



TOWN OF OXFORD
S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
(P) 203.888.2543 (F) 203.888.4543
www.Oxford-CT.gov

Planning & Zoning Commission

Regular Meeting Minutes

Tuesday, May 3, 2016

7:30 PM

Oxford Town Hall

Main Meeting Room

CALL TO ORDER

Chairman Arnie Jensen called the meeting to order at 7:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Pete Zbras, Harold Cosgrove, Glen Persson, Arnie Jensen, Pat Cocchiarella, Todd Romagna and Bob Costigan.
Tanya Carver arrived at 7:36 PM.

Not Present: Jeff Luff and John Kerwin.

Staff Present: Steven S. Macary, ZEO, Jessica Pennell, Administrative Secretary, Land Use Counsel, Peter Olson and Brian J. Miller, Town Planner.

CHAIRMAN'S REPORT

SEATING OF ALTERNATES

Chairman Arnie Jensen seated Alternate Commissioner Pete Zbras.

AMENDMENTS TO THE AGENDA

AUDIENCE OF CITIZENS

CORRESPONDENCE

Commission Secretary Pat Cocchiarella noted the following correspondence for the record and stated that it is in file in the Planning & Zoning Department.

- a. CFPZA Newsletter – Spring 2016

OLD BUSINESS

NEW BUSINESS

1. **Z-16-028 – Oxford Greens Phase 4 East – Owner & Applicant: Timberlake Investment Partners IV, LLC** (Site Plan Modification)

- a. Application Z-16-028 received on 4/27/2016.
- b. Letter from Christopher J. Smith, Shipman & Goodwin dated 4/26/2016.
- c. Plans dated 3/31/2016 prepared by TPA Design Group.

Commission Secretary Pat Cocchiarella read a letter dated 4/26/16 from Christopher J. Smith.

Commission Secretary Pat Cocchiarella read a letter dated 5/3/16 from James H. Galligan, PZC Engineer.

Commission Secretary Pat Cocchiarella read a memorandum dated 5/3/16 from Brian J. Miller, Town Planner.

MOTION BY Commissioner Harold Cosgrove to refer **Z-16-028** to the James H. Galligan, PZC Engineer and Brian J. Miller, Town Planner for review.

Second by Commission Secretary Pat Cocchiarella. VOTE: All (7) Ayes.

2. **Z-16-029 – Oxford Greens Phase 4 East – Owner & Applicant: Timberlake Investment Partners IV, LLC** (Site Plan)

- a. Application Z-16-029 received on 4/27/2016.
- b. Plans dated 3/31/2016 prepared by TPA Design Group.

MOTION BY Commissioner Harold Cosgrove to refer **Z-16-029** to the James H. Galligan, PZC Engineer and Brian J. Miller, Town Planner for review.

Second by Commission Secretary Pat Cocchiarella. VOTE: All (7) Ayes.

3. **Z-16-030 – 300 Oxford Road, Oxford Towne Center (Quarry Walk) – Phase 1A – Owner & Applicant: Oxford Towne Center, LLC** (Site Plan Modification)

- a. Application Z-16-030 received on 4/28/2016.
- b. Plan dated 4/28/2016 prepared by Langan.

MOTION BY Commissioner Harold Cosgrove to table this item until the end of the meeting.

Second by Commissioner Glen Persson. VOTE: All (7) Ayes.

BOND RELEASES

ZONING ENFORCEMENT

1. **16 North Larkey Road, Zoning Complaints** filed by Susan Kasmin and Attorney Fran Teodosio (on her behalf).

Chairman Arnie Jensen stated that the Commission has referred this to Attorney Olson.

Land Use Counsel, Peter Olson stated that the Commission asked that he advise them how to handle these complaints procedurally and he prepared a letter and sent it to the Commission, it should be in the packets.

Attorney Peter Olson: I'm concerned about two (2) procedural issues the first is that the zoning regulations vest enforcement authority in the Commission, in the Zoning Enforcement Officer, in the Planner, in certain other individuals designated by the Commission, certain Commission members and he thinks it is important that there be one (1) authority to review these complaints. He stated that is the first piece of advice in his letter. He stated that he has drafted a motion for Arnie to read that essentially the Commission is assuming authority over the complaints and no one else gets act on them, period. He stated that the second procedural issue is that the complaints have come in a variety of formats, letters, emails, formal complaint forms, to a variety of different offices and individuals and in order to make sure that all complaints are dealt with, that there is not some extraneous complaint that hasn't been resolved he thinks it is important for the Commission to assume that it is handling everything. He stated that includes, the allegation of the complaints are that the violations are ongoing, so there is no need for the complainant to continually submit everyday it is happening again, the Commission is dealing with the issue as an ongoing violation question. The three (3) items on the agenda are as best I can summarize the three (3) complaints and we should ask the attorney handling it to confirm that once he's made his presentation. That's that, there is one bit of procedure that he negligently omitted from my letter, and that's that after the property owner is given an opportunity to present, the complainants attorney should have an opportunity to respond before moving on in the order. With that I'll turn it back, and I did prepare a motion that the secretary has.

Commission Secretary Pat Cocchiarella: I move that the Planning & Zoning Commission assume authority over all zoning complaints filed to date concerning the property located at 16 North Larkey Road, in whatever form and to whatever board or commission, or member thereof, or other town official including the Zoning Enforcement Officer, such complaints have been made. All authority concerning enforcement issues related to the Property as set forth in Articles 19 and 20 of the Zoning Regulations shall be assumed by the Commission, and no other official or individual shall take any enforcement action or be considered to have failed to take enforcement action concerning these complaints.

Commissioner Harold Cosgrove:

Second.

Chairman Arnie Jensen:

All in favor? Discussion? Hearing none, all in favor?

Commission Members: Aye.

Chairman Arnie Jensen:

Opposed? Abstained?

Attorney Olson: And then one (1) other thing, the process laid out in my letter is for the Commission to conduct a hearing on the complaints, this is not a “quote” public hearing, as such would be defined in the statutes subject to various timing requirements, but I do suggest that the Commission hear from the public as part of the hearing.

Chairman Arnie Jensen: So I’m just gonna finish reading what is on the agenda, and I think it kind of summarizes the complaints to date. The Commission will hold a hearing on all complaints related to the Property, alleging ongoing violations in regards to the following:

1. That the use of the Property for “asphalt processing” has not been approved by the Commission;
2. That areas of the Property are being used for parking in violation of the requirements of Regulations § 3.15.1 and § 3.24, and prior Commission decisions and approvals; and
3. That areas of the Property are being used for storage, in violation of the buffer requirements of the Regulations § 3.15.1, and prior Commission decisions and approvals.

The hearing may continue on additional dates, after which the Commission will decide whether and how to act on the complaints under Articles 19 and 20 of the Regulations. Members of the public are invited to attend and comment.

There is one (1) other thing that we didn’t include here, and that is that there are two (2) other complaints of odor violation, that I think since it is on the same property should be included along with everything else that we are going to consider. So, I think that we will start with the complainant to present complaints and evidence.

Attorney Fran Teodosio: Thank you Mr. Chairman, my name is Francis Teodosio, business address 481 Oxford Road and I’m here this evening representing my client Ms. Sue Kasmin who lives to the south of 16 North Larkey Road. Before I start the substantive presentation, I have some procedural questions given what you have just been told and I am asking the Chair but perhaps you can defer to your attorney. You are acting as the Zoning Enforcement entity this evening is that correct?

