

refresh your recollection (inaudible) here on November 12, I was here before this Commission for an approval for a 12 lot subdivision. The property is located on the northern side of Flynn Lane and the easterly side of East Street. At last meeting there was some concerns about three of the lots. After much discussion, after a compromise, the Commission voted to deny them those lots. We are back here this evening attempting to receive approval of two of those three lots. That section, which is about 1.75 acres, has been redesigned by Purcell Associates, to take care of some of the concerns about the houses being in the flood plain. In each instance the house on each lot will not be in the flood plain. I would like to now call upon Chris Cignoli to explain some of the details concerning this. Chris.

Chris Cignoli

Good evening. My name is Chris Cignoli. I work for Purcell Associates in Glastonbury, Connecticut. We represent United Construction Company. Back in the original time and (interference) three lots which were not approved. The two homes, which were not approved, were not approved for the reason because they were in close proximity to the flood plain, there was some concern at that point on the origin of where the flood plain came from. In the 1987 Insurance Study Map for the City of Middletown that Mr. Minor drew up, was not addressed as a regulated stream of the City of Middletown. In 1984 Purcell Associates did a Flood Insurance Study for the City of Middletown which stressed, among other streams in the city East Minor Brook. We then have sent to, at this point we have completed our study, we have sent along to the agencies who are responsible for submitting that to the City of Middletown, we have presented the Hundred Year Flood Line in our original design and in our design that we show you this evening. What we have done is reworked the lots in question and now have only two lots and are proposing two homes on those lots. There will be one in place built in the areas the homes were located. The homes will now be located approximately one and one half feet above the 100 Year Flood levels. What we have done is basically reworked the area pertaining to the flood line (rustling of papers causing interference)...What we have not done is decrease water increase inside the subdivision because basically we reworked the flood area itself. The two homes at this point are minimum of 55 feet away from the flood line and, as I stated previously, they are now one and one half to two feet above that finished grade around the house above the grade of the flood zone. There is no portion of the house, or the driveway, or the garage closer for handling One Hundred Year Flood Plain as the problems we are (noise interference) in the original plans. We have taken all (inaudible) original subdivision which included 9 lots and 3 lots you did

*Hundred Year

not approve, (paper rustling interference). We feel that we have met all the items which were of concern to you in the original disapproval of 3 lots, and at this point, if you have any questions regarding the engineering design, we will address them.

Comm Leinwand

Why did you just really squeeze the two houses into that land?

Mr. Cignoli

Basically, what we are doing is taking the comments which you gave us last time so that three homes (inaudible)...and what we have done is we have reworked the plan with the two homes, and basically, filled the area which we could fill, and brought the houses out of the flood possibility, and the concern which was being felt from the Commission the first time was, that based on the flood line, (inaudible) homes, by picking the lots up we feel that we have eliminated that problem.

Chm Gionfriddo

Are there any other questions? Commissioner Patnaude

Comm Patnaude

Chet [Dzialo], did you see the report from the Water and Sewer Department? As of 3/11? This department recommends that this project not be approved as submitted. Plans must be revised to conform with Water and Sewer Department regulations and requirements. These revised plans should be resubmitted to, and approved by, the Water and Sewer Department prior to preliminary approval.

Attorney Dzialo

Well, I am a little astonished at the timeliness of that report. I spoke with Mr. Bauer this morning, on the telephone and he made no indications that this was...

Chm Gionfriddo

This is Mr. Baron, Water and Sewer, not...Chet [Dzialo] I do not know if they are picking you up on the mike. Are there any other questions by members of the Commission?

Mr. Cignoli

We have received one comment from the Water and Sewer Commission. The only comment we received then, which was on Monday, is that the sanitary lines exiting the homes shown on the plan, that 1% is requested, that they give 2%. They requested that we submit new plans. We said at this point that we will wait for all comments to come in at the meeting and we have no problem changing the sanitary sewer lines coming out of the homes to the main sewer line of 2%, as stated, you could say, in its place, as part of the approval of this subdivision. Okay.

Chm Gionfriddo

Thank you. Any other questions? If not, do any members

of the public wish to be heard on this matter? No. You have got to come up and use the microphone.

C. B. McCoid

C. B. McCoid, 67 Bell Street, Middletown, Connecticut. My first question to the applicant is, do you propose having basements in these homes?

