

**TOWN OF OXFORD
PLANNING & ZONING COMMISSION**

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**Planning & Zoning Commission
Regular Meeting Minutes
Tuesday, December 6, 2022
7:30 PM-Main Meeting Room
S.B. Church Memorial Town Hall**

I. Call to Order

Chairman Cocchiarella called the meeting to order at 7:35 PM.

II. Pledge of Allegiance

III. Roll Call

Present: Carl Bouchard, Sara Locke, Pete Zbras, John Kerwin, Pat Cocchiarella, Brett Olbrys, Ed Rowland, and Robert Carr.

Not Present: Joshua Dykstra and Dan Wall.

Also Present: Kevin McSherry, Land Use Counsel, Steve Macary, ZEO, and Jessica Pennell, Coordinator.

IV. Seating of Alternates – No alternates were seated.

V. Public Hearings - 12/6/2022:

A. Recessed Hearing:

1. **Z-22-182 (a) Z-22-182 (b) – [IND] –13 E. Commerce Drive (Lot 14 Woodruff Hill Industrial Park) – Owner:** Town of Oxford, 486 Oxford Road, Oxford – **Applicant:** Airamid, LLC c/o William Kennedy and/or Tiana DiMaria, 511 Brook Street, Rocky Hill, CT *(Site Plan Construct 5,332 sq. building) (Special Exception –Article 9, Section 9.3.10) (Request Extension/Close Hearing – Hearing opened on 11/1/22)*

Chairman Cocchiarella noted that this hearing was opened on 11/1/22 and recessed to this evening.

Tom Regan, Attorney for the applicant, introduced himself to the Commission. He is from the law firm of Brown Rudnick, in Hartford, Connecticut. He introduced Curt Jones, engineer for the applicant to go over some modifications to the plan and follow up on questions from the hearing held on 11/1/22.

Curt Jones, Engineer from Civil 1, representing the applicant briefly went over the revisions to the plan. He noted that they have added a landscaping buffer to the neighboring lot, and they have revised the Statement of Use to clear up questions that were during the last hearing.

Commission Secretary Olbrys stated that that the revised Statement of Use removed the reference of a tax agreement.

Curt Jones stated that the reference to the tax agreement was a clerical error, and there is no tax agreement associated with this application. He also noted that there will be no family area in the facility, and the statement of use has been revised to reflect that change as well.

Attorney Regan also noted that the reference to the family area was removed from the Statement of Use. He introduced Chris Ecsedy.

Chris Ecsedy, Environmental Engineer from CJE Environmental, LLC submitted an Air Emissions Summary for the applicant (ATTACHMENT A). He summarized the air emissions aspect of the project.

Commissioner Kerwin question if the applicant has already filed their application with the DEEP.

Chris Ecsedy stated that the DEEP has not yet issued a tentative determination on the draft application.

Commissioner Kerwin asked if the DEEP requires local zoning approval before it issues the determination.

Chris Ecsedy replied that DEEP does not require local zoning approval before it issues the determination.

Commissioner Kerwin asked if the Department of Health also regulates crematories.

Attorney Regan stated the Department of Public Health does regulate crematories.

Carl Bouchard, Alternate Commissioner asked about the natural gas supply.

Curt Jones stated that there is no natural gas supply on E-Commerce Drive. There will be gas tanks onsite.

Commissioner Carr asked if the air quality standards are public information.

Sara Locke, Alternate Commissioner asked if there are any air quality measurements from off-site or at a distance from the facility, and how the pollution will spread across the town.

Chris Ecsedy stated that those measurements are not usually taken. He stated that if it is not detectable in that location, it is most likely not detectable in any location.

Chairman Cocchiarella asked questions regarding the primary and secondary combustion chambers.

Chris Ecsedy went over the functions of the primary and secondary combustion chambers.

Commissioner Carr questioned what possible particulates that could potentially exit the exhaust system.

Chris Ecsedy stated that the incinerator is designed to make sure that there are no particulates.

Commissioner Carr questioned if the system failed.

Chris Ecsedy stated that there is an alarm system that notifies the owner and operator and they can shut down the system.

Commissioner Carr asked what contaminants could be that may exit the system.

Chris Ecsedy stated that possible emissions are nitrous oxide, carbon dioxide; pollutants associated with incineration.

Commission Secretary Olbrys what happens to materials in a body that are not incinerated.

Chris Ecsedy stated that whatever isn't incinerated is returned to the family.

Commission Secretary Olbrys clarified that he means the disposal of the items that are not turned to dust.

Commissioner Zbras questioned the mercury that could be contained in the body.

Attorney Regan stated that mercury will vaporize within one (1) hour of the cremation. It was noted that criteria that the DEP has established for crematories is that the incinerators of the crematories need to be at least 150' from the nearest property line, and Airamid meets that criteria. He stated that is the means of protecting a healthy environment.

Commissioner Zbras stated that if the DEEP states that it has to be 150' away from any property lines, then it means that it must create some type of pollutants.

Attorney Regan stated that there are potential mercury emissions associated with the amalgam in people's teeth, and that is becoming less and less as people transition to different composites for fillings. There's less and less mercury, as studies have shown. The DEEP has established that 150', is a safe distance from the property line for mercury vapors, and this facility is going to be over 180' from the nearest property.

Commissioner Zbras questioned how many ovens they will have at the facility.

Attorney Regan stated that it is planned for four (4) units.

Commission Secretary Olbrys questioned any odors coming from the facility.

Chris Ecsedy stated that there should be no odor from the facility.

Attorney Regan introduced Bill Kennedy, the applicant proposing the project.

Bill Kennedy, applicant, explained why he chose the location, which is the industrial zone. He noted that there will be no interaction with the public, transfers of the bodies are done inside the facility, there really isn't a smoke, or odor that should come from the facility. He noted that they are using high technology, state of the art equipment for the operation.

Chairman Cocchiarella asked if there is anyone from the public that would like to speak.

Rachel Breslin, Attorney, Carmody & Torrance, 50 Leavenworth Street, Waterbury stated that she is present on behalf of Hu Brothers, LLC, and Cast Global Manufacturing, located at 66 Prokop Road. She stated that the properties are separated by a sliver of 9 East Commerce Drive and the properties are accessed from different street frontages. She noted that their letter was read into the record about their requested

continuation of this public hearing, as the applicant has submitted new materials into the record. She explained that they were recently retained to represent Hu Brothers, LLC and Cast Global Manufacturing Corporation in opposition of this application. She noted that they are requesting the extension so that they have the time to review the materials, so they will be able to voice any concerns they have with the application.

Ellen Fox, 522 Traditions Court North, Oxford Greens stated that she is 1.5 miles from the proposed crematorium. She noted that this will be Oxford's third crematory in town with the two (2) others being two (2) miles from her house. She stated that a third crematorium coming into her neighborhood presents a public health and safety hazard for her and all of her neighbors living in close proximity. She expressed that she is not against crematoriums but stated that it does not belong where people live, or where other businesses share space. She went on to cite statistics regarding crematoriums. She also noted a list of pollutants, and their associated harmful effects. She noted that a third crematory in the area would cause her to have to keep her doors and windows closed. She also made reference to some research that she has done on other crematoriums. She asked some questions about how many bodies the company will incinerate per year, how the ovens are cleaned and if the debris gets sent down the drain into the sewer system? She expressed concern that the company may want to expand further in the future. She requested that the Commission reject this application.

Mark Oczkowski, owner, Earthworks, stated this is proposed near one of his buildings. He reiterated that there are already crematoriums within a 2-mile radius. He also explained his concerns with the inspection process, and that the inspections are only as good as the people that are working. He also questioned who would be qualified to read the inspection reports.

Sandra Jasulavic, 74 Prokop Road stated that she is concerned about this application, and the smoke. She stated that she did some research online and that these could back up during a power outage. She also noted that she has an organic farm and animals, and how this will affect her property values.

Rachel Breslin noted for the record that the applicant will be granting a 35 day extension, as was discussed by Curt Jones and her colleague Jackie Kaufman earlier in the day.

Chairman Cocchiarella asked if there were any other members of the public that would like to speak.

There were no other public comments at this time.

Commissioner Kerwin asked about the zoning of the area and how far the nearest residential area is located.

Attorney Regan stated that property is zoned industrial, in the industrial area with industrial buildings, and it is a permitted use. He also pointed out that there are significant difference between DEEP requirements pre-2009 and post-2009. He stated that they are under the new requirements, the equipment is clean burn, and it has every protection you can have. He stated that it is appropriate for the neighborhood in the area that it's in so just keep that in mind.

Mark Oczkowski questioned why there are only concerns about residential, and not the people working in the industrial zone.

Commissioner Zbras asked how many times a year the facility is inspected.

Chris Ecsedy stated that there is an initial inspection after the permits are issued, when there is a complaint, and periodically they may do a random inspection.

Commissioner Zbras stated that when he spoke with DEEP, they said that they will inspect only if they get a complaint.

Chris Ecsedy stated that the facilities are not usually inspected to confirm compliance; they may be inspected every 5 to 10 years.

Commissioner Zbras stated that his concern is the additional pollution that would be added to the area.

Chris Ecsedy stated that the monitoring of certain parameters ensures the system is running properly.

Kevin McSherry, Land Use Counsel stated that there are inspections by DEEP and the Department of Public Health. He stated that it is his understanding the DPH does annual inspections.

Discussion ensued regarding inspections and reports from the DEEP and the DPH.

Commission Secretary Olbrys stated that he believes a concern regarding this application is the mercury. He asked if the fail-safes or the system would capture the mercury as the body is burned? He explained that he has been looking up information online during the discussion and referred to a study from the National Canadian Institutes of Health. He went on point out items of interest in the study. He shared that the study states that all mercury present in a cremated body is vaporized, and released into the atmosphere. He explained that the study says mercury is released, and it converts by micro-organisms to methyl mercury, which is generally regarded as the most toxic form of mercury. He stated that the mercury could accumulate in the environment. He asked if the proposed equipment captures vaporized mercury, or if that mercury that vaporizes is released into the atmosphere.

Chris Ecsedy stated it does not capture mercury, it is into the atmosphere, but the amount of mercury from amalgam is very small.

Attorney Regan stated that it one of the reasons why DEEP has established the minimum distance from property lines.

Commission Secretary Olbrys stated that one of the points that some Commissioners and some members of the public are trying to make is that with the older facilities, and this new facility, the accumulation, over time, could cause a higher potential for the mercury to have adverse environmental impacts.

