.

Cleanup of the site is not part of the project, but the applicant is encouraging the process as per the Mayor's request and to allow them better access to the leased area.

When asked if they can move higher up on the mountain, Mr. Heffernan stated that going higher up does not allow for better coverage and gave the example of why it would not work (plateau and snowballs). The tower must be placed lower to reach its coverage objectives.

Mr. Kuck stated the tower on Chestnutland Road can be seen from Route 202.

Mrs. Kohler stated that T-Mobile does not have coverage in the proposed area and thus the reason for the tower.

Mr. Taylor moved to close the public hearing for Optasite Towers, LLC public informational hearing to construct, maintain and operate a wireless telecommunications facility consisting of a 140 foot, self-supporting monopole, antennas, associated equipment and other site improvements integral to a wireless telecommunications facility on property owned by the Estate of Edward J. Drazil at 425 Litchfield Road in the B-2 zone.

4. NEW BUSINESS

- A. Danny Kallivrousis, site plan application to allow construction of a commercial building under Chapter 65, Industrial District, Section 065-020 paragraphs 1 & 2, on property located at 9 Old State Road, Map 14.3, Lot 82 in the Industrial Zone. Decision by September 25, 2007.

Mrs. Castagnetta stated that a letter of withdrawal was received. Mr. Taylor read the letter of withdrawal.

Mr. Paduano moved to accept the letter of withdrawal from Danny Kallivrousis, site plan application to allow construction of a commercial building under Chapter 65, Industrial District, Section 065-020 paragraphs 1 & 2, on property located at 9 Old State Road, Map 14.3, Lot 82 in the Industrial Zone. The motion was seconded by Ms. Ward and carried unanimously.

B. **Mesude Bajrami, letter of request to recognize a change of use from a non-conforming mixed use office/residence to a non-conforming four family dwelling, on property located at 53 Park Lane Road.**

Mrs. Castagnetta asked if members had reviewed the staff memo and then she summarized the memo. Mrs. Castagnetta stated that the building was built in 1989 and there are use change signoffs, but she is not sure when the use change was approved. She thinks the use has always been nonconforming. There is no increase in bedrooms and there is enough parking onsite.

Mr. Bajrami was present for the application. He purchased the property in 1989. It was originally a real estate company downstairs and an apartment upstairs. When the real estate office closed, another business use was put in there. However, that office is now closed and it has been over a year that the applicant has not been able to rent the space out. Rather than keeping it empty or putting another use in there, the applicant felt that changing it to a four apartment building would be a better use.

Mr. Bajrami stated the apartment use would create less traffic than the business use. As there is no sewer, soils test are necessary, however, at first blush, the site looks easily convertible. A dumpster exists on site and could be enlarged if necessary.

5. **OLD BUSINESS**

There was no old business on the agenda at this time.

6. **ZONING ENFORCEMENT OFFICER'S REPORT**

No Zoning Enforcement Officer's report was submitted for review. Members briefly discussed the conversion of the Oriental House and how the surrounding properties were held to a higher standard and the Oriental House is not sticking to any standard. Brief discussion ensued as to how a Village Center District is needed to uphold architectural and aesthetic standards for that area of town.

Mrs. Castagnetta stated the Village Center District public hearing is being held September 11, 2007.

Members also briefly discussed Home Depot and the problem of outside storage on that property. It reflects badly on the town when some businesses can't or won't adhere to the regulations. Members felt it was also unfair to the businesses that do hold to the regulations. They discussed sending a letter to the editor thanking those businesses that uphold the regulations.

When asked about the cease and desist process, Mrs. Castagnetta stated a non-compliance letter would go out, she would wait 2-4 weeks for compliance and

then a C& D would go out. It is then another thirty day waiting period before a citation can be issued.

7. **ACCEPT FOR PUBLIC HEARING**

- A. **Louis C. White, special permit and site plan applications to allow a combined residential and B-1 use under Section 040-020-4E, on property located at 25 West Street, Map 28.4, Lot 159 in the B-2 zone. Suggested Date: September 11, 2007.**
- B. **David Ireland, special permit and site plan applications under Section 025-110(A3) to allow a 1,280 square foot detached garage, on property located at 12 Valley View Lane, Map 13.4, Lot 23 in the R-8 zone. Suggested Date: September 11, 2007.**

Mr. Paduano moved to accept Items A & B for public hearing on the dates suggested by the Zoning Enforcement Officer. The motion was seconded by Ms. Ward and carried unanimously.

8. **BUSINESS MEETING**

A. **Discussion and possible action on this evening's agenda:**

Optasite Towers, LLC public informational hearing to construct, maintain and operate a wireless telecommunications facility consisting of a 140 foot, self-supporting monopole, antennas, associated equipment and other site improvements integral to a wireless telecommunications facility on property owned by the Estate of Edward J. Drazl at 425 Litchfield Road in the B-2 zone.

Members did not feel that this tower would be as intrusive as the one which was proposed for Gaylordsville, but suggested that the Chestnutland Road tower be looked at to see if T-Mobile can co-locate on that tower and get the coverage it needs. Members suggested that a copy of the minutes and applicable information be sent in a packet to the Siting Council. They also felt that the neighbors would be more accepting of the proposal if the site were cleaned up.

Mrs. Castagnetta would put a summary together for the applicant.

Mesude Bajrami, letter of request to recognize a change of use from a non-conforming mixed use office/residence to a non-conforming four family dwelling, on property located at 53 Park Lane Road.

Members felt that the proposal provides rental housing for the community, it is in a good location to the center of town, and there are no changes with the exception of interior work.