Chairman Arnie Jensen: Yes.

Attorney Fran Teodosio: Is that in a ministerial capacity?

Attorney Peter Olson: Did you say ministerial or do you mean administerial? Which word?

Attorney Fran Teodosio: Administrative.

Attorney Peter Olson: Administrative capacity, I agree with that.

Attorney Fran Teodosio: Would you explain to the board what that means.

Attorney Peter Olson: The question is I guess you are asking me, are you asking me to distinguish between administrative capacity and legislative capacity?

Attorney Fran Teodosio: And the discretion that goes along with it.

Attorney Peter Olson: I'm not comfortable doing that off the cuff.

Attorney Fran Teodosio: The second procedural question I have is, if they are acting in the Zoning Enforcement capacity, the Zoning Board of Appeals takes appeals from action of the Zoning Enforcement Officer if the allegation is that the interpretation isn't correct. Is that a process that is going to be followed?

Attorney Peter Olson: I don't agree that's the process in the Town of Oxford. The case law I will admit is all over the map on the question. But the requirements as I understand them for a decision of the Zoning Commission that is not a site plan, special permit or other item laid out in the statutes that relates to enforcement is appealable to the Zoning Board of Appeals if the regulations vest enforcement authority in the Commission, which they do, and state that an appeal is to be taken from a decision of the Commission to the Zoning Board of Appeals. That latter statement is not in the regulations.

Attorney Fran Teodosio: No, the only thing mentioned in the regulations is the Zoning Enforcement Officer.

Attorney Peter Olson: Correct.

Attorney Fran Teodosio: But effectively here they are the Zoning Enforcement.

Attorney Peter Olson: But I think the case law has drawn a distinction between the Commission and the Zoning Enforcement Officer in that respect. Now I am not going to say that he can definitively state either way, but I believe the case that it is not appealable to the Zoning Board of Appeals.

Attorney Fran Teodosio: Just for the record I would like to go on record as disagreeing and I want to be sure of the version of the Zoning Regulations that we're handling this matter with today, are they the regulations that include amendments up to 3/25/2014?

Attorney Peter Olson: That's the version I reviewed.

Attorney Fran Teodosio: Ok, so can we all agree that those are the regulations?

Attorney Peter Olson: I can't speak for the Commission.

Chairman Arnie Jensen: Those are the latest? Yes.

Attorney Fran Teodosio: And Mr. Olson, the provision with regard to enforcement um, are in there correct?

Attorney Peter Olson: Articles 19 and 20, correct.

Attorney Fran Teodosio: So we are in agreement?

Attorney Peter Olson: Yes.

Attorney Fran Teodosio: Now Mr. Chairman, I have a question for you in regard to presentation, as I have viewed the agenda there's three (3) components to it and one of the components is the presentation of the history of this application and the preparation of the history of this application for the board. Are you asking me to give that history or is the staff going to do that.

Attorney Peter Olson: I included that as a piece of the procedure because the staff has conducted some research and provided it to the Commission. You should make whatever presentation you think you need to make.

Attorney Fran Teodosio: Alright, then I need to ask the Commission if the Commission has received, and I am speaking to each individual member, have you received from the staff a series of documents that are differentiated by the Approval # in the upper right hand corner, there should be six (6) of them.

Commission Members: Yes, six (6).

Attorney Fran Teodosio: Do you also have the paperwork that is alluded to on page 1 of every one of those approvals, in other words, documents included but for the maps.

Chairman Arnie Jensen: Yes.

Attorney Fran Teodosio: Ok, Jessica I have a question for you. On Approval #1, site development plan last revised 11/21/2005 approved by PZC 2006, do we have that.

Jessica Pennell: Yes.

Attorney Tom Kaelin: I'm Attorney Tom Kaelin, Woodbury and I am representing the land owner. Just a point of order, because this is a hearing I assumed you would be deciding this case on what was presented to you tonight. It already sounds like that you have information in front of you and I would like to know if that's so and where it came from and I don't have any information that was provided in advance. It seems Mr. Teodosio does. Can someone explain what the information is that you already have.

Attorney Peter Olson: Tom there was an agenda, a piece of the procedure that I laid out that was documents presented from staff and Jessica will hand you a copy I think right now.

Attorney Tom Kaelin: Thank you very much.

Attorney Peter Olson: We just did it ahead of time, so it's not done during the hearing.

Jessica Pennell: You want the map for the first approval?

Attorney Fran Teodosio: Ok before we get started what I'm going to try to do, give you an outline, I'm going to try to go through all six (6) approvals that you have information about before you but before I start let me tell you the three (3) general points that I'm trying to make. The actual activity on that property right now, that is the processing of reclaimed asphalt with two (2) I call them stoves, cookers, whatever you want to call them, there are two (2) devices there on that property. That use of the property, whether we go through

items 1-6 and the special exceptions that were granted and modified, or you look at the zoning regulations in the Town of Oxford, neither of those sources of law if you will or approval allow that activity that is occurring everyday. In addition to that the ancillary changes that have been made to that property, i.e., the utilization of certain parts of the property for parking the utilization of certain parts of the property for structures which are defined in your regulations, the activity that's occurring on the boundaries is all also not compliant with any of the special exceptions that are in those six (6) that you have before you or your specific zoning regulations. Now, before I get started, I do want to say that he understands the Commission's position with regard to not wanting to hear anything this evening concerning the noise, because the Commission is taking the position that the noise is not something that it is part of.

Attorney Peter Olson: Just for a point of order, the Commission asked me for my advice on my question. My advice to the Commission in writing was that the Commission is not the enforcement authority for the noise ordinance.

Attorney Fran Teodosio: Alright.

Attorney Peter Olson: The Commission has not taken any action to accept or reject my advice.

Attorney Fran Teodosio: Alright then, if that's the case I want to present to the Commission for what the Commission wants to do with it, the noise ordinance here in the Town of Oxford. The noise ordinance sets out certain hours during which there is going to be activity, it speaks of business hours, it speaks residential hours, but most importantly it says that the enforcement officer, the zoning enforcement officer it to work with the First Selectman with regards to anybody who wants to essentially make noise outside of the hours that are set in the noise ordinance. The day time hours for noise are 7 AM-10 PM and noise is defined by decibel in here. We have been complaining about noise also we're frustrated by the circumstances that the zoning enforcement officer is not enforcing this, I have written to the Selectmen, I want to put this into your record and I call to your attention if you are acting as the Zoning Enforcement Officer, then I would argue that you would have to act on this also, but concededly, this is separate from your zoning regulations. So I'm not going to bore you with the noise issue this evening but I'm on record saying that the noise is there at 4:00 AM. Mr. Chairman, do you have the copy in your paperwork of the complaint to Mr. Macary that I originally sent on April 11th, it wouldn't be with those six (6) items. Alright, then I'll submit it, here, I think they may have been at your last meeting, but I'm going to submit a letter dated April 21st for 2016 in which I wrote the First Selectmen but I included a letter of April 11, 2016 to Mr. Macary. Who do you want me to give it to, who is taking documents?

Attorney Peter Olson: Jessica.