Attorney Regan stated that studies show that the amount of mercury is decreasing significantly in the amalgams in people's teeth. He stated that it is becoming less of an issue regarding the mercury vapors.

Jim Hu, 66 Prokop Road, Cast Global Manufacturing. He asked about the hours of operation and how many bodies will be cremated each day. He also asked if all four (4) units would be incinerating at the same time.

Ellen Fox, 55 Traditions Court, North also mentioned the potential toxins released when people who have undergone chemotherapy or radiation are cremated.

Bill Kennedy, applicant, outlined the hours of operation, as well as other steps taken to work with the neighboring property. He noted that the number of cremations has not yet been determined at this time. He briefly explained the process regarding the mercury vapors, which is their number one concern.

Commission Secretary Olbrys stated that Mr. Kennedy stated that the mercury vapors condense and fall to the ground.

Bill Kennedy stated that he is not a scientist, and therefore, may not be conveying the proper information at this time.

Commission Secretary Olbrys stated that Mr. Kennedy's can clarify his statement at the next meeting, but expressed his concern about the mercury falling to the ground, and the possible build up over time, which could cause a toxic environment in the general area. He stated that it could become an environmental concern associated with the property in the future.

Chairman Cocchiarella stated that the public hearing should remain open if the applicant is willing to grant an extension.

Attorney Regan stated that they consent to the 35-day extension and will submit a letter to the Commission confirming the extension.

MOTION BY Commission Secretary Olbrys to recess the hearing to 1/3/23 at 7:30 PM.

Second by Commissioner Carr.

All (6) Ayes.

Motion passed unanimously.

Commission Secretary Olbrys made a motion for a 5-minute recess at 8:26 PM.

Second by Commissioner Carr.

All (6) Ayes.

Commission Secretary Olbrys moved to come out of recess at 8:36 PM.

Second by Commissioner Zbras.

All (6) Ayes.

B. New Hearing:

1. **Z-22-190 [IND] – 21-23 Nichols Road – Owner:** – TPB Contractors, LLC c/o Attorney Dominick Thomas, 315 Main Street, Derby, CT – **Applicant:** T&C Partners, LLC c/o Attorney Dominick Thomas, 315 Main Street, Derby, CT (Site Plan) (Modification of Special Exception) [*Article 2, Section 2.14a, Article 9, Section 9.3.21, Article 10, Section 10.7.2 (6)*]

- a. Letter from Attorney Steven Kulas dated 10/31/2022.

THE FOLLOWING PORTION OF THE MINUTES WAS TRANSCRIBED BY A THIRD PARTY DUE TO
THE LENGTH OF THE HEARING

Chairman Cocchiarella: Okay. Next thing is we have a new public hearing. Um...So, planning and zoning public hearing. The intent of the public hearing is to have the applicant or his authorized representatives to present to the Commission, and to the public all information that is necessary or pertinent to the application, to hear questions from commission members and/or staff relevant to the application and the applicant's response, to hear questions and or input from the public relevant to the aspects of this application only, including comments in favor of or opposed to the application, general comments or questions which are fielded by the chairman to the applicant to respond to appropriately.

Chairman Cocchiarella: Those people wishing to speak are requested to sign in on the sign in sheet for the secretary. Those who wish to speak may do so upon recognition of the Chairman. Upon stating your name, address, and intent in the applicant in the interest, I'm sorry, of the public hearing, all speakers will be allowed a reasonable opportunity to be heard. Speakers may not speak again until all others have had the opportunity to speak.

Chairman Cocchiarella: Do any of the Commissioners have any conflicts of interest?

Pete Zbras: No conflict.

John Kerwin: No conflict.

Pat Cocchiarella: No conflict.

Brett Olbrys: No.

Ed Rowland: No.

Robert Carr: No.

Chairman Cocchiarella: There's no conflicts. Does the applicant feel that any commissioner has a conflict of interest?

Attorney Dominick Thomas: No, Chairman Cocchiarella.

Chairman Cocchiarella: Okay. Do we have any correspondence?

Commission Secretary Olbrys: Yeah. Do you want me to read the, uh, notice?

Chairman Cocchiarella: Read the call.

Commission Secretary Olbrys: We have a letter dated October 31, 2022. Uh, Chairman Pat Cocchiarella, SB Church Memorial Town Hall, 486 Oxford Road, Oxford, Connecticut regarding 21-23 Nichols Road, Oxford, Connecticut. This is from the law offices of Attorney Steven P. Kulas, 246 Main Street, Seymour, Connecticut 06483.

Chairman Cocchiarella: Do we have any other correspondence?

Commission Secretary Olbrys: Uh, yes. Uh, this is from uh, VibraSciences, Incorporated. Um-

Attorney Thomas: Those are exhibits.

Commission Secretary Olbrys: Oh, okay. Thank you.

Commission Secretary Olbrys: Okay. I don't believe we have any other correspondence.

Chairman Cocchiarella: All right, uh, do we have green cards for this?

Attorney Dominick Thomas: Yeah, uh, for the, uh, I... [inaudible 00:05:04] First of all, Attorney Dominick Thomas, 315 Main Street Derby, Connecticut. Representing the applicant, the certificates of mailing, and the notices were submitted electronically.

Attorney Thomas: I emailed them to Jessica, and I do have the originals, although I know in the past the electronic version has been uh, accepted. That can include the uh, signing posting photo.

Chairman Cocchiarella: Okay.

Attorney Thomas: I also submitted exhibits, which I will uh, review and uh, review and, except the one which was given tonight. All the exhibits were sent to the, uh, to uh, uh, Attorney Kulas. Um, and I'd like to begin, uh, with... This is, I guess, in the category of the re-run. Uh, yeah, with it before you. The uh, uh, that you approved, the uh, rock crushing operation in the, uh, building that you had approved prior in a settlement. Um, the uh, building appropriately designed to enclose the machine, the uh, actually crushing portions of the crusher, uh, and obviously for obvious reasons, it opens to allow it to be loaded and opens, uh, to allow the material to be put out. Uh, we believe it complies with the requirements of Article 10.7.

Attorney Thomas: In the memo I submitted to you, and I, I understand you have a packet with all these exhibits, but I submitted to you the memorandum decision that, uh, uh, Attorney Kulas referred to in his letter, and uh, you can, uh, I'm not sure you can read it. The court, uh, ruled in favor of the town, and the applicant on some of the technical issues that he challenged that you were actually granted a variance and you were supposed to, and that uh, you should have followed Article 14 and he rejected, disagreed with that.

Then the judge turned it around, as you recall, uh, some commission members, uh, went out, uh, after the public hearing closed, despite the applicant... I'm sorry, the neighbors who asked that the public hearing be kept open, um, this commission felt that they had sufficient information and closed it, but apparently, a couple of commissioners went out there and, um, with the staff, and listened to the operation, uh, for the purpose of noise.

Attorney Thomas: Um, we argued, uh, we are constantly argue that, yes, there was a post, uh, hearing, uh that piece of evidence, but it was not prejudicial, and that's where the court ruled regarding the prejudice on page 11 of the memorandum decision. It's regarding prejudice that the defendants, us, argued the plaintiff's not prejudiced because the noise level would've been the same, regardless of whether the plaintiff was present during the site visit.

Attorney Thomas: If the plaintiff had been present, however, he would've had the opportunity to, for example, ensure the decibel readers were properly calibrated, ensure the data would be collected from its proper location, or ensure the rock crusher would be operated under the usual conditions.

With that in mind, we in fact, that that's the reason we're, we're back here before the Commission. Uh, we uh, um, my client, uh, uh, did some research, I did some research, and we uh, contracted with an independent, uh, company that does decibel testing. I notified their counsel and uh, the staff that we were doing it if they wished to observe it, on November 28th, Monday November 28th um, VibraSciences Incorporated, uh, went out to the site, and while I submitted that electronically, I do want to, for the record, submit the original of the document that I submitted electronically.

Attorney Thomas: That's the original, and I will say this. We, uh, I got to be clear. The only difference between that document and the document you got is his GIS map is this big, so uh, I took well over half of it in the PDF, but certainly you can look at the whole.

The GIS map was there because, uh, as I'll explain, what he did in the, uh, in the uh, testing is that he located, he uh, the three, the three tests he took place, so uh, like I said, your Zoning Enforcement Officer was present to observe. Um, the uh, photograph that I handed out to everybody tonight, it's a photograph taken by myself of the crusher operating.

Attorney Thomas: Um, the individual, um, uh Mr. Joe Fattore, um, was there, took his, as you see in his report, took his measurements, calibration, weather, uh, everything, the temperature and everything, and uh, determined that the closest spot on the property line to the operation of the crusher, which you can see in the photograph, I took it as it was operating. In other words, when we were there, the crusher was on, but then when the testing was going to begin, the crusher's throttle was turned up to crush.

Attorney Thomas: Um, my client was in the Volvo to the left that you see, and you can see, uh, the pile in which he dug and the large rocks that were submitted into the processor, uh, rock processor, and ran through and was operating with the stuff coming out. I was actually having a conversation while that was happening with your, uh, staff, and uh, as you can see, uh, he took samples in three locations. Um, the uh, all noise sample says, he says here, "I've denoted in the decibel scale A".

Attorney Thomas: Uh, so we took this first one, which was the closest property line point to the operation machine at CLP pole F891, directly across from the location of the crushing of the concrete rock structure. Uh, I will, I'd like to point very briefly that, with respect to the concrete rock structure and the operation, in the argument that I made before the court, uh, I quoted from the transcript of the hearing, um, the comments of Commissioner Kerwin, at all times who did not go out to the site, uh, and pointed that out to the court, uh, uh, and that wasn't convincing enough on the point of prejudice.

But the comments at that point were the fact that you had had this two foot by four foot concrete blocks building, which is built here, and it surrounds the operation of the crusher that much, and, and in fact, suppresses much of the noise, because it's confined to within that building. That's where the noises generate, and um, so anyway, the um, uh, that was uh, location one.

Attorney Thomas: Location two was the stone pillar at the entry of the driveway, uh, with the crusher in full operation and matching noise level, as it was, and we would, just so you know, uh, we would communicate via

cell phone. I would tell, he would tell me he had reached this section two, and then I would tell um, uh, my client to turn it up full and, and begin crushing.