Mrs. Castagnetta stated that Attorney DiBella felt it to be more conforming and in harmony with the neighborhood than the current use.

Mr. Paduano moved to approve the request to recognize a change of use from a non-conforming mixed use office/residence to a non-conforming four family dwelling on property located at 53 Park Lane Road with the stipulation that the applicant make the dumpster area look aesthetically pleasing. The motion was seconded by Mr. Taylor and carried unanimously.

B. Discussion and possible decision on the following closed public hearings:

- 1. Proposed amendment to the New Milford Zoning Regulations to add Chapter 118, Mixed Use Zone #1, to encourage the development of the existing underutilized corridor adjacent to Route 7 properties and bordered by Peagler Road to the north, Sunny Valley Road to the south and Fort Hill Road to the west, into an economically diverse combination of housing types and compatible commercial uses, consistent with the New Milford Plan of Conservation and Development, as proposed by the New Milford Zoning Commission.**

Members felt that several changes needed to be made to make the regulation more flexible. Mr. Paduano felt that the intent/purpose of the regulation should follow Smart Growth Principles and reference the American Planning Association.

Members briefly went through the regulations and referenced sections that they would like to be changed or removed entirely. Another discussion ensued regarding the need to be sure that sewer capacity can be ensured before approvals are given to applicants. Mr. Taylor stated that at this time there are more approvals than there is sewer capacity and it will be a matter of time until the sewer system cannot handle any more subscribers. He felt that the Zoning Commission has the right to say no to an application if it feels that in the future the sewer won't be able to handle the load.

It was noted that residential use puts more strain on the sewer system than business does.

Using the Mixed Use Zone would require a zone change with a Master Development Plan. A site plan would then be necessary with a special permit.

Mr. Taylor felt that the Zoning Commission should ask for sewer feasibility before an application is accepted for review. Mrs. Castagnetta stated that the Master Development Plan should also be brought to every meeting when an applicant is before the Commission.

Mrs. Castagnetta stated she would take all of the comments made this evening into consideration and would bring a revised version of the regulation back to the Commission for review.

Mr. Paduano moved to deny the proposed amendment to the New Milford Zoning Regulations to add Chapter 118, Mixed Use Zone #1, to encourage the development of the existing underutilized corridor adjacent to Route 7 properties and bordered by Peagler Road to the north, Sunny Valley Road to the south and Fort Hill Road to the west, into an economically diverse combination of housing types and compatible commercial uses, consistent with the New Milford Plan of Conservation and Development, as proposed by the New Milford Zoning Commission. The motion was seconded by Mrs. Vance and carried unanimously.

2. **Proposed amendment to the New Milford Zoning Regulations to add the following definitions to Chapter 15, Definitions: Arcade, Articulated Façade, Banquet Hall, Class 1 Retail, Class 2 Retail, Class 1 Service, Class 2 Service, Fitness Center, Medical Offices and Medical Clinics, Mixed-Use, Parking Structure, Pedestrian Oriented Design, Public Gathering Space, Pedestrian Way, Sequestered Parking, Shared Parking, Surrounded Parking, as proposed by the New Milford Zoning Commission in conjunction with Chapter 118, Mixed Use Zone #1.**

This proposed amendment is in conjunction with the Chapter 118 Mixed Use regulation. Mrs. Castagnetta noted that several changes would be necessary to Chapter 15 as well.

Mr. Taylor moved to approve Proposed amendment to the New Milford Zoning Regulations to add the following definitions to Chapter 15, Definitions: Arcade, Articulated Façade, Banquet Hall, Class 1 Retail, Class 2 Retail, Class 1 Service, Class 2 Service, Fitness

Center, Medical Offices and Medical Clinics, Mixed-Use, Parking Structure, Pedestrian Oriented Design, Public Gathering Space, Pedestrian Way, Sequestered Parking, Shared Parking, Surrounded Parking, as proposed by the New Milford Zoning Commission in conjunction with Chapter 118, Mixed Use Zone #1. The motion was seconded by Mr. Paduano and FAILED unanimously.

Mrs. Castagnetta stated she would rewrite both sections for the first meeting in October.

9. ACCEPTANCE OF MINUTES

A. July 24, 2007

Mr. Paduano moved to approve the minutes of the July 24, 2007 regular Zoning Commission meeting. The motion was seconded by Ms. Ward and carried unanimously.

B. August 7, 2007

Mrs. Vance moved to approve the minutes of the August 7, 2007 special Zoning Commission meeting. The motion was seconded by Ms. Ward and carried unanimously.

10. BILLS AND COMMUNICATIONS

There were no bills or communication for review at this time.

11. ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION

Mrs. Castagnetta noted that she handed out a letter from Vin Nolan to the Commission in regards to the old CVS building. The owner would like to put in a family restaurant and hold a liquor permit. However, the building is within 500 ft. of a church. Mr. Nolan asks in his letter if the Commission would consider amending that regulation to not apply in the Village Center Zone.

Members agreed and Mrs. Castagnetta stated she would run the change past Attorney DiBella. Members also felt that Mrs. Castagnetta should look at other towns to see what they do in instances such as this.

Mr. Taylor suggested looking through the rest of town because there are situations like this in several different locations in town.

Mrs. Castagnetta noted the Liquor Control Board does look at health, safety, and welfare when each application comes in. She will call them and discuss this issue. It was also noted that the license goes with the land.

12. **ADJOURNMENT**

*Mr. Paduano moved to adjourn the meeting at 8:55 p.m.
The motion was seconded by Mrs. Vance and carried
unanimously.*

Respectfully submitted,

Judilynn Ferlow
Recording Secretary

/jlf