Attorney Thomas Kaelin: Ok, again, just so we are clear, I need to make a record or at least know the record of what is being submitted and what has been submitted so far I understand there are the six (6) applications that I have been provided a copy of now there's a noise ordinance that Attorney Teodosio has just handed in, is that the universe of documents we have so far as part of your record.

Attorney Peter Olson: The map behind you has been shown.

Attorney Thomas Kaelin: Ok the map behind us.....

Attorney Peter Olson: And there will be more maps.

Attorney Thomas Kaelin: Ok but I just want to make sure that there are no other additional documents that you already have that are going to be a part of this record that I don't know about.

Attorney Fran Teodosio: For the record, I did not submit 1-6, they generated 1-6.

Attorney Thomas Kaelin: Ok. Very good, thank you.

Attorney Fran Teodosio: Mr. Chairman do you have a copy of the original zoning complaint that was filed?

Jessica Pennell: I don't have any of the complaints or letters that are addressed to the Commission in the packet. Separate from my file are the zoning complaints and any other stuff that happened prior to speaking with Attorney Olson.

Attorney Peter Olson: So to shortcut this, if you have a copy of the complaint, why don't you submit it and we will make it part of this record. If not.....

Attorney Fran Teodosio: Yeah, I do and I am not trying to be coy with this Commission, I assumed that there were four documents essentially, my original complaint that I was asked by the Zoning Enforcement Officer to submit, the letter that I sent to Mr. Macary after the last meeting, the letter that I sent to the Board of Selectmen after the last meeting and then the noise ordinance.

Steven S. Macary, ZEO: We all got them last month.

Attorney Fran Teodosio: But they're part of this record, they are part of this.

Attorney Peter Olson: Go ahead and submit it.

Attorney Thomas Kaelin: Is this the April 5th official complaint on this complaint form?

Attorney Fran Teodosio: Yes.

Attorney Thomas Kaelin: I have a copy of that.

Attorney Fran Teodosio: Are we all set?

Jessica Pennell: I think so; I am just marking the exhibits.

Attorney Fran Teodosio: Alright, so I'm going to go back to the use, the parking and the buffers. In addition to that I want to call to your attention that in your zoning regulations, there is an activity that is forbidden, and that's any activity that intentionally casts light or casts light on another person's property. It's in your forbidden uses. I will call it to your attention in chapter and verse later on. Ok, let's go to approval #1, and actually you can follow along with me because you have the same in front of you that I have here. Approval #1 goes

all the way back to 10/18/2005, and this is the site plan for that approval. I want you to go to page #3, the statement of use, Ok. What does it say, it says storage of construction equipment, trucks, backhoes, company office, small tool storage, this is what the applicant said they wanted the property to be used for. You've got minutes that go along with that, ok and if you go to the minutes, you can see, especially on page 2 of the minutes, if you go down to where Peter Feola is talking, he's the I guess representative of KAF Associates. He's talking about an office and a storage facility. Storage will be primarily for larger vehicles approximately five (5), consisting of one (1) excavator, a backhoe, paving and truck rollers, it is going to be stored on the premises. He talks about small quantities of process being on the property and your Chairman, Mr. Vizzo, in the last line is very concerned that the areas where the equipment is going to be, and the areas where the storage is going to be are specifically designated on the map. He wants to know that. Ok, and Mr. Cocchiarella, you make it a point to ask how many parking spaces there are going to be on this use, ok, and Mr. Vizzo says, Hey make sure the buffers are back there for any activity that is going on in back. Alright, that's on page 3, Chairman Vizzo. Now you know as the Planning & Zoning Commission that anytime you give an approval you say we are going to approve "x" use and we are going to hold the people that are before us to any representations and conditions that were made during the discussions in the public hearings, and the application itself. So, that information is important. And the approvals had on page 4, and if you look at it it says compliance with the Oxford Zoning Regulations and it talks about the landscaping being done, it talks about paying attention to the engineer's letter, and here we have the site plan that was approved then, ok. Now the site plan back then did have bins back here, but you are going to see in the history of this application that they were taken out, they were actually, I think, taken out in the third application to come before you. Now I want to point out that something here, see this area here in the upper left hand corner? It's where a septic system is supposed to go. It's where there's fields and leaching areas for the septic system. You know what's there right now? Two (2) cookers for asphalt, and you know where they are? They're pushed all the way up against the property line, here. They're violating your setback rules, they're violating your buffer rules and I think they're a structure but back in 2005 it wasn't allowed, here's your site plan, ok. I also want you to see the activity, see all the trees that are here, see the trees are jogged and you'll see that your Commission goes on, and it is replete throughout all six (6) applications, you want blue spruce, you don't want white pines, you want blue spruce, as a matter of fact there's a Cease and Desist order that enters halfway through this because there is noncompliance there. Here's the parking spaces that are allowed, they're specifically listed in the application. Alright, I take that back, they are not listed in this application, but will be listed in subsequent applications, but look at the way they're configured, and see the buffer that's allowed there, and see nobody is violating any setbacks and see how far back the parking spaces are? Alright, so that was the original approval, the original approval, the original approval back in 2005 with a statement of use that's for storage of construction equipment, trucks, backhoes, company office, small tool storage, nothing absolutely nothing about cooking asphalt.

(Changed map on display)

Attorney Fran Teodosio: So that was in 2005, in 2008 there is another application. So let's go to page one (1) of the application, ok. It's a new building site plan because what happened is that this building was built in the wrong place, alright, it was built 40' off of what it should have been. So the applicant who is now Larkey Land Investors, comes before the Planning & Zoning Commission and on the third page of your packet, page 8, they have a discussion with the Planning & Zoning Commission about what they want to do, ok, and they say that they

bought this building and they want to do exactly what the other applicant wanted to do, ok, and then they go on and they say exactly what they are going to do, and actually Angelo Russo says this is not a contractor's yard, what they want to do? They want to store some hay, mostly store box trailers and they a couple of antique trucks. That's what they want to do, everything is going to be the same. Mr. Angelo Russo also says that my brother hauls freight, I'm in the hay business, we're renting the property for our trucks now, and they are told to go get a new set of prints. That approval is had on the next page, Ed Hellauer makes the motion, they did not change anything, they are going to go by the same stipulations that were originally allowed on the building, ok, nothing was changed, so the only thing that happens between application 1 and application 2 is that the building shifts, ok, no authorization for asphalt in application 2. As a matter fact, there's a letter from Mr. Turner saying that the landscaping needs to be complied with. Ok. Now I'm sure some time this evening somebody is going to rebut me and say the approval's for a contractors yard, ok.