And then, uh, location three, uh, what we had him do, uh, we identified, for the purpose of the hearing, we identified the location of the property of uh, Mr. and Mrs. Werden, and uh, so obviously we didn't trespass on the property, so location three was at CLP pole F888 with the crushing in full operation, which is down on, uh, Nichols Road, uh, opposite uh, right opposite the pole. So then, uh, uh, right opposite, I'm sorry, to the edge of the Werden property.

Attorney Thomas: So basically, uh, if you look at the map, site plan map, you see one and two. So there's site one, which was the closest, directly the closest point to where the crusher was located where you can see the rectangle. Then number two, this is in the site plan, uh, map, uh, attached to the VibraSciences report. Then that two is the filler in the driveway, which is just short of the, uh, what would be the northerly boundary line. And then number three in terms of GIS and uh, hopefully you can see it. Number three is on GIS and it's on Nichols Road. We put a little circle there. It's on Nichols Road, and that property to the left of the tree across Nichols Road that's the Werden property, so we had him do, uh, three, uh, testing uh, sites, uh, in the uh, test, and uh, as you can see on this first page of the report, um, directly across from the rock structure at full maximum operation, uh, it was just 50.9 decibels. At the stone pillar to the driveway, uh, it's 48.3 decibels, and location three, uh, which was down by CLP pole F888 on Nichols Road just 43.2 decibels.

Attorney Thomas: So what does that mean? Well, the next thing I presented to you and you should have are two things. One is an exhibit I presented, uh, from a 2001 test when Guerrero was filing applications with a, a crusher that is two, three, four times the size of this crusher, which as you can see, was taken with not in any building, outside the building, and there were, uh, decibels that were tested.

What we pointed out to you at the hearing and what we point out to you, uh, tonight is that the technology of the structures, regardless of the building, has reduced the noise substantially. Back in 2001, it was 80 decibels at 100 feet, 74 decibels at 200 feet, and 68 decibels at 300 feet with no building, and it notes in there that, uh, your vacuum cleaner has a noise level of 85 decibels.

Attorney Thomas: But that's obviously 21 years ago, so what I presented to you is a chart I was able to pull out from one of Yale uh, Health Department websites which is a decibel level comparison chart. Uh, you should have this chart here that uh, gives you various decibel levels, and uh, as it shows you the vacuum cleaner at the time had gone down to 75 decibels, literally quieter, but the range of uh, of uh, noise at the property line, which is where it's measured, is below 50 in all circumstances, and uh, therefore, as you can see, it's also pretty clear it's a burden at night is very low.

Attorney Thomas: Finally, on the noise issue, I gave you, uh, a set of the, uh, regulations from the DEEP. The, the, the Town of Oxford adopts the regulations from the Connecticut Department of Environmental Protection, not pertaining to crematories because you've had enough of that, right? This is pertaining to noise, and uh, so I, I gave you a, a pretty comprehensive thing, but if you look at the back page, if it's two sided, if you look at the back page, uh, the noise standards, uh, uh, my client is a class C emitter. That's an industrial, uh, use.

The uh, property around him, in front of him, and of course is all industrial property. So emitting like, right to the road in front of him, the site one, uh, it would be the fact that he's emitting to a C property, so he could be as high as 70 decibels. He's not.

Attorney Thomas: The property to the north, the adjacent property, is a residential property that happens to be owned, uh, by a family member, but since it's a residential property, it's an A zone. So as you can see on that, on the regulations I gave you, A daytime, and the client is limited to only operating this during the day, uh, by uh, this, by the standard issuing file. And by the way, I would incorporate, by the way, that uh, uh, any of the conditions that you imposed on prior approval, uh, I would incorporate into this public hearing that as you can see, its 61 decibels.

Attorney Thomas: So it's 61 decibels a-at that point, and just for the sake of uh, comparison, because we know the Werdens had appealed it, at the Werden's, it's substantially lower. It's nowhere near the 61 decibels, uh, limit. In fact, the noise would qualify, as it goes out we would've done night, but we couldn't do it at night but we are class C, uh, emitter in those situations.

In addition to that prior hearing, and I'm sure tonight, there may be some complaints about that the client, that my client, um, uh, emits dust. There's, there's dust. Um, and again, one thing that I'd like to point out, as I pointed out in the beginning, this is an industrial zone. My client has an approval for a contractor's yard. We are here only for the purpose of the approval of the rock crusher to operate. The contractor's yard can continue to operate. Our business, that was never appealed, contractor's yard and trucks.

Attorney Thomas: So after you approve the hearing or, and the a-application, which was appealed and was turned down because of the post, uh, post hearing activity by Commission members. Um, Mr. And Mrs. Werden complained to the Department of Environmental, uh, Department of Energy and Environmental Protection, or DEEP, Bureau of Air Management about the dust. So you have been given a copy of that report. This is done in, in the summer, June of 2021, and as a result of that, a person from the DEEP came down to investigate the complaint, um, the numerous complaints by the Werdens against my client.

Attorney Thomas: So I, I'm not going to go, I'm not going to read it entirely, but as you can see, the person came down, took a picture of the roadway, took a picture a-, uh, uh, uh, observed, uh, the client, u-uh, the client's operation, observed, uh, um, uh, or asked my client questions about his record keeping, and at this time, based on the complaints and as an precaution, my client has started retaining, uh, a local Oxford business to actually sweep the road, uh, especially when he has trucks coming in, even though basically, when we turn right to go down Nichols Road, there's one other little house, which his relative owns, and there you have it.

Attorney Thomas: But as you can see from the picture there, even before the road was swept, there was little to no dust on it. Then the road was swept with sweeper and wet, and uh, the report in the end recommendations, no violation of R, RCSA uh, 22a 174-18 were observed during this inspection. Re-inspect if future complaints were received, but you could also look and read what he observed. My client keeping a log book, the fact that he had sweeps. He takes enormous precautions in this area to prevent any problems. Finally, an exhibit that was in, of course, as you know in a public hearing, I have to submit said exhibits, but this is one of the exhibits from the prior hearing and this is large, uh, uh, one that was explained to you to, to show you some distances, uh, actual distances. So basically, utilizing the tool, the uh, uh, Google Earth tool for measurements, and you can see on there that the location of the crusher, which is to the um, as you're facing like where the person was taking the test, to the right of the building that's on my client's side, is approximately 550 feet from uh, the property line of the Werdens.

Attorney Thomas: It's 710 approximately from their actual house, and this is an area we need to be, understand what the area is. It's, it's in the industrial zone. Well, the Werdens live there and the Werdens operate a septic and site excavation contractor business out of that property and maintain equipment on that property. In addition to that, you've got two other contractor yards substantially closer to their property.

Okay, so with respect to the area, with respect to the impact, it has certainly has no impact upon the value. Uh, the amount of uh, the truck traffic, uh, is no more, or very little more. There might be an occasional spurt, but very much level, so the impact upon the neighborhood is no greater than the approved, uh, contractor yard, and basically, the precautions that have been taken, including the one to reduce noise, to address dust, has been taken by my client.

Attorney Thomas: This commission that made certain findings, and all of those findings were supported by the court. The one reason with that before you, the one reason that's a Dominick Thomas rerun that you're seeing is because there was an activity, uh, uh, post hearing activity that took place that the court felt was prejudicial. I believe we've addressed it. I believe we have made an appropriate presentation. I believe we have complied with all the conditions in 10.1 to 10.3. There was no impact upon the neighborhood, that this is an industrial neighborhood, that my client has taken protection. There's no impact on property value. There's no impact on uh, traffic. You have industrial traffic running through this neighborhood, especially up and down Hawley.

Attorney Thomas: Remember, there stuff that goes down Nichols is only my client's trucks. The stuff that goes down Hawley are the other contractor yards. In addition to that, if you look at, I think you can see it, the full exhibit of the, uh, of the aerial, right bordering my client's property and on Christian is the large 125,000 square foot Stihl building power tool company, company, that I understand still operates 24 hours a day, seven days a week with truck traffic, uh, coming in.

Attorney Thomas: So the area is, uh, operates as industrial area, and I believe that we have shown that, uh, my client complies with all the conditions to grant the special exception for him to have the rock crusher, uh, in accordance with the state of uses and standards, and in accordance with all the same conditions, including those you discussed with concerning what are holiday hours and, and uh, uh, at the last meeting . So thank you. I'm here to answer any questions, as is my client.

Chairman Cocchiarella: Thank you.

Commissioner Kerwin: Dominick, maybe or, or Attorney Thomas, so in your applications, you cite the modified uh, or the text amendment that was adopted back in June 2019.

Attorney Thomas: Correct.

Commissioner Kerwin: The original application, which was, um, or the, the application that was o-overtured by the court was not filed under that text amendment. Can you address that a little bit?

Attorney Thomas: Yeah. The original application was for a contractor's yard with the application saying that the rock crushing was an accessory part of it, because he's not a rock crushing operation. He's a contractor, and he crushes materials that are, uh, broadening, and the crushing doesn't take place other than that. That application, you approved the contractor's yard, denied the rock crushing, so all I appealed at that point. I appealed the denial of the rock crushing.

While the appeal was pending, this is application one. While the appeal was pending, this commission met and adopted the new regulations to address, uh, rock crushing and changed definitions. At that point, the discussion with your prior counsel, Attorney Olsen, and this commission, an agreement was worked out for the construction of the building and how to operate, and, and there was an agreement, hours and, and everything.

That agreement was brought to the court as part of an 8-8n motion, and uh, the Werdens objected to that agreement. As a result of that objection, the court was unable to approve the settlement, so I immediately filed a new application for a modification under the new regulation.

Commissioner Kerwin: And can you talk a little bit to us about, um, how a rock crusher is treated under the new a-, the new regulations?

Attorney Thomas: Under the new regulations, uh, you are allowed to rock crush. It has to be in, as it says in the section, I think 10.7.6, it says it's in enclosed building and um, uh, I don't, I, I can grab the application number, but I think that's it. It has to operate within an enclosed building, and in fact, the determination that you made, because obviously, the whole purpose was what needed to be enclosed was that portion of a rock crusher that actually crushes the rock. You can't, can't operate in an enclosed building um, with, you know, to load it, load it and have it come out.

Attorney Thomas: So at that point, both in the discussions for the settlement and in the application, we referenced the one rock crusher that operates, uh, Guerrero, which is a much larger operation in which it's in a large building where the roof opens up, uh, the uh, thing is loaded, the crusher operates, and at the other end garage doors open up, and material comes out.

Attorney Thomas: But we're focused only on the rock crushers, because in the original application, the screener was considered to be a part of the operation of a contractor.