Chm Gionfriddo

Chet [Dzialo], why don't you just address your questions and then we will give him the opportunity to answer. I would rather have him do that than individualized questions.

C. B. McCoid

Specifically, gentlemen, I am sorry to whip a dead horse. I addressed this group previously on the subject and realized that to some we are overstaying our welcome, but, the situation is sufficiently severe to warrant the reiteration. Specifically, there is an area subject to sheet flooding. Given as it sometimes occurs, a combination of heavy snowfall, warm weather, and an unseasonable rain during the winter months, you can get water flowing across this area to a depth of 4 to 6 inches. Who knows about it. Quite frankly, gentlemen, I do. I lived in the area. My brother owns property two lots north of the (inaudible) location. I am concerned because, without some provision made to protect the potential buyers of this property, either face the fact that there is a probability of wet basements and require that the contractor supply sump pumps for these basements as specified. And, additionally, auxiliary power sources because sump pumps in Westfield are wonderfully helpful if the power works. But during those times when the power fails, you have flooded basements, with which nothing can deal except the local Fire Department or (interference)...and that is a losing proposition. I am suggesting gentlemen that what we need to do here is to specify that these houses need a (inaudible) or their basements are (interference)... need to be equipped with sump pumps and that auxiliary power supplies be provided by the builder. Given the fact that this area has flooded repeatedly I do not think that this is an unusual or outrageous suggestion. If you want to refer to someone who has had specific long term involvement with pumping stations in this area, I suggest that you might wish to contact the Westfield Volunteer Fire Department. They have pumped basements for the last fifty years and I know specifically it has pumped the basement of the house next door many times in that period. Thank you.

Chm Gionfriddo

Thank you. Anyone else? Then I will give you a chance to answer.

Dr. Dominick Cerritelli

Dr. Dominick Cerritelli, Flynn Lane.

Chm Gionfriddo

You have to get into the microphone.

Dr. Cerritelli

There was a hearing back in October, and at this time the flood plain sediment became non-flood plains and the wetlands became un-wetlands. Every time there is a storm, or rain, there is a foot of water at the base of this street and there are times when children are going to have to come home from school and we are going to have to pick them up. Now it is a skating pond. Right where they are going to build the houses there is a brook and anybody who takes a walk up there can see that these houses, not only should have cellars, but they probably should have stilts to be built on.

Chm Gionfriddo

Thank you Doctor Cerritelli. Anyone else? Chet [Dzialo] did you want to...?

Attorney Dzialo

Steve, I will have Glenn Russo answer those questions.

Glenn Russo

Good evening, Glenn Russo, United Construction. In reference to the flooding in that area, at the present time the existing flood plain there is a problem due to engineering by Purcell, a professional engineering firm. They feel, as well as I do, that these problems can be solved with some engineering, grading. Basically it is not a very complex thing to do. That end of flood zone does go over the road. There is no doubt about that. We are not building the house on the road. We are building it in an area that will no longer have a flood plain in it when we change the grading around. We, there was a problem, or the Commission feels there is a problem of flooding, or wet basements, I mean, I would entertain putting sump pumps in if that puts their minds at ease. I personally do not feel it is necessary, but I am willing to do that if they feel it is necessary.

Chm Gionfriddo

Thank you.

Glenn Russo

Did I answer all the questions?

Chm Gionfriddo

Commissioner Patnaude

Comm Patnaude

Just one question. Regardless of what Mr. McCoid asked about, you said you were willing to put in sump pumps. Are you willing to put in the generator too?

Glenn Russo

Yes. We can do that also.

Comm Patnaude
Okay.

Chm Gionfriddo
If there is nothing...Chet, do you have anything further that you want to add? If there is nothing further then we have two options with respect to this one. We could leave it open in light of the fact that we do not have Water and Sewer comments, but my own personal feeling is there is nothing new that is going to come in that is going to convince me to vote for this.

Comm Leinwand
I move to close the public hearing.

Chm Gionfriddo
There is a motion and a second to close the public hearing. Is there any discussion? If not, all those in favor? Any opposed? The public hearing is closed. Move to item 5.

Secretary Gadomski
Item 5. Proposed Zoning Code text amendment Section
71.02.01. Applicant/agent Joseph Voll/Attorney Joseph
Milardo. Copy of the text is on file in the Office of
the Town Clerk.