Attorney Fran Teodosio: I want you to go to your zoning regulations and look at the definition of a contractors yard is, because it does not include anything with regard to the processing of asphalt, as a matter of fact it talks all about storage. So now we move on and there's an application in 2009 and that application is received on May 22 and what is it, it's a modification according to the application of the existing permit, that's on page 2 of your packet. Anna Silva explains to the P&Z Commission on page 6 that the building had shifted 51 feet, Anthony Russo comments that he is going to put in the trees that you want, blue spruce, pines and blue spruce, ok. And Ed Hellauer moves to approve the plan based on incorporating the comments of the Town Planner and Town Engineer and they're attached so let's go to the Town Planner. Article 8 Section 10 of our zoning regulations requires that all outside storage areas be visibly screened from neighboring properties. The only screening shown here is for the property to the south. Landscaping plan would be improved if it showed the species to plant and the dumpster location shouldn't be visible from any other properties. What Ms. Pennell is putting up is the map that went along with that 09 approval. This is your official map, blue spruce and doug fir per your board, blue spruce and dog fir, that is about the third time it's been said in the application, it is right there on the application. Look back here, the bins are gone and the buffer ends here because the activity ends here. The parking is here, the parking is here, the building is here, the buffer is here because nothing is happening back here, the only thing that's back here is the septic system again. Its right there, it shows, it is leeching fields and reserve, no activity, no activity that can even remotely be considered the start or the basis for the asphalt processing going on up there every day. By the way, this application talks about parking spaces, it specifically lists the parking spaces, you see this strip up here, this is the strip I'm talking about with regard to where there is process material, where there is parking going on, lots of parking, there is nothing proposed up here way back when and all of your parking spaces are specific to down here.

Attorney Fran Teodosio: Ok then, we go to approval #4; approval #4 is biggie because approval #4 has the new statement of use. It's submitted on 3/11 and the statement of use is for Marcus Dairy and the last time I looked Marcus Dairy didn't do any asphalt processing, and the statement of use signed off by everybody says used as a maintenance facility and storage, maximum of 5 employees. Ok, there's a public hearing with regard to that and Larkey Land investors comes here and presents to you everything that they are going to do there, and there's an approval. There was a Cease & Desist on this property that had been issued because there were several deficiencies on Larkey, first one on page 2, actually page 5 of the packets you have in front of you. Halfway down, Colorado spruce are not there, there's extra trailers on the property and the parking striping hasn't occurred yet, but you work through

the application and you make specific findings with regard to what you are going to allow there because on the next page you've got the approval, ok. Bonnie Bartosiak moved to approve, ok and she puts all of the regular requirements that you put in as the P&Z Commission. Compliance with the statement of use dated 3/2011, what's that statement of use, what's that statement of use, that it's going to be used as a maintenance facility for storage. It doesn't say anything about asphalt. It goes on to say any changes and/or modifications to the use permit, the use permit issued to Marcus Dairy, including the requirement of any conditions of approval must be reviewed by the Zoning Enforcement Officer as to conformity with the original plan. If the ZEO determines that the proposed changes may differ from the original plans, a new application must be submitted to the Planning & Zoning Commission. I'm not aware of an approval that's come before you for asphalt processing. It also says that the transfer of the property to a new owner or lease of any proposed continuance of the business shall require the new owner to submit a statement of use to the Zoning Enforcement Official and any additional business has to conform to the approved statement of use and all conditions. That would be Mr. Burns, Mr. Burns cannot go onto the property or Burns Company or whatever they call themselves just because he's leasing from Mr. Russo and conducting an activity on the property, which is cooking asphalt, processing asphalt, whatever you want to call it. If Mr. Russo can't do it, if you haven't authorized it, and by the way, #10, there is your Colorado spruce again, and the parking requirements. Jessica do we have a map for that? Now I want you to take a good look at this map because there is nothing there, there is no activity back here, as a matter of fact, they forgot to draw in the septic, but it's pretty clear that when they came in with Marcus Dairy, they're not really concerned about anything at least with the initial application, and you still got your septic fields over here. Right after that application was submitted in 1/2012 and I think that's called Z-11-129(a) because it was kind of trailing the application that came in the year 2011, there's an application for Larkey from Larkey for some parking, ok, how many spaces? I'm not sure because all it says is it's going to be a trucking company that transports refrigerated food and there's going to be some tankers there and there's going to be Marcus Dairy, ok. How that statement of use complies with parking, I guess you have to do a stretch, but ok. But look at the approval, Pat Cocchiarella moves to approve, the applicant and their assigns must comply with all representations made by the Planning & Zoning Commission at meetings and public hearings regarding this application, compliance with the statement of use dated 1/10/2012 and compliance with the Oxford Zoning Regulations in effect as of this date, so even if you give the applicant the benefit of the doubt with regard to what I think is an artful application, what were you approving? You were approving parking for a trucking company that transports refrigerated food, you don't see anything in there about asphalt, don't see anything in there about asphalt processing.

Attorney Fran Teodosio: Now we go to Z-15-148. Now, Z-15-148 has got me baffled because if you look at the application and the application is on the second page, I hope you all, I didn't say that, but I assumed that if you do this every day you know where your statement of use is, they are asking for a change of use, and I ask you, what in your paperwork says what the change of use is because if you go to the statement of use, all it says is that there's going to be an operation 24/7 and there is going to be employees and additional truck parking, ok. But there's a map with that, so let's look at the map, Jessica will you get yours. Ok, first thing I want to point out, this is the last map, the map that's closest to the activity that is occurring there right now, because no other maps were officially submitted. Parking, it doesn't say anything about an elevated structure that has at the top of it two asphalt processing vehicles or facilities, whatever you want to call them. I also want to point out that there's a loading dock right here in the middle of the property. That's where they say they're going to put their

loading dock, there's no loading dock there, there's some kind of dock over here, and there's a structure over here that's violating the setback regulations, violating your buffer regulations, violating all of your regulations. It does say storage of trailers up here and miscellaneous uses, ok. Storage of trailers and miscellaneous uses, those were the backs of the Marcus Dairy trucks. That was the proposal, that they were going to be stored up here and you approved that, you approved it, but you also said they had to be compliant with the Oxford Zoning Regulations which even back then would have required a buffer here, ok, a substantial buffer. I'll get to those sections of the regulations in a moment. Jessica please note I want to submit this one as an exhibit after I explain. This is a depiction of what is going on up there right now. It was submitted to the Town and never acted on, as a matter of fact, I got a copy from the Zoning Enforcement Officer. Here you go, here's your two bins, here's your asphalt processing plant, never been submitted to you for approval. Here's the proposal for employee parking on this strip, never submitted to you for approval. Here's a poor attempt of complying with your buffer requirements, never submitted to you. This little yellow indentation that I've shown here, that's the structure I'm telling you about that you'll see pictures of shortly. Proposed 500 gallon fuel cell, I don't think that's up there, but that's part of the proposal also. A prescreening handler, all this activity, never approved. It's not on your applications, it can't be inferred from your Zoning Regulations that he's allowed to do this and we've been complaining about it for almost two months. What I'm handing out is a picture that was taken on April 6th, I don't know that I'm going to have enough so some of you guys are going to have to share. I'll try to use the picture and the map to show you what's going on. The view from that picture is essentially from my clients property ok and I will concede that it is before this set of trees went up, this single line of trees, that was taken on April 6th. But I want you to look at the smoke that you see in the center of the picture that smoke is coming from the two asphalt processing pieces that are essentially trucks that drive up there on top of that structure, that structure is this here, ok, on top of where the leeching fields are supposed to be, and if you look at those two trucks that are on the top of that structure which is in the setback, which is in the buffer, you'll see a dump truck, I think you'll all have an appreciation for how tall a dump truck is, well look at the dump truck vis a vie the two asphalt processing pieces of equipment. You can get an appreciation for how tall that structure is, ok. Essentially what it is, it's a inclined piece of property that allows the trucks to be driven up to the top there, I'm not quite sure why, maybe to keep the smell down because they get up a little higher, ok. I also want you to take a look at all the process that is stored in various piles on that property, that's reclaimed asphalt, and I want you to go back and remember what the history of this application was and how specific the Planning & Zoning Commission was at every single step saying you had to identify where the process, where the material was going to be put, that's what Mr. Vizzo said. That's what Bonnie Bartosiak was referring to when she said all compliance with, or you had to comply with all representations you've made. There's no indication, well I can't use this map but, there's no indication on any other map that there's going to be any storage of process in that area, you know from the history and the sequence of the maps that I showed you that every single map after the bins, which were taken away in the second application, there was no activity proposed there, except parking of vehicles. I also want you to pay attention to the two cars that are parked in the front closest to my clients property, I want you to pay attention to that because my client is going to show you a picture in a little while that's going to show you what's built there now, and it's been built since April 6th. It wasn't there on April 6th, it was there yesterday though. This next picture...