Commissioner Kerwin: But ju-

Attorney Thomas: Yeah.

Commissioner Kerwin: I-I think that one of the questions that we're gonna have as a commission is the effect of the application and the new text amendment, which we just got copies of, on this application. We're gonna be reviewing this now, this application, based on the new text amendment that was adopted on June, June 18...

Attorney Thomas: Right.

Commissioner Kerwin: ... of 2019.

Attorney Thomas: The-the-the-the application that was before the court was based on the new text amendment. The application that was-

Commissioner Kerwin: Yeah.

Attorney Thomas:...long term was based on the new text amendment.

Commissioner Kerwin: Well, there's a new application now that you filed, right?

Attorney Thomas: Right, which is based on the same changed text amendment.

Commissioner Kerwin: And... all right. I recall there was some comments. I don't know if you recall as to when we entered into the amendment why we were doing it in relation to the, the new text amendment.

Attorney Thomas: And I guess I'm a little confused. The, the new text amendment was passed from prior to [inaudible], which was treating rock crushing as an accessory use. That was my appeal. An, an agreement was worked out based on the conditions of your approval. When the app-

Commissioner Kerwin: I think I recall at the time, one of the reasons why we entered into that agreement, and you weren't here then.

Attorney McSherry: No.

Commissioner Kerwin: But, but there was some that would've complied with the amendment as it came in-

Attorney Thomas: Right, yeah. Yeah. Th-the whole, the [inaudible 00:31:30] complied with the amendment. When the, when the, uh, then defendant, the Werdens objected. The court ruled that the, under 8-8N, all parties, and they were a party, had to approve a settlement, so the court put out... So, so at that point, rather than do a petition for cert-certification on the-

Commissioner Kerwin: I see.

Attorney Thomas: ... I filed a new application under the new regulation.

Commissioner Kerwin: That was-

Attorney Thomas: And that went through.

Commissioner Kerwin: Okay.

Attorney Thomas: That was one that went through the court. The court, uh, one of the arguments was "Oh, oh, even under the new regulation, you really have to, uh, uh, impose the standards of Article 14." That was rejected. Uh, they made a couple of others. The only reason it was overturned, as you think that's why I presented you with the memorandum decision, was because of the post-hearing, once the hearing was closed, when commission members went out there to have listened to the operation of the, uh-

Commissioner Kerwin: It was a procedural error.

Attorney Thomas: It was a procedural error. And so-

Commissioner Kerwin: ... for regulation.

Attorney Thomas: Therefore, rather than spend money on a petition for cert, again, you know, it was to come back before the application, which I have to go through the same procedures, but this time, because the issue addressed noise, we went and uh, hired a licensed company, which, which explained to you certification, certification of the machine that was used and everything of that nature.

Commissioner Kerwin: And in fact, those statutes reference, those regulations are adopted in our-

Attorney Thomas: Yes, correct.

Commissioner Kerwin: ... thing.

Attorney Thomas: Yes.

Commissioner Kerwin: [inaudible 00:33:05]

Attorney Thomas: You adopt, you ch-, when you don't, you, you did not choose to set your own decibel levels. You choose to follow-

Commissioner Kerwin:[inaudible 00:33:11]

Attorney Thomas: Yeah, where do, DEEP as proposed, uh, regulations.

Commissioner Kerwin: I don't have any other questions.

Chairman Cocchiarella: Is there anyone else? Is there anyone else?

Commissioners: No.

Chairman Cocchiarella:

Okay, is there anyone in the audience that wants to comment?

Attorney Steven Kulas: Thank you, Chairman Cocchiarella. If I may.

Chairman Cocchiarella: Yeah.

Attorney Steven Kulas: I need roughly a minute. Attorney Steven Kulas, 246 Bank Street Seymour, Connecticut, on behalf of Robert and, Steva Werden. I have, um, a few comments. Uh, what I would like to discuss as [inaudible 00:33:55] as such for the judges decisions since ultimately I prevailed. I will just say that involved a different application and is not binding on this application.

Attorney Steven Kulas: So to the extent that the commission may say, "Well, let's just do what Judge Frechette saying. We're home free." I would ask that you put that aside. You have your own counsel. I'm sure he would advise you correctly as to the law. One of the things I have, and I know your attorney's much more experienced than I am in some areas. Um I have a book. It's a compendium of land use law, put out a Connecticut practice series, and I would be happy to provide specific cites to your attorney.

Attorney Steven Kulas: But what it talks about is either special permits or special exceptions, and there's a ton of case law that says the commission cannot vary it's regulations when it grants special exceptions. Now maybe Judge Frechette disagreed with that, but this is a new application, and quite frankly, if I hadn't prevailed on another issue, we'll probably still be litigating that, because I feel very strongly that it's black letter law that you cannot vary your regu-regulations when granting a special exception.

Attorney Steven Kulas: And that's what this is, a modification with special exceptions under those, um, regulations that um, Commissioner Kerwin was referring to, and it requires the operation to be done in an enclosed building, the proposed, it's not an enclosed building. Very simple.

Attorney Steven Kulas: And I would refer to the discussion with Mr. Commissioner Kerwin, and it's not in your minutes, but it's on the audio. Back in February of 2021, Mr., or Commissioner Kerwin had a discussion with a grinding of asphalt single plant applicant up, I believe it was near the airport. And the applicant informed that commission at the time that everything from loading to the grinding to the piling of the materials after it was ground up would be in a totally enclosed building and that that building would comply with all

DEEP, all OSHA regulations for the health and safety of the persons operating them, so it can be done in a fully enclosed building and was presented to the commission.

Attorney Steven Kulas: I have some documents that I will submit further that shows it's being done at a plant in Norwalk, Connecticut even as we speak. Well, maybe not tonight, but during dep. Fully enclosed, it's what your regulations require, and you should apply them strictly because of the nature of the application.

Attorney Steven Kulas: Now I speak also to some of the conditions of revising special exceptions. Regarding special exceptions, including in Section 10.1.2, that the commission should consider the impact of the proposed use on traffic, including the impact on public roads for a high traffic generator involving... it, it, that goes on to three, existing and potential impact of both of the development upon daily traffic, peak hour traffic, adequacy of right of ways, traffic width, proposed traffic generated, and it goes on. You guys have your own regulations.

Attorney Steven Kulas: The light to the extent to which any sensitive environmental features are in the site maybe it's disturbed, what uh, commissioner shall be taking mitigation proposed and for its impact. The impact on proposed public services, etc. You are considering a rock crushing operation, not considering a contractor's yard, and in concerning our concerns about truck traffic, I have for you tonight a series of photos taken over a seven day period in which 155 trucks entered onto Nichols Road.

Attorney Steven Kulas: Mr. and Mrs. Werden are here to tell you the majority about all those trucks passed in front of their house. That's after the rock crushing operation was approved and was operating during the pendency of the appeal. Seven days, 155 trucks in addition to the regular traffic that's going to Nichols Road. I will submit this to your secretary. These pictures were taken and they're dated and time stamped, so I only [inaudible 00:39:04] have one copy.

Attorney Steven Kulas: Our other concern is about the environment. As part of this, um, court proceeding, Mr. Beard testified and motioned to dismiss, um, the applicant about the operation, of the crushing operation. He testified that he was a single person, and that he wasn't there at all times. He further testified that... he did not know what type of material was b-being brought in from the outside contractors for who [inaudible 00:39:58].

Attorney Steven Kulas: I will submit the transcript, and you can determine whether or not I'm saying it correctly. That was testimony taken under oath before a judge in a superior court. That's not my words. I also want to refer to you to a decision this commission had regarding some operations by Burns Construction since they were, uh, processing asphalt.

Attorney Steven Kulas: And Burns, a complaint was brought, so they were seeing the scope of a contractor's yard, and this commission ruled that because it wasn't sold to third parties, it wasn't operated, they were only processing their own materials, that met the definition of the contractor's yard. The work is contested by and verified [inaudible 00:41:11] and the pictures show as well the number of different companies that do not belong to the applicants that had been delivering, making use of their crushing facility.

Attorney Steven Kulas: They're not members of the contractor's yard. They do not own the contractor's yard. This operation is not being operated, or was not being operated as a contractor's yard. You're asked to modify the contractor's yard. I have a short list of 20 different companies, I'll submit that to the secretary, too.

Attorney Steven Kulas: Mr. **Commissioner Kerwin**, I don't have a copy of the audio for you, but you may recall better than I, since I wasn't at the meeting.

Commissioner Kerwin: What audio, Steve?

Attorney Kulas: That would be February, it was in February of 2021 regarding asphalt crushing and grinding taking place totally within an enclosed building. February 2, 2021, approximately...I don't have a time, but six minutes into that particular, um, recording, you'll hear your discussion with the-

Commissioner Kerwin: I actually recall that, and I, not that this is the place to quibble, but because you asked me on the record, I, was that actually an application for a contractor's yard or manufacturing and processing?

Attorney Kulas: It was-

Commissioner Kerwin: I think... I think the issue was not the application, we-we'll have to check, um, Ms. Pennell, but I believe the application wasn't for a contractor's yard but was for manufacturing.

Attorney Kulas: Yeah.

Commissioner Kerwin: And that, that was why, if everything is done inside, then it's-

Attorney Kulas: Right.

Commissioner Kerwin:...manufacturing.

Attorney Kulas: Wh-what I'm saying is the processing systems are similar, if not the same.

Commissioner Kerwin: Yeah, but-

Attorney Kulas: Whether they're done either manufacturing or part of a contractor's yard. And again, this is not a thing that operates as a contractor's yard when third parties are bringing materials. Contractor's yard is for a contractor. I also have a picture um, referred to a totally enclosed building in Norwalk. I have pictures from a newspaper article confirming that.

Attorney Kulas: And finally, um, uh, I can submit, there are several articles about the concerns that neighbors in other communities have about rock crushing operations. You know, it, I think it's very understandable that, in this type of community where there's a lot of small contractors, people who do relatively minor work may want to store materials, do minor crushing of materials they themselves remove from a job site that contractor's yards are recognized by this commission.

Attorney Kulas: But you're asked to modify a contractor's yard and turn it, into something else. That is not going in accordance with your regulations, nor is the fact that the building is not fully enclosed in accordance with your regulations, and that is required under our law because that's what your regulations require, and the nature of this application, which is a special exception.