ITEM #5:
PROP. Z.C.
AMEND SEC.
71.02.01
J. VOLL

Chm Gionfriddo
Joe [Milardo] do you just want to review for us the proposal?

Attorney Joseph Milardo
Joseph Milardo, Middletown, I am an attorney and I represent the applicant Joseph Voll, the owner of this property. This is a zone text amendment which is, primarily, about a month ago we went over it and we had some discussion. It was requested that the text undergo some consideration by myself and members of Planning and Zoning. Mr. Martucci and myself went over it, and a copy of the text is on file with the Town Clerk (inaudible) reflects the agreement as to what the text should read if you would adopt the zone text amendment tonight. It addressed the issue that Commissioner Loffredo brought up with regard to the timeliness of filing application of zone text amendment and also address the State Statute which, in turn, will bring the Zoning Code to (inaudible). Is everything on track? Do we have the text amendment?

Chm Gionfriddo
Why don't you just read it. It would probably be quicker than having people look it up.

Attorney Milardo
All right. I will see if I can find it here.

Chm Gionfriddo
(inaudible) what this does is allows the Commission, at

its discretion, to consider an application within the twelve month period, instead of what our current thing says which is basically we cannot, we do not even have the discretion to consider.

Attorney Milardo
That is correct.

Chm Gionfriddo
It is basically up to the Commission whether or not we wish to consider.

Attorney Milardo
That is correct. And basically, I am not going to speak at length on this even though I should, because Commissioner Leinwand spoke about this very text amendment tonight, and turning down the application that you had this long public hearing about, the comments were made that, look, you should be able to regard these kind of changes, along with your plan and function. You should be able to look at the zones at any time. Now, your current text, if a better project comes in and you want to read the zone and know that it was voted down tonight, you have got (inaudible). Whereas, if indeed, the Commission has the ability to, at their discretion, decide whether to reconsider a zone (inaudible) this text amendment will allow it to do so. It does not say you have to reconsider. It may (inaudible) the State Statute which says that you may reconsider. You may vote, in fact, to not consider the (inaudible) and so to take care of the harassing application, the applications that you feel as testing the patience of not only the neighborhood, but also the Commission, by summarily saying we do not choose to reconsider this zone change (inaudible). The State Statute gives you every right to do that. And your own zone text says that you have a right to do that. But, (inaudible) flexibility to consider not only your motion but on motion with the citizens in the neighborhood who want to change a zone, or what they feel to be a detrimental zone. Quite obviously the developers with the same opportunity to allow you to consider another zone change in consideration that they do another plan. Now, I think, that in today's day and age you are certainly aware of the level of responsibility that the Commission is exercising. I think you were applauded tonight for the things that you are doing. The type of quality zoning that you have provided the City of Middletown. I think as a planning tool we need this and just for the same arguments that Commissioner Leinwand said, I will not belabor the issue, that is my presentation.

Chm Gionfriddo
Are there any questions by members of the Commission for Attorney Milardo? Commissioner Loffredo.

Comm Loffredo
I have one Joe. I think where I meant to have all the

materials to be on file no later than one week before the meeting to be included in our presentation, I wanted that included more or less right under 71.02.01, the last sentence in that first paragraph. Is what you meant, is my request "E"?

Attorney Milardo

Yes. Any petition submitted in accordance with this section shall not be the subject of discussion by the Commission unless more than seven days have elapsed since the date of filing. In other words you have to have, well, I am sorry. I presented it to Mr. Martucci. I do not know what he does in sharing with the panel. That was the understanding I had from the preliminary hearing. Whether it is a problem that I did not know, there is definitely a misunderstanding because we wanted to... We did want to come to a preliminary hearing, or whatever, and have this stuff done, and that was the intent of your (inaudible). Mr. Martucci, obviously, and George [Reif] helped...

Change of tape to side 6

Change tape
to side 6

Chm Gionfriddo

...the problem should be when you want to make an amendment.

Attorney Milardo

No. That is not the point really. This is your text amendment. I think this is something that appears in your bond, the (inaudibles) attitudes is necessary in today's day and age with the kind of situation that is staring you in the face, with the planning issues so whatever changes you want to make, we would consider (inaudible). Our main purpose is to bring this Statute or this text amendment, text provision in line with the State Statute. What you do procedurally with regard to current (inaudible) which is up to you to adopt in your legislative function and your organizational function deciding how you are going to operate your Commission. I do not think anyone would quarrel with that and I do not think I can lend anything to it. If this is mine, this interpretation, Commissioner Loffredo I appologize, but that is the way I understood it to be and that is the way I drafted it.