Chairman Arnle Jensen: Are you submitting these for the record?

Attorney Fran Teodosio: Yes I am, yes I am. You know what, let's for everybody's clarification, I'll write one on the front of the document that I submitted. Mr. Chairman I'm going to write one in the upper right hand corner, attorney, I'm going to write one.

Attorney Tom Kaelin: That's fine, I just want to add an objection for the record. There's been numerous representations by Attorney Teodosio about complaints and concerns about structures. I want to note for the record that we were provide with no advance notice that there was any complaint or concern about structures, more importantly, receiving information tonight about complaints tonight about structures is not on the agenda. I feel at this point I've let it go on quite a bit but I think it's inappropriate for you to hear information evidence about complaints about structures when it doesn't appear on the agenda, doesn't appear in the formal complaint and we had no notice before tonight that there would be complaints about structures and setbacks, the complaints were about the asphalt processing machine and whether it was a permitted use and there was a complaint about whether there are appropriate buffers and complaints about parking and storage is taking place. A complaint now that has gone on about structures a number of times is beyond what is on the agenda for tonight and what we were formally noticed in advance of. So I would object to any further evidence or complaints being heard about the structures.

Attorney Fran Teodosio: May I be heard with regards to the rebuttal?

Chairman Arnie Jensen: OK.

Attorney Fran Teodosio: First of all I have been saying all along that the use and the activity up there is not allowed. I would argue that the structures that have been set up, i.e. where that facility is and the other things that have been done up there are all part of the activity that you haven't authorized. In addition to that I have complained that the buffers, especially on this side of the property mentioned in my complaint at least twice when we were talking about the southern boundary have been violated, so I think I am entitled to say what's there. Lastly, you have this anomalous situation where I can't submit any more complaints, we're just waiting so I mean, you can either take my complaint right now and handle it, there's no surprise with regard to that, they know what they've done, or I'll submit a complaint tomorrow about the structure, it doesn't make any sense, it's in that buffer, or in the area where the setback and buffers are supposed to be.

Attorney Peter Olson: My suggestion to the Commission is the following, one clarification, first, Attorney Teodosio, in our discussions nobody has said that you can't file complaints about additional issues, what I've asked is that you not submit complaints everyday about the same issue, that we are trying to cover all of the complaints, that it's an ongoing violation in the process.

Attorney Fran Teodosio: Then I'll.....

Attorney Peter Olson: But, hold on, let me continue, second, for efficacy purposes I don't see any reason why we should prevent Attorney Teodosio from making a full presentation of his claims, however, there is no fairness to the property owner to expect them to respond tonight. So my suggestion would be, with the Chair's approval, that you be permitted to continue, make your full presentation, if there is an additional zoning regulation sections that you claim were violated we will add them to the agenda for the next meeting and then Attorney Kaelin, you'll be permitted a full opportunity to respond to those.

Attorney Tom Kaelin: Well I understand the efficacy issue but, you understand my problem.

Attorney Peter Olson: I understand your problem, and your objection is noted, I think this is the easiest way to handle this, it's fair to the property owner as well.

Attorney Tom Kaelin: I think what would be fairer to the property owner is to have him submit tomorrow a formal, written complaint specifying exactly what his additional complaints are and we will take those up at the next hearing.

Attorney Peter Olson: My concern with that is that we will undoubtedly between that submission and the next meeting discover yet another violation claimed by the complainant so I don't want to have a serial adding to the agenda of an additional complaint, so that's why my suggestion is, and the call of the hearing is fairly broad, Attorney Teodosio, present your evidence, we'll allow you every opportunity you want to investigate and respond at the next meeting before the Commission makes a decision on whether to enforce, issue notices or that it's, that's my suggestion to the Commission. I think it's an easier way to proceed for everybody.

Attorney Tom Kaelin: The problem is I'm hearing complaints as they're coming up, I don't know what structure we're talking about, apparently it can be more than one, I don't know what regulations he's talking about, it's hard for me to even follow the presentation of evidence without having a complaint in front of me, I think minimum due process requires that the complaint be disclosed before the property owner be forced to respond. Not here it and then have to come back.

Attorney Peter Olson: I think that's fair, I think that we can still respond to those concerns by having the presentation made if there's an additional regulation section that is claimed is being violated then we should require a formal complaint, and then you'll be able to respond to that at the next meeting. I don't see a difference between that and accepting a complaint tomorrow and then having Attorney Teodosio re-present next week.

Attorney Tom Kaelin: The only problem is, he is trying the case for which I don't know what the issue is. So I'm sitting here not knowing what's going to come next, I don't know what structures he's talking about, I don't know what regulations we're talking about and if I had been fully informed beforehand as he's required to do, I would be able to make appropriate objections and make appropriate comments and make appropriate notes as the hearing goes forward. So now what I'll have to do is essentially listen, wait for a complaint, I'll have to go back and listen to the tape at great cost and expense of my client. He has enough to cover with his complaints that are properly lodged to fill up the whole evening tonight. I don't think it's going to require any more time next week or the next meeting for him to properly lodge a complaint and if there's additional issues we can respond to them at this time. That's my point.

Attorney Fran Teodosio: May I be heard? There are only two structures that I'm talking about and one is the asphalt plant so that is implicit in the argument that it's not allowed.

Attorney Peter Olson: I need to interrupt you, there's been no allegation by you or anybody that there's an asphalt plant.

Attorney Fran Teodosio: Asphalt facility, asphalt cooker.

Attorney Peter Olson: And I think based on the photograph you are calling what is there a structure, but I don't know if that's necessarily correct.

Attorney Fran Teodosio: In your definitions of structures, I'll read to you what the Planning & Zoning regulations say under definitions.

Attorney Tom Kaelin: Well, he's made my argument, because the complaint has been about the use, not about the construction and building facility, that now is apparently part of the complaint.

Attorney Peter Olson: Mr. Chairman, I think there are two options for the Commission, the Commission can decide to not accept any evidence now about violations concerning locations of structures which I think is the complaint from Mr. Kaelin, correct at this point?

Attorney Tom Kaelin: Yes.

Attorney Peter Olson: And if the complainant wishes to file complaints about location of structures, they can do that tomorrow, and it will be added as a separate item on the next agenda and then we move on with the violations tonight. The other option is to have the presentation tonight, complaint tomorrow, moving on to the next week. You've heard both attorneys, Mr. Chairman, do you want to take a break and we can discuss it?

Chairman Arnie Jensen: Yeah, I think that's a good idea.

Attorney Peter Olson: OK, so I would say maybe a 10 minute recess.