I'll just submit these last three newspaper articles, and just say, I want to address one other thing. You know, you went around a little bit with the crematorium earlier, and I just said, "Well, it's in an industrial zone", and there's a comment from the people. One other person says business in the industrial zone, so what about the people who work there?

Attorney Kulas: Well, this may be part of the industrial park, whatever it is, there are still residents in the neighborhood. What about the people that live there? They did not give up their rights. They were grandfathered in. They have a right to quiet enjoyment of their property and to live as best they can in accordance with the regulations.

Attorney Kulas: For all those reasons, I ask that the application be denied. If you have any other specific questions, I'll be happy to address them. If not, I'll turn it over to Mr. and Mrs. Werden who probably can give more uh, information as to their own personal experiences. And see, one of the quick things we have before this... Are you raising your hand, sir?

Commissioner Kerwin: I, you had stopped talking, so I was gonna ask you a question.

Attorney Kulas: Sure, I'm sorry.

Commissioner Kerwin: And then as my hand went up, you started, so I didn't mean to interrupt you.

Attorney Kulas: No, that's fine. That-

Commissioner Kerwin: Okay. Come on, come on.

Attorney Kulas: Yeah, okay. Um... More judicial restraints than I'm accustomed to.

Commissioner Kerwin: Oh, yeah. I didn't mean to interrupt you.

Attorney Kulas: I-I-I'm sorry. I-I won't imply with that. Um, well, I-I, I really think this, this application, this is not in keeping with restrictions. Uh, regulative compliance with the regulations. It's not in keeping with the other considerations and granting a special exception. Um, look at the pictures. Look at the dust trailing from the trucks that's shown in the pictures. Half of the trucks in the seven (7) day period. If that's not an increase in traffic, I don't know what is. Yes, sir?

Commissioner Kerwin: Yes, uh. Attorney Kulas, Steve, we've known each other for 30 years. Um, can you tell me what the definition is of rock crushing under the new regs?

Attorney Kulas: I don't have that in front of me right now, but I think it's the processing of earth materials, and that is subsequent, subsequent, um...

Commissioner Kerwin: So under 2.18.8 there are two point-

Attorney Kulas: Earth or biological materials.

Commissioner Kerwin: Earth or biological materials processing, typically which involves the processing of earth and biological materials with or without the use of mechanical equipment, including without limitation, crushing, washing, sorting, screening, grinding, chipping, mulching, or otherwise processing earth or biological materials. So that's the amendment that was adopted on June of 2019.

Attorney Kulas: Right.

Commissioner Kerwin: So that's the new standard that...

Attorney Kulas: Right.

Commissioner Kerwin: ... the application has to comply with. And then a contractor's yard is just defined as property use for a storage of vehicles, construction or earth moving equipment, storage of earth or biological materials, and process and recycling of earth/biological materials. So obviously, that would relate, that's 2.14 small a. That would also relate to 2.18a. Uh, so... can you comment on the requirement that it only gets done under the new regulations that that processing activity is only done by the contractor themselves.

Attorney Kulas: Well-

Commissioner Kerwin:...and not for his own use? Is there, is there any limitation in the current regs that requires-

Attorney Kulas: I don't see-

Commissioner Kerwin:... that process to be done?

Attorney Kulas: I only see it in the current regs, and I do thank you for pointing this out. I do have a previous planning and zoning commission p-, ruling uh, complaint about what a contractor's yards, what a contractor's yard is determined to be, and that's truly the definition of contractor's yard. And I do have the minutes and the decision of the board at that time, and that involved [inaudible 00:48:45]-

Commissioner Kerwin: Can you please give us the date for that first?

Attorney Kulas: I-I have the minutes, but um, the dates are from 5/21/2016.

Commissioner Kerwin: So that's operating on a definition since amended in 2019.

Attorney Kulas: Not operated, the contractor's yard definition in so far as the more has not been amended.

Commissioner Kerwin: It has been.

Attorney Kulas: But I-

Commissioner Kerwin: The text.

Attorney Kulas: Again, I would, I would submit, even if you look at the regulations, it does not contemplate sale or retail operations that are used by third parties. It's done for a contractor's yard.

Commissioner Kerwin: Well, that's what it, so that was my question. You made that statement, but I don't see it in the regs, so I was asking you-

Attorney Kulas: No. It was in the regs back in 2016. It was an interpretation of the regs by the court.

Commissioner Kerwin: The, the regs that had been amended.

Attorney Kulas: Right, and I'm asking that if you feel that there's a change, it still should apply to what a contractor's yard is.

Commissioner Kerwin: There it is. Thank you, Steve, or Attorney Kulas.

Attorney Kulas: Actually, when you read the letter, you got Kulas right, and I appreciate that. I-it-it's a simple name, but most people...

Commission Secretary Olbrys: I grew up with a Stanley Kulas.

Attorney Kulas: Oh, okay. I see that. I appreciate it. Any other questions?

Attorney Kulas: All right, and if I may turn it over to Mr. and Mrs. Werden-

Chairman Cocchiarella: Yeah, this is now the audience can speak, so that's where we're at.

Steva Werden: Hello. Hello. Uh, Steva Werden, 110 Hawley Road. Um, so basically, we started this complaint five years ago.

Steva Werden: Five years ago, started September 11, 2017, and I'm not gonna be long winded here, because I know you've been through this for five years along with us, but my, my concerns are I just wanted to state a couple of the facts about what has been going on in the neighborhood since you gave the special, the modification of the special exception to, for him to crush.

Steva Werden: So basically, I gave you a notebook full of one week's worth of truck traffic that comes and goes all day long, and it has started in April when his season picks up, and then it ends, it had ended, it ends in the fall, basically, and he ha-, he has stopped since we, he got shut down by the courts. So along, along with the, along with the truck traffic, um, my concern is that if you were to give him this modification, basically what's not saying that he's going to double, triple, quadruple what he's done, because basically, you gave him the go ahead and it merely says he's the one man band over there, but there are multiple people working with him. There's gotta be.

Steva Werden: You, you're working loaders and screeners and, and opening gates, and he's got a truck driver, so if we, if you do give him this, where is it gonna lead to? Is he gonna get two, three more crushers? You know what I'm saying? What's the truck traffic going to be? Where are we gonna end with this? What's excessive for you guys? Because like I said, 150 trucks in a week, in, seven days is a lot of truck traffic.

Steva Werden: The other thing, the other thing is, like I said, we know we live in the zone, the industrial zone, and we're good with that and we understand we have to take the truck traffic, but not in excessiveness of this operation and where it could go. Since we've been doing this, it has increased. His, his operation has gotten bigger, so basically, what I would like to, you know, you to keep in force is just keep the regulations that you have about only crushing for site development and basically, the contractor's yard, not an open dump site for him to crush other people's materials that come from all over the state of Connecticut.

Steva Werden: They're not his materials. He's reprocessing them and reselling them, so and then again, like I said, Mr., M-Mr. Thomas said that, you know, we are in an industrial area, but if you look at where we all are, it's all residential. We have 22 residents, residential homes on Hawley Road, and there's only, there's only once, one contractor's yard across the street from us, and he only, i-if anything, he's a masonry department, and he only s-screens once in a while.

Steva Werden: So by, by saying that it, we're just this big industrial park, we're not. We, we're only, there's... like I said, it's more residential and you have like three or four subcontract, uh, contractor's yards, which two, uh, two of the contractor's yards, two, we all live there. People live there, and basically, the one across from Sinopoli, there's nobody living there. It's only one building.

Steva Werden: So when he says that it's in this industrial area, yes. We are in an industrial area, but it's a residential area most of the time. There's 22 houses compared three, three or four contractor's yards. So again, I would like to thank you for hearing me out, and again, I want you to remember that it's our safety, health, and quality of life a-and our house values that are at stake here. You, you have to look in the long run. I, I'm sure he's going to try to get bigger and better and have more crushers. That's what we're worried about down the line. Thanks.

Chairman Cocchiarella: Thank you. Is there anyone else?

Robert Werden: Yeah, Robert Werden, 110 Hawley Road. Um, just wanted to go back to what Dominick Thomas had said. This is probably 2020 meeting where he said that you can't um, crush in a total enclosed building. You would be arrested by OSHA if you did. So basically that was in 2020. I'm gonna hand this to Jessica, so you all have this to take, if you want, with you.

Robert Werden: This is a building in Norwalk, which my attorney had already said, that was approved in 2018. It was approved by OSHA. It's 20,000 square feet. They do everything totally inside this building. They crush, they hammer, they load, they do everything, and there's nothing getting emitted out. They said actually, they did a study. The air coming out of the building is cleaner than what we're breathing right in here. So if your regulations say it has to be inside a building, that's where it should be. So...

Chairman Cocchiarella: Thank you.

Robert Werden: Thank you.

Chairman Cocchiarella: [inaudible 00:55:49]

Commissioner Kerwin: It says, um...

Chairman Cocchiarella: Yeah. I just don't have a copy in front of me.

Commissioner Kerwin: Let's take line six. [inaudible 00:56:20]

Chairman Cocchiarella: What's that [inaudible 00:56:35]?

Commissioner Kerwin: It's uh, it's the new section, 14.7.6(a).

Chairman Cocchiarella: [inaudible 00:56:51]

Commissioner Kerwin: Yeah, this, this is, this is that section review. [inaudible 00:57:02]

Chairman Cocchiarella: If there's no one else in the public, we'll go back again. Attorney Thomas?

Attorney Thomas: Yeah. Uh, I'll ask the public to please-

Chairman Cocchiarella: Sorry for the wait.

Attorney Thomas: Starting with the enclosed building, what the uh, the, this commission as a commission has the right to interpret the way it's intended its own regulations. So at page seven of the, um, uh, despite Attorney Kulas's statement that you ignore the decision, uh, the decision is, it did establish some law as to uh, the points. And what it says in there is that, in the present case, the rock crushing is not completely within an enclosed building, and therefore, uh, the plaintiff alleges therefore, it does not comply with the regulations, and therefore, he argued that it, it uh, approving variants.

Attorney Thomas: Uh, in approving the application, however, this com-commission specifically conditioned to approval that all rock crushing activities be conducted within an enclosed building, specifically the special permit approval states that all rock crushing, in other words, that portion of the machine that crushes the rock is what we are talking about.

Attorney Thomas: It, the rock has to be put into something. Obviously, the, I don't know. I-I wasn't provided with any of the exhibits beforehand, but I'm sure the building in Norwalk may very well be a rock crushing operation. You're addressing this, which if it's the contracting ops who don't crush all the time. You have a crushing operation that operates as part of another contractor that operates basically in a large construction thing with the same thing.