Chm Gionfriddo

Any other questions? If not, thank you Joe. Anyone from the public wishing to be heard with regard to this matter?

Don Mitchell

Members of the Commission, I am Don Mitchell. 39 Wall Street. I would like to speak about the proposed text change. First, with your indulgence, I just want to read an excerpt from the way it is written right now. In 71.02.01: an application shall not be accepted requirement if the application fails to conform to any of the applicable requirements of this section including payment of any fee, as established by City Ordinance, nor the applications,

the reclassification of the whole or any part of the land, the reclassification of which had been approved or denied to date of submission of the application required. The reason I wanted to read that is that during the preliminary application hearing, whatever, on this it was brought up that (inaudible) would be some kind of a problem with time frame as far as knowing where the twelve months starts from. Having founded this fair institution a number of years ago the English that I see on this piece of paper here indicates to me that we are talking about from the date of the approval or denial. And it looks pretty plain to me so I would first like to clarify that. Secondly, what I would like to address is that if this, if there is something like this in our zoning regulations it must have been there for a good reason one would hope and if it is not, has it been a great problem. Is there some kind of definite problem other than right now a particular applicant wants to come back within a twelve month period. He has a specific goal in mind here. He is not doing this to just give the Commission more discretion, more power. He is doing it because he has something that he wants. It is as plain as that. What this current reading does is force an applicant to consider the highest and best use of the land the first time out. It does not mean that he can go and (inaudible) and if that does not work, come back with another. If you take the risk of making an application that may or may not make it, that is just what you are doing. You are taking a risk just like if you play the stock market. There are risks involved and there are penalties to pay when the risk does not pay off. In this case it is a year that has to be left alone so that that area does not become a hotbed again. It also prevents the harassment of the neighborhood so (inaudible). There was some problem back in January of this year when this particular, I will try not to cross the bounds, here, but this amendment is tied very closely to a proposed zone change for Wall Street and Silver Street we are all aware of. As Commissioner Leinwand told us at that time he was not going to look favorable on any back door approaches to getting something shoved through. Well this is the back door lets lock it. There is no need for giving in to something like this. The discretion that he speaks of is not something that you need. It probably wouldn't be exercised one way or another. The only thing that discretion would do is make a decision to have a public hearing in January legal instead of illegal so what we are saying here is that we know we got something that works and it helps to protect the neighborhood. It gives the neighborhood a chance to stand up and take a stand on something and then at least rest in peace for a year without having to go through the same thing all over again. If this would pass that is just what we would be doing. It doesn't mean that we're --I'm prejudicing any kind of application. I certainly don't want to see a zone change (INAUDIBLE) Right Now, we hear about bringing this in line with the state statute. I did code compliance work and zoning work for a period of about four years. During that time it was always my understanding that a local ordinance or regulation could be more stringent than a state statute and not less stringent as long

as long as it was no conpiscatory, well this is not conpiscatory.

NEW SPEAKER:

Thank You. Gentlemen, which, could you please, for the benefit of the Commission Attorney, excuse me.

NEW SPEAKER:

I had one marked omission here, but it is a very major point and that is if you accept this, can I, it would probably be illegal anyway in that it would put zoning in direct conflict with itself in that its talking about changing the 7102.01 whatever and a couple of pages later it mentions exactly the same way again in a different section.

NEW SPEAKER:

We argued about that, it was picked up first by staff

(Several speakers exchange remarks, INAUDIBLE)

NEW SPEAKER:

Would you refer us to what state statute you are putting us in compliance with.

NEW SPEAKER:

INAUDIABLE

NEW SPEAKER:

Could you look, Commissioner Leinwand would like to know the statute.