Commission Secretary Pat Cocchiarella: Motion to take a 10 minute recess.

Alternate Commissioner Pete Zbras: Second.

Commissioners: Aye.

Commission Secretary Pat Cocchiarella: Motion to come out of recess.

Commissioner Glen Persson: Second.

Commissioners: Aye.

Chairman Arnie Jensen: So I did confer with counsel and my decision is, this is my opinion, the complaint is very specific and there are four things to the complaint, it's asphalt processing, buffer and parking, buffer and storage and noise. It doesn't talk about structures, I think structures has to be dealt with separately, so you file another complaint that has to do with structures and we will deal with it at the next meeting.

Attorney Fran Teodosio: File it with whom?

Attorney Peter Olson: Why don't you address it to the Commission, that way we will keep it on the same playing field, then we don't have to do that again. Thank you Mr. Chairman.

Chairman Arnie Jensen: So is there more evidence with the four specific things?

Attorney Fran Teodosio: Yes.

Chairman Arnie Jensen: I thought so.

Attorney Peter Olson: Three, we already rejected noise. Attorney Teodosio disagrees.

Attorney Fran Teodosio: Jessica, I'll give this to you. I just gave Jessica a picture marked #2. As I hand them out, this is just for the individual Commission members you can just mark them too, yourself. This is taken within the last 48 hours, correct? So we've got some white pines, not in compliance with your own buffer requirements, not in compliance with your approvals or your regulations as to how the buffer is supposed to be set up. It does show the most current activity and I don't know, I tried to count the number of trucks in this area where new activity has been yet presented for approval by you and I think there's at least 30 trucks. You can see the asphalt operation going on in the background, you can see the 2 plumes of stink, you can see all the dump trucks moving back and forth, the excavators. And Mr. Chairman for the record because you've already ruled with regards to the buffer, so I'm only saying this, I'll submit it tomorrow, the coverage requirements for the industrial zone are violated, you can see that by this picture. I'll submit that tomorrow. The next item that I'm going to show you, I've marked that #3 on the backside of my copy, I will let you look at it. It's the operation of the asphalt devices about 4 o'clock in the morning. Four o'clock in the morning, the noise, the smell, the glare, the lights.

Attorney Peter Olson: You can tell the noise and the smell from the photograph.

Attorney Fran Teodosio: No, I can have my client testify to that if you want.

Attorney Tom Kaelin: Can you clarify as to where on the property this photo was taken?

Attorney Fran Teodosio: From her bedroom window, side yard.

Attorney Tom Kaelin: Looked like it was from the back yard.

Attorney Fran Teodosio: The next picture is #4. Ok, #4 is showing you the improper parking that I'm alleging, and its way over here, see this strip? And it's way down here. As a matter of fact, there is a pile of dirt that is dumped right here on my clients property right in the middle of this strip and these cars are parking on that strip and you can see the condition of the ground around that area. Incidentally, this strip is 30 feet wide. That's important and I'll point out why it's important shortly. Notice that these cars are parking diagonally. That parking is not approved, it's not compliant, it's not buffered. The next picture I am giving you is #5, this is showing more parking, in the lower portion of the picture you can see the boundary location of my client's property and smack in the middle of the parking you can see a mini excavator doing work that's not been approved for anything here in this strip, and those cars are parked approximately right here, they are definitely on the strip. Picture #6, on that picture I count 12 cars, which by your zoning regulations would require 12 parking spaces; buffered and compliant with the layout, that is required in your zoning regulations. And by the way all these pictures were taken between the last time we were before you and now, so within the last 45 days. Alright every one of those cars on that property is up here, they go right across and they are all being parked perpendicular to the property lines. It's not authorized, it's not buffered, it's not compliant. Picture #7, alright, #7 is taken on my clients property looking this way, and you can see the row of pines, single pines and it's gazing down

towards the strip, the reason I'm submitting that picture is to show you that the configuration of trees that were put up here is single, is pine, it's not jogged like the old group that you saw on the other pictures, remember this is a depiction that was never submitted, the actual trees up there are jogged and they stop somewhere midway here because that was, those were the old trees and that's where the old activity was. The new activity that we're complaining about is up here and those are the trees that were submitted. I submit to you that they're non-compliant, I also submit to you that they're not configured properly, your regulations go into great depth about how the buffer is supposed to be laid out and you can see from that picture that they're practically touching the electronic wire of my client's property, before this meeting is over those white pines are going to grow big enough to touch that. They have to be pulled back, what the applicant is essentially doing is forcing the buffer onto my client's property.

Alternate Commissioner Pete Zbras: Excuse me, #2, are those the same trees.

Attorney Fran Teodosio: Yes. There was a question asked if the trees in picture #2 and picture #7 are the same from different angles. Alright, I've given you #8, um, #8 is submitted to you and I have a video of it, for the following information. Regularly early in the morning on that property, there are third party trucks going to that facility. That truck that you see there was on that property early in the morning close to the asphalt processing equipment, did not take any process, or asphalt. My client, who will testify, was standing in her yard and she videotaped that truck this morning. That's a truck from the Town of Oxford. That's a Town of Oxford highway truck. Ok, those are all the pictures. Mr. Chairman, if you'll give me one minute. I'm representing to counsel I'll make a colored picture of this and present it to the counsel, but I want to show the counsel picture #2 in living color. Mr. Chairman I'd like to ask my client some questions where she is seated unless you want her to stand up here.

Chairman Arnie Jensen: Yeah, why don't you state your name and address for the record. You don't have to stand up.

Sue Kasmin, 14 North Larkey Road, Oxford, Connecticut.

Attorney Fran Teodosio: Ms. Kasmin, you were here at the Planning & Zoning Commission 2 months ago, correct?

Sue Kasmin: Yes.

Attorney Fran Teodosio: Where do you live, what is your full address?

Sue Kasmin: 14 North Larkey Road, Oxford, Connecticut.

Attorney Fran Teodosio: You're right next to 16 North Larkey, correct?

Sue Kasmin: Yes.

Attorney Fran Teodosio: Between then and now could you tell the Commission approximately how many times the asphalt units have been operating?

Sue Kasmin: They're regular Monday thru Friday starting around 4:00, 4:30 AM, stop at 9:00 and then throughout the afternoon.

Attorney Fran Teodosio: And the parking on the strip, the pictures that we saw, is that a regular occurrence?

Sue Kasmin: Yes, I've counted 23 cars the other day, I have a picture.

Attorney Fran Teodosio: Can you hear the asphalt devices when they are operating/

Sue Kasmin: Yes, I wake up at 4:00, 4:30 in the morning, it vibrates through my home foundation no matter which room I'm in and the smoke comes through the windows.

Attorney Fran Teodosio: When the smoke comes through the windows does it have any scent.

Sue Kasmin: It's horrible, it makes me sick to my stomach and it gives me a headache, it smells like burning tar.

Attorney Fran Teodosio: Approximately how many vehicles do you think visit that property a day?

Sue Kasmin: Uh, I, I don't know, 30?

Attorney Fran Teodosio: Do they come in empty, are they dump trucks?

Sue Kasmin: They're dump trucks, carting trucks, they come in full, they dump their process, they leave empty. They come empty and they get more asphalt and they leave full.

Attorney Fran Teodosio: Do you hear that?