Attorney Thomas: That's what you, that's what you had before you when you were doing your regulations, because I testified before you and pointed out. Your definition of an enclosed building is what you already had at the Guerrera site, one that operated that way. The crushing takes place, the crushing of it is enclosed on either side with two by, 2'x4' concrete blocks.

Attorney Thomas: So the court went on to say, "The approval states all rock crushing activities on perceptive properties shall be conducted solely within the concrete block structure enclosing the rock crushing machine. Any rock crushing machine would be operated on the property will be operated within solely within the aforementioned concrete block structure."

Attorney Thomas: He then quotes law from the perp, prosecutes planning and zoning commission case. "A zoning commission may, at its discretion, choose between disapproval or approval with conditions. In the present case, the commission chose to approve the application with conditions and accordingly did not grant a variance."

Attorney Thomas: You interpret your regulation to mean that this building, which you helped design was what you meant by the regulations. Okay? The fact that you can build a 20,000 or 30,000 square foot building that complies is irrelevant, because what you were doing is drafting a regulation for a contractor yard to operate a crusher where he is not operating the crusher five days a week or anything.

Attorney Thomas: In fact, my cl-, my client has... This is where he testified. There is very little activity if a, if any, between October, November and April or May. He uh, he does have, if you're crushing indoors and you're having a, a rock crushing outdoors, this is rock crushing in accordance with your definition in 2019. It, I found it very interesting that the Burns, uh, case from 2016 was cited, because I stood before you in the first application, before you changed the regulation, arguing that rock crushing, materials processing was from a contractor yard based on that same decision that the commission didn't agree with me at that point.

Attorney Thomas: And as Commissioner Kerwin said, the rock crushing that the Burns case was three years, three or four years before you changed the regulations. Therefore, it is irrelevant. Um, the comment by Mrs. Werden that, if you will prove this [inaudible 01:01:40]. Certainly, any contractor could come in right now and ask you for another crusher, but he's got to build another building. It, that's part of your regulation.

Attorney Thomas: You can't have, plus the fact that you would have the perfect right to say no. But the fact of the matter is, my client has no intention of doing that. What was very interesting about this, the uh, truck traffic that they showed in a seven day period. The Werdens are at the end of the street. They could've easily shown what it was like in a five month period. They picked the seven day period because my client got the contract to work on the Oxford airport, so those were trucks from other people, a lot of it from other contractors that he now has to hire because of the job he gets.

Attorney Thomas: So when he gets a job, because he's, so he has to hire other people to transport the material. So he got a job at Oxford airport. Before you approved... he's been here since 2012. Before you approved the changes to your regulation, he was a contractor's yard and they could've easily found many seven day periods when there was the same number of trucks if he was operating a large job. When he gets hired for other large jobs, he has to hire contractors. He's operating a contracting yard.

Attorney Thomas: Attorney Kulas wants you to speculate that those are other people using his, his, uh, jobs. You, you saw that the, look at the uh, uh, look at the uh, DEEP report on the dust. It, in that case, the person questioned my client as to his operation, and he explained how it's operation. Yes, there are seven-day periods when there are a lot of trucks, like the work from the airport. Then there is, there could be a 14-day period when there are none.

Attorney Thomas: But what he does do, to be a good citizen for the area, is he, he has agreed, he has started on his own sweeping the road, just to make sure there is no, uh, there is no problem. The crushing, you put conditions on it when you approved it. Before the appeal, you put the same conditions on it. But in fact, the, the, the Burns definition has absolutely no relationship to this, and the client has operated in accordance with your regulations.

Attorney Thomas: And the truck traffic, even before you approved the crushing, would be at the same level if he had a big job. It would go up, it would go down. This is compared to others that you have in Oxford, the amount of truck traffic is substantially less. It peaks over a period of time, and it goes down.

Attorney Thomas: Uh, the, I basically, I th-that, uh, uh, addresses it. I do believe without a doubt, he is a contract, contractor's yard who we're asking for the approval under the change in your regulations to operate and rock crush. There is no evidence of excess dust. He filed a complaint. DEEP rejected it. There is no evidence of excessive noise. As a matter of fact, because of the type of building you have, enclosing the crushing operation, the decibel level is very low.

Attorney Thomas: And I will conclude with this: where you see that picture that I took of the crusher operating, I was standing next to your zoning enforcement officer having a conversation, and we could hear each other very well. And I wasn't talking in my usual loud voice. Thank you. And, oh, excuse me. Do you have any questions for me?

Chairman Cocchiarella: Okay. Anyone on the commission have any questions?

Commissioners: No.

Chairman Cocchiarella: Anyone? Okay.

Attorney Kulas: Just briefly Chairman Cocchiarella, in response, I don't know why we keep going back to Judge Frechette's decision as far back as it is. H-he's a superior court judge. Superior court judge is where the ruling is very binding on the instant case before him, has some guidance of other superior court judges, but they certainly are not binding law on this commission and so forth. And I said before, I disagree with that ruling, but why spend money when I won on another issue?

Attorney Kulas: Um, I would also like to tell you that, even the regulations on reference, it was the interpretation of the regulations, not the letter of the regulations themselves, and I think that typically, the commission can interpret the new contractor's yards definition to limit to non-third party participation only to the contractors.

Attorney Kulas: As far as having you speculate, I'll let you determine the names of the trucks and what, if any, relationship that, that are shown in the picture are to Mr. Beard or TPC contractors. Um, you know, and if you didn't have the rock contractor and you had that airport job, all those 155 trucks in a week would be going out of town. Think about that.

Attorney Kulas: Finally, I'd like to request that this hearing be held over and we have a site visit in the presence of my clients as well as the commission. Thank you.

Chairman Cocchiarella: Um, just you know, uh, this isn't a courtroom. Attorney Kulas is speaking as a member of the audience.

Attorney Kulas: I'm also representing my clients.

Chairman Cocchiarella: He's representing the client, but at the same time, this isn't a courtroom.

Attorney Kulas: Understood.

Chairman Cocchiarella: Okay? We're considering the application.

Attorney Kulas: That's why I didn't want to go into the court case.

Chairman Cocchiarella: Thank you.

Attorney Kulas: Thank you.

Chairman Cocchiarella: Back to the applicant please.

Attorney Thomas: Get to go, right. Uh-

Chairman Cocchiarella: You get to go last.

Attorney Thomas: Yeah, yeah. Uh, I just, with respect to the issue of keeping the hearing open, there's no reason to keep the hearing open, and I do want to point out, in Fuller, the, the book [inaudible], in Fuller, it clearly states that somebody opposing an application have a neighbor or someone within right, someone who is statutorily aggrieved, which he is not. It's classically agreed, has no absolute right to demand a site visit or to visit the, uh, site. There is no right to do that.

Attorney Thomas: And I don't see any reason why to visit the site. We, we have addressed the noise. We have addressed the, the uh, dust issue. The comment that I made about the trucks is that my client hired the trucks. There is no evidence they were contracted.

Attorney Thomas: The reason I quoted the case, I think, is because a judge did address it, and I would conclude with this: I'm gonna agree with Attorney Kulas on a point, the 2016 decision in Burns was this commission acting to interpret this regulation. The decision of this commission to determine that the building that my client had to build to enclose that portion of the rock crusher that operates complies with the regulation is an interpretation of this commission directly interpreted what it meant. Thank you.

Chairman Cocchiarella: All right, uh, what is the, um... does the commission want to keep this open, or do I have a motion to close it, or a motion to recess? What's the commissions....

Commission Secretary Olbrys: For what purpose to recess versus closing it?

Chairman Cocchiarella: Do we have anymore information that we need to take in? What's the benefit of keeping it open?

Attorney McSherry: I think one of the questions that was tossed out was d-did the commission want to do a site walk? That, that was tossed out there, and, and I think you should just dis-discuss that issue. You don't, you don't have to take a site walk. It's up to the commission.

Chairman Cocchiarella: I'm, you know, um... I don't, I don't think that there's any more information that we're gonna get that's gonna be new and different, is my personal, now that, that's my stand on this, I think. But if other people disagree, then we'll take a vote.

Commission Secretary Olbrys: So even if we did a site walk, I don't have a sound reader to read the decibel levels, so it'd be just me observing the operation and whether or not it's in full working, you know-

Chairman Cocchiarella: This thing-

Commission Secretary Olbrys: I don't know.

Chairman Cocchiarella: -is not even operating.

Commission Secretary Olbrys: Yeah, so I, I don't personally feel that we need to, to go visit the site.

Commissioner Kerwin: I've seen contractor's yards before. I don't think that you can get anything pertinent to this application. I think the only issue that, that, as it relates to the motion of recess or not is, are we gonna get anymore information? Is there anything that we need? Are we submitting this to anyone else?

Chairman Cocchiarella: I already-

Attorney Kulas: E-excuse me, can you just speak up? We're a little bit far away.

Chairman Cocchiarella: Sorry. Um...

Attorney Kulas: Thank you.

Commissioner Zbras: [inaudible 01:11:13] about the rock crusher noise. Anything else?

Chairman Cocchiarella: No, there was a, you know, a sound engineer has already submitted his report. We're not gonna hire another sound engineer, so I don't know.

Commission Secretary Olbrys: I'm open to closing the public hearing.

Commissioner Kerwin: Make a motion.

Commission Secretary Olbrys: I'll make a motion to close the public hearing.

Chairman Cocchiarella: Okay.

Commissioner Zbras: Second.

Chairman Cocchiarella: All in favor?

Commissioners: Aye.

Chairman Cocchiarella: Opposed? Abstained, motion carries.

Chairman Cocchiarella: We, um, let's see. I have something I have to read. Um... Okay, "The commission now has 65 days from the close of the public hearing in which to render a decision on the application. The time limit during the public hearing may be extended, provided the total extensions do not exceed 65 days. Once the public hearing is closed, no further and or new information will be accepted. The commission's final decision on the application will occur at a regularly scheduled meeting up to 65 days from the close of the public hearing."

VI. Regular Meeting Business

- A. Amendments to the Agenda – None
- B. Audience of Citizens – (Items not listed on the Agenda) – None
- C. Correspondence – None
- D. Old Business – Matters on which a Public Hearing was held

1. **Z-22-180 [IND] – Proposed Text Amendment to the Industrial Zone** – Owner: 8 Pheasant Run, LLC, c/o Mark Oczkowski, 4 Woodruff Hill Road Applicant: Vesta Modular c/o Robert Sizemore, 1000 Town Center Suite 975, Southfield, MI [*Proposed zoning regulation text amendments: addition of Article 2, Section 2.13a and addition of Article 9, Section 9.3.23*]

MOTION BY Commissioner Zbras to deny this application.