NEW SPEAKER:

Sub-section E, I think, no Sub-section C, states, "the Commission shall (inaudible) or deny changes requested"... I am reading from the middle sentece, ..."requested in such petition...(inaudible) ..."no such Commission"...then skip a line,..."shall be required to hear any petitions or petition relating to the same changes or substantially the same changes more than once in a period of twelve months." That's what the state statute says. So no one can compel you through legal process or whatever to hear any item that you do not want to hear once it has been the subject of a zone change or request (inaudible) period of time to current request. Now I think that one thing has to be made clear with regards to this, you are the zoning body, and I think you better state that again tonight. Not the citizenry of the the City of Middletown. The zoning body has to have the authority because that's what the state law requires to have flexibility. I think it is extremely important as a Zoning body because not only do you have to zone it you have to plan. Now as I said,(inaudible) summary his denial of the sub-division, the subject of all the controversy tonight. brought up a very good point as to why your body should have the discretionary abiility to reconsider your decisions. If you have made a decision to change a zone (inaudible) or developer has. Suppose

like take the argument the (inaudible) best shot. Suppose (inaudible) that changing a zone would be a very good idea. Let's take that hypothetically and the developer comes in and doesn't get (inaudible) something happens bankrupt or whatever and they abandon the project. Suppose the neighborhood wants to return that zone after that project. They, they have to leave it available for some other developer to come along under perhaps a unwanted zone or an unwanted use when the first use has gone sour. Now remember, once you change the zone you got a (inaudible) against that zone, you got very little discretion, however, this will give you the discretion to change that zone on your own motion or the motion of the neighborhood that wants to protect their environment or whatever. So that I think that if you listen to Mr. Mitchell you are listening to a (unintelligible) you are going down a very poor path. You should be increasing your flexibility showing your ability to make proper (inaudible) instead of hiding behind the heart of this which you may in many instances cause you repercussions down the road that you do not want.

NEW SPEAKER:
Attorney Mazzotta

Attorney Mazzotta:
If I may, Mr. Chairman and members of this Commission. I know that you have had a long night and I do not want you to stay longer than you have to but this means a great deal to the owner of the property which is St. Francis Church corporation and I want to call to the attention of this Commission that there was an application a few months ago but it was for a different applicant, for a different proposal for that site. That was voted down. This is not an attempt by St. Francis Church or anybody acting on behalf of St. Francis Church to harrass the neighborhood. Now what I would like to start off by saying is this, It isn't a question of whether you should entertain discretion, it is a question that you must have discretion. The statute 8-3 says you must hear any application for a change of zone. Then it says the only time that you may not or that you don't have to hear it is if it is a re-hearing on substantially the same changes. What we have here is a situation where we have a different applicant coming in now, with a different proposed use. You must have the discretion to hear this. What we are saying here is this when you got a conflict between a state statute and your zoning ordinance the local zoning ordinance must give way to the state statute. I refer you to your City Attorney for this (inaudible) Corporation there is untold number

SPEAKER: Attorney Sal Mazzotta
of cases in Connecticut law submit a brief for that thing.
I think Mr. Mitchell is misinformed on that there is a
provision in your zoning code which says that whenever you
have a conflict in front of the zoning regulations the
stricter must apply. But here you got a different situation
you got a state statute which is 8-3 which states that you
must hear this and then you have your own which states that
you must have the discretion to hear it, and the local
ordinance says no you can not hear it. So what you are
in this text is in violation of the state statute. This was
called to your attention, I don't think you have any
alternative but to approve this propose text change. We have
to have the opportunity to be heard on this. Does anyone have
any questions on this , I would be happy to try to explain.

NEW SPEAKER:
I guess not Sal.

ATTORNEY MAZZOTTA:
I have Father who is the Pastor of the Church
if anybody wants to hear from him (inaudible) Father.

NEW SPEAKER.
when you get Father talking about a specific application
and a specific use that's not what is on the agenda tonight.

Attorney Mazzotta:
I don't intend to have a discussion of the use at all, but
if anyone does have a question he is here and if there is
anything else that needs to be said I would like to have
the right to be heard in rebuttal that important.

NEW SPEAKER:
No Problem, Can I ask a question

NEW SPEAKER:
(inaudible) be accepted for filing. That's something
you decide. In your office whether it is acceptable for
filing or not correct.

NEW SPEAKER:
Basically correct, however, we would have to be out in the
(unintelligible) and analyze it before it got into the office.

NEW SPEAKER:
(inaudible)

NEW SPEAKER:
(inaudible) rejected until we know what it is

NEW SPEAKER:

(inaudible) why does the new language say not acceptable for processing? What does that mean?

NEW SPEAKER:

As an applicant they pay \$50.00 for filing so

NEW SPEAKER:

I guess what he is asking is do you have any problem do you prefer say not acceptable for filing or do you prefer using your words

NEW SPEAKER:

Who wrote this, Joe (inaudible), Larry

NEW SPEAKER:

It was a combination, different people

NEW SPEAKER:

The question I have is why is the proposal language speak about nonacceptable for processing, and how and why is that distinctly different than not accepted for filing?