Sue Kasmin: Absolutely.

Attorney Fran Teodosio: How about the lighting?

Sue Kasmin: It's terrible. I had to call the State Police one night because the lights were directed in my windows directly about 4:30, 5:00 o'clock in the morning because it was so bad. But, they're bright every night. It lights up my whole yard and that is for storage at night, but when they start at 4:30 it's like daytime.

Attorney Fran Teodosio: Say that again.

Sue Kasmin: At 4:30 when they start they have the highway lights, the big lights, they have a couple sets, and that just lights up my whole yard.

Attorney Fran Teodosio: Are they directed at your property.

Sue Kasmin: The pay loaders headlights always are shining on my bed.

Attorney Fran Teodosio: I don't have any other questions for my client, if you have questions you can ask.

Attorney Tom Kaelin: Are you planning on having your client here at the next meeting?

Attorney Fran Teodosio: Yeah.

Attorney Tom Kaelin: I'll reserve my questions for that meeting.

Attorney Fran Teodosio: Any questions?

Commission Secretary Pat Cocchiarella: I'd like to wait until we've heard everything.

Chairman Arnie Jensen: Yeah, alright.

Attorney Fran Teodosio: Now I just have closing.

Chairman Arnie Jensen: Okay.

Attorney Fran Teodosio: You're the Planning & Zoning Commission and I say this sincerely, and I don't mean any insult. Your responsibility is to make use of property in this Town congruent. You have nothing to do with the economic development of this Town, you are not the EDC. I say that to you because I've seen submissions to the Planning & Zoning Commission saying, well this brings jobs, that's not your call. Your call is to make sure that the zoning regulations are compliant, or the uses that are on property are compliant with your zoning regulations, and I'm proud to say that Oxford's zoning regulations are very protective of the individual and are very protective of what I like to say is clean and green. The purpose of your zoning regulations is laid out on page 9, it talks about to implement a comprehensive plan. I'm not going to read every one of them, you know what they say, I'm just pointing out that they involve protecting property. You may hear the applicant say that well I have a, I'm grandfathered in somehow, I have a contractor's yard. I would submit to you two things; they abandoned that use when they changed that use and don't go by the schedule in your Planning & Zoning Regulations because it says right on there, this is just a guide. Go to the actual text, if you want to know specifically what's allowed. The reason I say that is although I strenuously argue that this is not a contractor's yard, even if you think it's a contractor's yard and you go that way, if you go to the definitions in your regulations there's a definition of contractor's yard and it has nothing, absolutely nothing to do with processing asphalt. Even if you disagree with me, the use of that property right now has never come before you. You've never approved any of this, you haven't approved these two facilities over here, the history of this Commission and the history of every Chairman is to put regulation after regulation on approval to make sure that whoever has gotten the approval complies with the approval. Look at the previous applications, look at how many maps they had to submit, look at how many conditions were on them. Your approval in Z-15 harkens back to the approvals that were previously had and if you go to those previous approvals they are pretty specific, I've already talked about the requirements that Bonnie put on her motion when she had, when she moved for the approval. Prohibited uses; I think it's interesting that prohibited uses in your zoning regulations speak specifically about sand and gravel processing plants and stone crushing operations, it says it's prohibited. You know what, asphalt processing is like sand and gravel processing, it's atrocious. It also says that prohibited uses are uses that cause light to go onto another party's property, that is Schedule C, item 4, page 18 of your zoning regulations. I'd like you to pay attention to page 20, Section 2.10 of your zoning regulations which talk about buffers, it defines what a buffer is, it explains to you what's got to be in that buffer, and it's not a mediocre strip of white pine. It goes so far as to say that the buffer has to be opaque, the only time it can't be opaque is if there's no activity on either side of this line. Well, there's activity on both sides. So you need to put the buffer there, and I'll tell you why

they don't want to put the buffer in, mine as well get right to it, if you put the buffer in and they put it on their property, you're gobbling up part of this 30' strip. Once you take the area that's required for the buffer, if you do it compliant with your zoning regulations, let's say you have 5' if you jogged the trees and do everything that's supposed to be done. You've got 25' left. If you go to your parking regulations and this is why I said to you, pay attention to the way the cars are parked, your parking regulations specifically set the parameters for parking spaces. Now, I didn't see any of the parking parallel to this strip, but if it's parallel to that strip, if it's parallel to that strip, the curb length, curb stall has to be 23'. The stall depth has to be 9' and any access aisle has to be 15', where are you going to put the buffer, that's why there's no buffer there right now, because if they're going to comply with the parking regulations there's no place to put the buffer and that's a parallel parking space, you look at your regulations at 3.24.3, I'll submit a copy for the Commission, look at your 45° angle parking spaces, look at the 90° parking space, both of which you saw pictures there. There's less and less room to put a buffer. Contractor's yards, here's your definition, property used for the conduct of a contractor's business including the storage of equipment, building materials, earth materials used in the conduct of the contractor's business. Doesn't say anything about processing asphalt. By the way, the parking spaces under your regulations are 18' long and 10' wide. I call your attention to Section 3.15.1 because there has got to be at least one of you sitting there saying this is a terrible situation for Ms. Kasmin, but you know what, she lives in an industrial zone. Your zoning regulations say there has to be a buffer and the buffer is going to be there, and I'll read it, whenever non-residential construction or uses proposed in a commercial or industrial district and it's also adjacent to an existing residence or residential district, a buffer shall be provided. So, existing residence, ok, it doesn't say residential area, it says existing residence. There's an existing residence over here, you have to protect that residence, that's the spirit of your zoning regulations. Section 3.21.1, love this section, because you know what it says, all uses not expressly permitted are hereby prohibited. I'm gonna say that again, all uses not expressly permitted are hereby prohibited, what that means, in my opinion, is if it doesn't say you can have an asphalt plant, it's prohibited. I'm sorry I said plant, an asphalt device, it's prohibited, that's Section 3.21.1 on page 31 of your zoning regulations. Your zoning regulations contemplate changes in uses, if you go to Section 4.8.1, Section a, when permitted use is changed, you have a history here that permitted use was changed, what you have before you right now is some type of approval that says that activity involving the Marcus Dairy and their trailers can be conducted on this property, it doesn't say anything about a 24/7 asphalt operation. In your industrial use section at 9.8.3 it says all, all parking areas shall conform to the standards of Article 2, Section 24.3, all. In an industrial zone it says all outdoor lighting shall be so directed and shielded that no glare will fall upon adjoining properties. It also says in 9.10, all outdoor storage areas must be sufficiently screened and fenced to prevent visibility from either area of neighboring properties with evergreens or a substitute suitable to the Commission. Section 9.11, buffer belts or strips shall be provided along all property lines where adjoining property is zoned or presently used for residential purposes, that's the non-conforming use that my client has, and that's the protection that these regulations give her that you need to afford her. Thank you for listening to me this evening, I know it was a long presentation, I appreciate your attention please look at those pictures, please concentrate on that map, I will submit additional complaints with regard to other activity that's going on, there are at least three, that's not for this evening. But again, give my client the protection she is entitled to, just because she's in an industrial zone doesn't mean she can't have the protections that are in here, your regulations were written that way on purpose, thank you.

Chairman Arnie Jensen: Ok, now for the property owner, state your name please.