Second by Commission Secretary Olbrys.

DISCUSSION:

Commissioners discussed that this text amendment would open up the industrial area to other types of storage areas for containers.

Attorney McSherry noted that he did revise the language of the text amendment.

Commission Secretary Olbrys read the revised text amendment.

Chairman Cocchiarella asked if the Commission wanted to amend the motion to add the new language.

Commissioner Zbras accepted the amended language.

Commission Secretary Olbrys seconded the amended language.

Vote on amended language.

All (6) Ayes.

Motion passed unanimously.

Chairman Cocchiarella stated that the Commission is now discussing the text amendment with the added language.

The Commission discussed the text amendment with the amended language.

Chairman Cocchiarella stated that the Commission has a motion on the floor to deny the text amendment as amended.

Commission Secretary Olbrys questioned if they deny the this text amendment if it reverts back to something or is it a new text amendment.

Attorney McSherry stated that this would be the amendment the Commission is making to what the applicant proposed. He stated it would be considered the new version of the text.

Attorney McSherry stated that the original language proposed by the applicant is what is in front of the Commission right now. He stated that the amendment has not been acted on by the Commission. He noted that from a procedural standpoint the amendment would have to be acted on and defeated or

withdrawn by the mover and the second, and then you could make a motion to accept the amended language.

Commissioner Kerwin asked for a point of order from the Chairman.

Commissioners discussed what text language they are denying; the original language submitted by the applicant or the revised language submitted by Attorney McSherry.

Attorney McSherry read the original language as proposed. The new language that has been read is not in front of the Commission is not in front of the Commission right now.

Chairman Cocchiarella stated that the question before the Commission right now is does the Commission want to deny the old language and replace it with the new language. He then stated that the Commission would then either approve or deny the new language.

Commissioner Zbras moved to deny the original text amendment.

Attorney McSherry read the text amendment that Commissioner Zbras moved to deny.

Second by Commission Secretary Olbrys.

Deny (4), Abstentions (2) – Commissioner Kerwin, Commissioner Rowland.

Motion to deny passes.

Attorney McSherry stated that now the Commission can consider the revised text amendment language.

Commission Secretary Olbrys read the revised text amendment.

Commissioner Zbras moved to deny the revised text amendment.

Second by Commission Secretary Olbrys.

Commissioners discussed the revised text amendment briefly.

Ayes (4), Abstentions (2) Commissioner Rowland, Commissioner Kerwin.

Attorney McSherry stated that you have a motion to deny on the table, and asked if the Commission is voting in favor of the motion or against the motion. He suggested that the Chairman recanvas the Commission.

Motion by Commission Secretary Olbrys to deny the revised text amendment.

Second by Commissioner Zbras.

Ayes (4), Abstentions (2) – Commissioner Rowland, Commissioner Kerwin.

Motion to deny passed.

2. **Z-22-181 (a) Z-22-181 (b) – [IND] – 8 Pheasant Run Road – Owner:** 8 Pheasant Run, LLC, c/o Mark Oczkowski 4 Woodruff Hill Road – **Applicant:** Vesta Modular c/o Robert Sizemore, 1000 Town Center Suite 975, Southfield, MI [*Site Plan – Construct 5,000+sq.ft. building (Special Exception – Use – Article 9, Section 9.3.23]*

MOTION BY Commissioner Zbras to deny this application because it does not comply with the Town of Oxford Zoning Regulations.

Second by Commissioner Carr.

Ayes (4), Abstentions (2) – Commissioner Rowland, Commissioner Kerwin.

Motion to deny passed.

3. Z-22-131 [RESA] – 266 Maple Tree Hill Road – Map: 5 Block: 43 Lot: 1 A –

Owner & Applicant: Tom Loring, 266 Maple Tree Hill Road, Oxford [*Special Exception – Construct a 4,752 sq. ft. Barn - Special Exception – Boarding of Horses - Special Exception – Construct a 17,136 sq. ft. Indoor Riding Rink*]

Attorney McSherry explained the four (4) motions that he has prepared for these applications.

Z-22-131- Special Exceptions – {a} {b} {c}:

PROPERTY INFORMATION:/

Applicant/ Owner: Tom Loring

Address: 266 Maple Tree Hill Road

Map: 5 Block: 43 Lot: 1A

Applications:

- a. Special Exception – Construct a 4752 square foot barn
- b. Special Exception – Boarding of horses
- c. Special Exception – Construct the 17,136 square foot indoor riding rink
- d. Site Plan

SITE PLAN APPROVAL:

MOTION BY Commission Secretary Olbrys to approve the last revised site plan with the following conditions of approval:

1. Compliance with all Town of Oxford regulations and ordinances in effect as of this date.
2. The applicant will be required to pay all costs of special consultants or studies as deemed necessary by the Commission at any time during the period from the initial review through inspection and final acceptance of any improvement.
3. The applicant and its/his assigns must comply with all representations made at the Planning and Zoning Commission meetings or at public hearings regarding this application period
4. The specific uses on this property shall be limited to those designated within the Statement of Use submitted by the applicant.
5. The applicant shall comply with all requirements of the Fire Marshal.
6. The applicant shall obtain all necessary licensing and permits as may be required by other agencies.
7. Site plan approval expires if the work has not completed within five years from the date of approval.
8. Sedimentation and erosion control measures on site shall be maintained in compliance with the proposed site plan and current guidelines, subject to field review by the commission's engineer.

9. The applicant shall have a preconstruction meeting with appropriate town staff prior to any construction activities.
10. The applicant show submit one copy of the set of plans which reflect these conditions of approval, with a copy of the conditions of approval attached.
11. No work shall be done until a bond is set by the Planning and Zoning commission's engineer in a form acceptable to Town Counsel or Land Use Counsel.

Second by Commissioner Carr.

Ayes (5), Abstentions (1), Commissioner Kerwin.

Motion to approve the site plan passed.

Commissioner Kerwin left the meeting at 10:13 PM.

Supporting Documentation:

The Following information and documentation was submitted for the consideration of the Planning and Zoning Commission regarding these applications:

- 1.) Complete Application.
- 2.) Project Narrative and Statement of Use
- 3.) OCCIWA Approval dated 6/28/22.
- 4.) Proposed Barn Plan/Survey dated 5/18/2022.
- 4.) Letter dated 10/27/2022 from Jim Galligan, P&Z Engineer.
- 5.) Letter dated 10/10/2022 Jim Galligan, P&Z Engineer.

The Commission conducted Public Hearings on the applications on October 18, 2022 and November 15, 2022.

Commission Secretary Olbrys read the following findings:

1. The proposed use will not be detrimental to the health, safety, welfare, and property values in the neighborhood.
2. The site is suitably landscaped and the design and setbacks of buildings and other structures are adequate to protect property and preserve the appearance and character of the neighborhood.
3. The proposed use, buildings, and other structures are adequate to carry the potential traffic and that provision is made for entering and leaving the site in such a manner that no traffic hazards will be created and that adequate off-street parking and loading facilities will be provided.
4. The land in which the use, building, or other structure is of adequate dimensions to conduct the use in such a manner that it will not be detrimental to adjoining property in the neighborhood.

Commission Secretary Olbrys stated that the standard conditions of approval have already been read and they apply to the following three (3) motions along with the findings.

SPECIAL EXCEPTION – 4,752 sq. ft. Barn APPROVAL

MOTION BY Commission Secretary Olbrys to approve the Special Exception to construct a 4,752 square foot barn with the following conditions of approval:

1. Compliance with all Town of Oxford regulations and ordinances in effect as of this date.
2. The applicant will be required to pay all costs of special consultants or studies as deemed necessary by the Commission at any time during the period from the initial review through inspection and final acceptance of any improvement.
3. The applicant and its/his assigns must comply with all representations made at the Planning and Zoning Commission meetings or at public hearings regarding this application period.
4. The specific uses on this property shall be limited to those designated within the Statement of Use submitted by the applicant.
5. The applicant shall comply with all requirements of the Fire Marshal.
6. The applicant shall obtain all necessary licensing and permits as may be required by other agencies.
7. Site plan approval expires if the work has not completed within five years from the date of approval.
8. Sedimentation and erosion control measures on site shall be maintained in compliance with the proposed site plan and current guidelines, subject to field review by the commission's engineer.
9. The applicant shall have a preconstruction meeting with appropriate town staff prior to any construction activities.
10. The applicant show submit one copy of the set of plans, which reflect these conditions of approval, with a copy of the conditions of approval attached.
11. No work shall be done until a bond is set by the Planning and Zoning commission's engineer in a form acceptable to Town Counsel or Land Use Counsel.

Second by Commissioner Rowland.

All (5) Ayes.

Motion passed unanimously.

SPECIAL EXCEPTION – Boarding of Horses

MOTION BY Commission Secretary Olbrys to approve the Special Exception for boarding of horses.

The Commission makes the following findings:

1. The proposed use will not be detrimental to the health, safety, welfare, and property values in the neighborhood.

2. The site is suitably landscaped and the design and setbacks of buildings and other structures are adequate to protect property and preserve the appearance and character of the neighborhood.
3. The proposed use, buildings, and other structures are adequate to carry the potential traffic and that provision is made for entering and leaving the site in such a manner that no traffic hazards will be created and that adequate off-street parking and loading facilities will be provided.
4. The land in which the use, building, or other structure is of adequate dimensions to conduct the use in such a manner that it will not be detrimental to adjoining property in the neighborhood

Conditions of approval:

1. Compliance with all Town of Oxford regulations and ordinances in effect as of this date.
2. The applicant will be required to pay all costs of special consultants or studies as deemed necessary by the Commission at any time during the period from the initial review through inspection and final acceptance of any improvement.
3. The applicant and its/his assigns must comply with all representations made at the Planning and Zoning Commission meetings or at public hearings regarding this application period.
4. The specific uses on this property shall be limited to those designated within the Statement of Use submitted by the applicant.
5. The applicant shall comply with all requirements set forth in the Fire Marshal's letter.
6. The applicant shall obtain all necessary licensing and permits as may be required by other agencies.
7. Site plan approval expires if the work has not completed within five years from the date of approval.
8. Sedimentation and erosion control measures on site shall be maintained in compliance with the proposed site plan and current guidelines, subject to field review by the commission's engineer.
9. The applicant shall have a preconstruction meeting with appropriate town staff prior to any construction activities.
10. The applicant show submit one copy of the set of plans, which reflect these conditions of approval, with a copy of the conditions of approval attached.
11. No work shall be done until a bond is set by the Planning and Zoning commission's engineer in a form acceptable to Town Counsel or Land Use Counsel

Second by Commissioner Rowland.