NEW SPEAKER:

When someone comes to the office and puts it on the desk they file it, and processing is to continue that and to bring it to the Commission

NEW SPEAKER:

So that after processing...

NEW SPEAKER:

If it is not processed we would not bring it to the Commission, but it would have been filed (inaudible) they bring things in they file them and quite frequently no one actually sees them until later

NEW SPEAKER:

The concern I have is that when you add this new language here (inaudible) shall not be required to hear any petitions it does not get to the Commission until unless it is filed and processed. That is part of the processing process.

NEW SPEAKER:

Yes

NEW SPEAKER:

(Inaudible)

NEW SPEAKER:

The new proposal would follow the general statutes. That's why they are proposing this (inaudible) to follow the general statutes to give the Commission the opportunity not to hear it or to hear it.

NEW SPEAKER:

I just want to make sure that I understand what this change does to (inaudible) processing.

NEW SPEAKER:

The change is that the new wording would allow (inaudible) - follows the general statutes. The Commission would clearly have the options of hearing or not hearing.

NEW SPEAKER:

O.K., O.K., I understand it

NEW SPEAKER:

O.K. JOE , let's have some one else, any one else.

NEW SPEAKER:

(softly) My name is (inaudible)

NEW SPEAKER:

We are not picking up up, speak up

NEW SPEAKER:

My name is Ellen Benton, I reside at 518 Kline Street in Middletown. I want to thank you all for your earlier vote for the City of Middletown, it late and I'm tired I'd like to speak like myself and ask you (inaudible) are you crazy, you got to be crazy what this change would do (inaudible) that if you turn down the South Main Street proposal tonight you would get another shot at turning down (inaudible) the hearing in two weeks. There is certainly no conflict with the State statute, I work with state statutes constantly I read the State Statutes I think I memorized the entire Planning and oning Stature. The State constantly write statutes taht says one thing and gives a permissive ability to a zoning commission or whatever is being regulated to do something stronger. The Federal government often (inaudible) legislation that the State strengthens. And quite often Connecticut we can thank heaven for that because it does a lot to protect our environment that would not be protected under federal law alone. It would appear that this issue has come up around one request for zone change. That came back and was denied because of the regulation that you use. You have the right to change plans You certainly should have the right not to hear something over and over again. I think this could only add to your burden by having every zone change that was requested, the ability to come back in two weeks or three weeks and have youdeny them a hearing or give them a hearing or (inaudible) the whole thing over again. I would think that this would be a very bad idea. And I want to congradulate you (inaudible)

NEW SPEAKER:

Thank You.anyone else

NEW SPEAKER:

Shelia Sims, 435 Street, I'm mad, that's what my kid always says and I always say to her life is unfair. Would you be making life a little more unfair to neighborhood groups and any other person who did not want a developer to develop something in their neighborhood and have them be able to with their resources to come back at you and come back at you and come back at you. Unfair because neighborhood groups and (in audible) just can'.

NEW SPEAKER:

(inaudible) that you can trust us not to be a bunch of dopes? If it is a stupid proposal we are just going to say fine good bye we have the right to say good bye. All this does is gives us us discretion because there are times. The neighborhoods and churches(inaudible) what makes sense.(inaudible) comes back in a week you know damn well what we are going to say

NEW SPEAKER

(female) Yea, but what if they come back in six months don't we have the right to know that we have a grievance case. one year before they can come back in they are much bigger than us.

NEW SPEAKER:

Any one else, Thank you, Any one else wish to be heard?

NEW SPEAKER:

Good evening, my name is Shirley Harris, I live at 135 Thank you very much for your decison in (inaudible) What I would like to address, obviously there is some threat as much as we do want to trust your good mission. We feel that we have a government by laws and not by men. That it is important to have the tools with which to stand (inaudible) But the one thing that I (inaudible) having recently re-read the zoning Code. From front cover to back cover very throughly. I noticed that this filing for text change that portion to be deleted is 710201. But 7103.02 there is a reference to filing for twelve months. I wonder that once it is the exact section(inaudible) what it is?

NEW SPEAKER:

A Mistake. That's what left it in, it's been picked up by both staff and opponents since then I would assume

NEW SPEAKER:

(Lady) o.k.

NEW SPEAKER:

Yes, staff has noted that their is another section that was not pciked up in the original application.

NEW SPEAKER:

(Lady) Therefore, is there a change of the filing or what would be the change the text? or, I mean...

NEW SPEAKER:

Well in my opinion I think that if the Commission were to make a motion to approve this text change and corrections to all the latest sections . That would be an applicable motion to deal with and the Commission would have to deal Up or Down on the Issue.

NEW SPEAKER:

(lady) Well O.K., I did want to make sure that it was brought up, because I did not hear and I wanted to mention it.

NEW SPEAKER:

Thank You Anyone else? I would rather have that rebuttal now Sal, I think it is necessary, unless something came up to you and you feel you actually have to say

NEW SPEAKER:

I know

NEW SPEAKER:

I think the issue is pretty clear cut thats why

NEW SPEAKER:

If I may, I just want to say this is not a court of justice this is a court of law. We have to go by the laws. And the law here state statute states that you must have the discretion and nobody, nobody when you are acting legislatively can take that discretion away from you. That's all I'm trying to say. I think that to take that away from you would leave us in a position where we would be deprived of our due processes owner of that property..

NEW SPEAKER

Thank you Sal.

NEW SPEAKER:

Is this really necessary. The issue was reasonably clean cut, I think. I think you are really beating a dead horse.

NEW SPEAKER:

(inaudible) given to everyone else that I asked to sign

NEW SPEAKER:

What I'm saying is if there is some kind of question here as to whether or not (inaudible) we do have a Town (inaudible) that can be consulted on this issue

NEW SPEAKER:

The decision is not going to be made on whether state statute requires it. I think the decision will be made on whether the Commission feels they would like to have the discretion or whether they feel they don't need it

NEW SPEAKER:
O.K. That's fine and just

Change of tape to side 7

Change tape
TO
SIDE 7

New SPEAKER:
Plus the pleasure of omission (inaudible) Members of the Commission who are sitting are regular members with the exception, all the regular members are here right, so there are no alternates serving. Commissioner

NEW SPEAKER:
(lady) I would like to read the introduction of the text the new text.

NEW SPEAKER:
Is there a motion intended to be acceptance of the new text and corrections of all related sections?

NEW SPEAKER:
(lady) Yes it is

NEW SPEAKER:
Is there a second to that?

NEW SPEAKER:
Second.

NEW SPEAKER:
Motion made by Commission and seconded by Commissioner
What's your pleasure.

NEW SPEAKER:
I would like to make an admendment that we add to the very end of the page under E where it says that (inaudible) ..."And the submission of all supporting materials". so that its clear that everything is there (inaudible)

NEW SPEAKER:
Is there a second

NEW SPEAKER:
I will second it.

NEW SPEAKER:

Commissioner , I'm calling myself here, an amendment made by Commissioner Leinhman and seconded by Commissioner Pass (inaudible) Let's vote first on the amendment. Is there any discussion on the amendment. To require that they file the text change, I mean the application and all related materials submitted seven days before the hearing. All those in favor of the amendment say Aye. (Commissioners voices saying Aye) Response, Aye. Any opposed. (There were no no) Is there any discussion on the actual text change itself.

NEW SPEAKER:I

I seek clarification for myself you can say whether you want to hear this case or not, that's all you want,

New Speaker:
That's right

New Speaker:
In other words (inaudible)

NEW SPEAKER:

That's the key to me I think the planning and zoning commission needs discretion and flexibility I believe this Commission has the ability to handle it we are not going to have every application that comes in that we turn down (inaudible) today two months from now three months from now they come back with another application. I don't believe that this Commission is going to roll over flop over and say sure let's have another seven hour hearing on the same application. But there are situations that were presented to us at the public hearing where from time to time this Commission should have the flexibility and I think there could be the situation that was brought up where the Commission changes the zones for instances, such as we did on a (inaudible) situation or something like that where an application fell through or where you might want to revert back to a former zone and couldn't under the current regulations so I think the flexibility is important. Anyone else wish to be heard? If not, all those in favor of the change say Aye.

Commissioners voices says Aye. Any Opposed. There were none.

MOTION CARRIES

(Inaudible/ SPEAKER)

NEW SPEAKER:

Alright we will just accept that, unless anybody has an objection (inaudible) We will move to Item #6.