All (5) Ayes.

Motion passed unanimously.

SPECIAL EXCEPTION – Construct a 17,136 sq. ft. Indoor Riding Facility

Motion by Commission Secretary Olbrys to approve the Special Exception for the construction of a 17,136 sq. ft. indoor riding facility.

The Commission makes the following findings:

1. The proposed use will not be detrimental to the health, safety, welfare, and property values in the neighborhood.
2. The site is suitably landscaped and the design and setbacks of buildings and other structures are adequate to protect property and preserve the appearance and character of the neighborhood.
3. The proposed use, buildings, and other structures are adequate to carry the potential traffic and that provision is made for entering and leaving the site in such a manner that no traffic hazards will be created and that adequate off-street parking and loading facilities will be provided.
4. The land in which the use, building, or other structure is of adequate dimensions to conduct the use in such a manner that it will not be detrimental to adjoining property in the neighborhood.

Conditions of approval:

1. Compliance with all Town of Oxford regulations and ordinances in effect as of this date.
2. The applicant will be required to pay all costs of special consultants or studies as deemed necessary by the Commission at any time during the period from the initial review through inspection and final acceptance of any improvement.
3. The applicant and its/his assigns must comply with all representations made at the Planning and Zoning Commission meetings or at public hearings regarding this application period.
4. The specific uses on this property shall be limited to those designated within the Statement of Use submitted by the applicant.
5. The applicant shall comply with all requirements set forth in the Fire Marshal's letter.
6. The applicant shall obtain all necessary licensing and permits as may be required by other agencies.
7. Site plan approval expires if the work has not completed within five years from the date of approval.
8. Sedimentation and erosion control measures on site shall be maintained in compliance with the proposed site plan and current guidelines, subject to field review by the commission's engineer.
9. The applicant shall have a preconstruction meeting with appropriate town staff prior to any construction activities.

10. The applicant show submit one copy of the set of plans, which reflect these conditions of approval, with a copy of the conditions of approval attached.
11. No work shall be done until a bond is set by the Planning and Zoning commission's engineer in a form acceptable to Town Counsel or Land Use Counsel

Second by Commissioner Carr.

All (5) Ayes.

Motion passed unanimously.

E. Old Business – Other Matters - None

F. New Business

1. **Z-22-200 [IND] –21 East Commerce Drive - (Lot 17 Woodruff Hill Industrial Park) –**
Owner & Applicant: 589 Investments, LLC, 29-1 Highland Road, Oxford, CT
[Major Re-grading +/- 8,200 cubic yards - Article 14, Section 14.1.2; 14.1.5 (C) & (D); and 14.2.3, Section (o)] – (Refer to Jim Galligan)

The Commission requested that staff send this to Jim Galligan, P&Z Engineer.

H. Zoning Enforcement

1. Approved Use Permits:

- a. Z-22-198 – 144 Oxford Road – Eagle Smoke and Snack Shop

Steve Macary, ZEO explained the use at this location.

Chairman Cocchiarella asked that Steve make sure that there is no smoking room, and that there is no sale of special edible candies.

- b. Z-22-199 – 315 Center Rock Green, Suite 9 – Priva Medspa (Quarry Walk – previously Viso Bello)

Steve Macary, ZEO explained that this business is going into a space that was previously occupied by Viso Bello.

2. Complaints/Enforcement – Items for Discussion by ZEO/Inquiries from Commission

Steve Macary, ZEO noted that the package store that went into Tommy K's plaza has many items that are obstructing the windows and that he will be asking them to remove the obstructions.

Steve Macary, ZEO also discussed Prokop Road and the excavation that was taking place there. He stated that he charged him fees for the excavation.

Commissioner Zbras mentioned a possible violation at the dry cleaner across from Quarry Walk.

Steve Macary, ZEO also mentioned the property across from Rich's farm; the owner clear cut the property. He noted that a meeting was held and that the owner will be stabilizing the property.

I. Minutes:

MOTION BY Commission Secretary Olbrys to approve the Items 1-3 as presented:

1. Public Hearing Minutes:

- a. **11/1/22 & 11/15/22: Planning & Zoning Commission Public Hearing** to opt-out of the **Accessory Apartment Requirements** as outlined in Public Act No. 21-29.
- b. **11/15/22: Planning & Zoning Commission Public Hearing** to opt-out of the **Parking Requirements** as outlined in Public Act No. 21-29
- c. **11/1/22: Z-22-180 [IND] – Proposed Text Amendment to the Industrial Zone** – **Owner:** 8 Pheasant Run, LLC, c/o Mark Oczkowski, 4 Woodruff Hill Road **Applicant:** Vesta Modular c/o Robert Sizemore, 1000 Town Center Suite 975, Southfield, MI (*Proposed zoning regulation text amendments: addition of Article 2, Section 2.13a and addition of Article 9, Section 9.3.23*)
- d. **11/1/22 & 11/15/22: Z-22-181 (a) Z-22-181 (b) – [IND] – 8 Pheasant Run Road** – **Owner:** 8 Pheasant Run, LLC, c/o Mark Oczkowski 4 Woodruff Hill Road – **Applicant:** Vesta Modular c/o Robert Sizemore, 1000 Town Center Suite 975, Southfield, MI (*Site Plan – Construct 5,000+sq.ft. building*) (*Special Exception – Use – Article 9, Section 9.3.23*)
- e. **11/1/22: Z-22-182 (a) Z-22-182 (b) – [IND] – 13 E. Commerce Drive (Lot 14 Woodruff Hill Industrial Park)** – **Owner:** Town of Oxford, 486 Oxford Road, Oxford – **Applicant:** Airamid, LLC c/o William Kennedy and/or Tiana DiMaria, 511 Brook Street, Rocky Hill, CT (*Site Plan – Construct 5,332 sq.ft. building*) (*Special Exception – Article 9, Section 9.3.10*)
- f. **11/1/22: Z-22-129 [RESA] – 228 Quaker Farms Road** – **Map:** 22 **Block:** 69 **Lot:** 34 – **Owner & Applicant:** Rhode Island Lights, Inc. c/o Attorney Dominick Thomas, 315 Main Street, Derby, CT (*4-Lot Subdivision*)

2. 11/1/2022 Regular Meeting Minutes

3. 11/15/2022 Regular Meeting Minutes

Second by Commissioner Carr.

All (5) Ayes.

Motion passed unanimously.

J. Invoices

MOTION BY Commission Secretary Olbrys to approve the following invoice:

1. Nafis & Young Invoice #250-22 for Vesta Modular – Review & Report

Second by Commissioner Carr.

All (5) Ayes.

Motion passed unanimously.

K. Other Business

- a. Farm Events Ad-Hoc Committee (Possible update on 12/6/22)

Commissioner Zbras noted that Attorney McSherry is working on the draft regulations.

Attorney McSherry stated that the regulations should be completed in January.

b. Any other items the Commission deems necessary for discussion.

The Commission canceled the December 20, 2022 Regular Meeting.

L. Adjournment

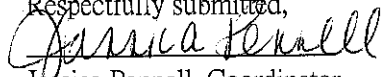
MOTION BY Commission Secretary Olbrys to adjourn the meeting at 10:25 PM.

Second by Commissioner Rowland.


All (5) Ayes.

Motion passed unanimously.

Respectfully submitted,


Jessica Pennell, Coordinator

Planning & Zoning Commission

2023 JAN -5 PM 3:39
TOWN OF OXFORD, CT

TOWN CLERK

CJE Environmental LLC

65 Jacobs Hill Road
Mansfield Center, CT 06250
860-966-1971
cjeenvironmental@gmail.com

RECEIVED
2/2/23
PH

Air Emissions Summary – Airamid, LLC

The following is a summary has been prepared for the December 6, 2022 Oxford Planning & Zoning Meeting:

1. Crematories are regulated by the Connecticut Department of Energy and Environmental Protection (DEEP). Crematories installed/constructed after June 1, 2009 are required to obtain air permits issued by the DEEP prior to construction.
2. DEEP has the most stringent air emissions regulations for crematories in the US. These regulations are based on very conservative assumptions about health risk and exposure.
3. Airamid has submitted applications to the DEEP to construct and operate the crematory in Oxford, CT. The applications demonstrate that the proposed Airamid Crematory will be in compliance with State Air Emission regulations when operational. The DEEP has deemed the applications to be administratively complete.
4. Airamid is installing state-of-art cremation incinerators at the facility; the units will be manufactured by Mathews Environmental Solutions, a leader in crematory technologies.
5. The crematory will be fueled using natural gas, a much cleaner combustion source than fuel oil.
6. The permits issued by DEEP will include a limit on the number of cremations that can be performed and amount of natural gas that can be used by the facility.
7. As a condition of the permits, the cremation units will be equipped with the following equipment to monitor, control, and minimize air emissions:
 - a. A continuous fuel consumption monitor including a non-resettable totalizing fuel meter
 - b. A scale to monitor the weight of each charge loaded into the crematory
 - c. A continuous secondary combustion chamber temperature monitor
 - d. An electronic exhaust scanner system which initiates audible and visible alarms if the opacity of the exhaust gas downstream of the secondary chamber reaches 5% as measured by the scanner system
8. Airamid will be required to maintain operating records to demonstrate compliance with the air permits. The records will include but not be limited to:
 - a. Continuous monitoring of the secondary combustion chamber temperature
 - b. Number of cremations performed
 - c. Monthly/annual fuel consumption
 - d. Monthly/annual emissions as well as opacity measurements
 - e. Activation of the opacity alarm in the event that it exceeds the 5% threshold
 - f. Calibration and maintenance performed in accordance with the manufacturer's specifications
 - g. Operator training
9. Airamid will be subject to periodic inspections by the DEEP. These inspections will be performed to confirm that Airamid is complying with the conditions of the permits and the Connecticut Air Emission Regulations.
10. In addition to the DEEP air applications, Airamid will be submitting an "Application for Approval of Crematory" to the Department of Health.