Thank you very much, I'm Tom Kaelin and my office is in Woodbury and I represent the property owner, and just for a point of clarification, since you rested and made a closing argument, I assume you waive rebuttal.

Attorney Fran Teodosio: No.

Attorney Tom Kaelin: You made your....

Attorney Fran Teodosio: I made a presentation, I can respond to any.....I was allowed to...

Attorney Tom Kaelin: Are you going to make a second closing argument?

Attorney Fran Teodosio: Yeah.

Attorney Tom Kaelin: I object to that, but ok, so be it, alright. So you've got to be thinking what else is there to talk about, just about everything that counsel has said, I disagree with. Let me start from the beginning, put this case in perspective. You were just asked to do what is necessary to make Ms. Kasmin happy. I'll start out by saying there's nothing you can do to make Ms. Kasmin happy. She's been happy, unhappy from the day my clients moved in and got permission to use an industrial property next to her property. Let me put the situation in perspective, this is not an unknown, unwelcome business moving into a residential neighborhood. This is an industrial zoned area of the town, this parcel my client owns is industrial zoned. Ms. Kasmin's property is in an industrial zoned, all the surrounding properties to Ms. Kasmin is industrial zoned. The lot behind her that you saw on the pictures behind the parking, there's a contractor's yard there, it's all heavy equipment, you'll see it in the pictures. The lot next to her on the other side I believe is either being sold or just sold and that will be industrial property. My client was there first, Ms. Kasmin had the choice she bought an industrial zoned property, she took on the burden of a non-conforming residential use surrounded by industrial lots and has done nothing but complain about the use of those industrial lots from day one. So this is not a situation of a business going into a residential neighborhood and the neighbors complaining, this is an industrial zone, industrial owners, industrial neighbors, she moves in and buys a non-conforming lot and tries to make a non-conforming use of it, that perspective is important. So far, all of the complaints you heard and submitted to evidence regarding smell, noise, the lighting have been subjective. There's been no objective evidence presented on any of the objective complaints submitted by Ms. Kamin and her attorney. The attorney used a lot of words that made it sound like the Russo's were getting away with something, that they were doing something behind the town's back. That they weren't quite being upright and forthright and I want to reject that out of hand right away. Anyone who has dealt with the Russo family knows that they are nothing but gentlemen, good neighbors and their first instinct and action is to go to the Town first, can I do this, can I do that, do I need approval for this, do I need approval for that. Everything that they've done on this property to date has been run by the town first and they have gotten instruction from the Town that they have been able to proceed with everything that they've been doing on that property. When an application was deemed necessary, they filed it, when actions were deemed required that weren't part of an application they took it, so I don't want this Commission to leave tonight with any lingering impression that the Russo's have done any wrong here, that they have done anything other than be a responsible neighbor, business owner and taxpayer. That's how we got where we are today, everything that's been done on that property was run by the Town of Oxford. It was run by the Zoning Office, it was run by the Zoning Enforcement Official. Nothing was done behind the towns back, nothing was done

inappropriate, nothing was done below board. As to all the complaints that you've heard tonight, initially they were run by the Zoning Enforcement Officer, Steve Macary and Steve Macary's determination, response, inclinations to us were; none of these violations have merit. I mention that because it carries some weight. You asked him in one of your charges to investigate these allegations and to report back to you. He didn't get a chance to report back to you formally in open meeting, but he reported back to us, and his response was I see no violations, and I want to address that briefly, even though you are the final determiners of what might be a violation. This has been a contractor's yard since 2005, seeking permission for additional other uses does not eliminate the right to continue a contractor's yard. There is a contractor's yard directly behind Ms. Kasmin. A contractor's yard allows a contractor to conduct his business at that yard. A few things I agree with Attorney Teodosio is, look at the definition of a contractor's yard. He'd like it to read you only get to store and park things there, but conduct your business elsewhere, that's not what the definition says. You conduct your business from the yard, including storage and parking. My client has an absolute right to conduct a contractor's business on that yard, and the town knows that and the Zoning Enforcement Officer has agreed with that. Another point and problem with the presentation from Ms. Kasmin's attorney seems to suggest, believe and argue that any changes to the contractor's yard regardless of how insignificant have to be run by the town for approval. They complained about a number of trucks, number of visits, working over here, working over there, they have approval to operate their business as a contractor's yard, whether they have six trucks, ten trucks, or fifteen trucks, they decide to have less, they decide to have more, is it the town's practice to have the owner of the property come back and get permission? They want to swap out a pick-up truck for a dump truck, a dump truck for a tractor, do they have to get permission? It's a contractor's yard, it's subsumed within the entire definition in permissible use of a contractor's yard. Let me address the asphalt processing complaint, because that's the complaint, that there is an asphalt processing facility on the property. Again, it didn't just magically appear, it wasn't snuck in, in the middle of the night. The Russo's came to the Town and said we have a new tenant, we have a new tenant by the way because our last tenant, a dairy was too intrusive for Ms. Kasmin's liking, she saw fit to submit a number of complaints, she saw fit to behave in a way that drove the dairy out of the property. We have a contractor who comes in, the Russo's go to the Town, we have a potential new tenant, this is what their business is, do we need any approvals, do we need any changes, is it compliant with zoning? Everything was laid bare before this Zoning Enforcement Officer in the Town zoning office and they told him what he needed to do, they said you're a contractor's yard, you can do this, they had permission already from, let me get to the maps in a second, but let me show you what we're talking about as far as this asphalt machine. I only have three pictures in color but I wanted to show you, so you get a better idea of the size and what they're talking about, maybe you can all take a look at that. There's two of them, let me know when everyone's had a chance to see it. You can see, essentially it's a trailer and there are two of them, it's a key piece of equipment typically owned by a paving contractor. It's not a plant, it's not a facility, they are not making asphalt, that would be an entirely different process than we are talking about. All they do with the machine is, they take asphalt that's been peeled off the road, bring it in, they heat it up, they get it in a state that it can be used again. It usually comes in, in the morning and goes out at night. Nothing is made, it is simply being reheated so it becomes usable. This is the kind of machine that you would find in a contractor's yard. This is not the kind of machine that you would have to get permission from the zoning authority here in Oxford to have on your property. It is what is typically found in a contractor's yard. If they were land clearing you would find bulldozers, you'd find chippers, uh, you'd find all kind of different pieces of equipment. The position of the ZEO was this was typically part of what's included in a contractor's yard and no separate approval was needed.

You'll note that they are located on the furthest side of the property, I'll just use the map that's up, dated 3/28/2011, from the furthest corner of the property possibly from Ms. Kasmin's property, I'm sure that was done intentionally as a courtesy in an attempt to alleviate future complaints from Ms. Kasmin. I have another handout I want to show you and make part of the record. I just want to give you the background information on what we are talking about, the first page, this is a 2011 article and it's talking about how Connecticut is welcoming and embracing the new technology of asphalt recyclers. Specifically a Bagela recycler, which is what's up on the property, although a much newer version. The article just mentions that this is an important, cost effective, environmentally friendly way to repair infrastructure. This is no demon machine, it's no unheard, unsound technology, it's proven technology that's adopted and embraced by the state. The next attachment is a report that was done back in 1991 in Austria when this technology first became available. They tested an early version of the Bagela asphalt recycler and they did it presumably in response to complaint and concerns of the emissions from the machine and the noise. It was tested in Austria and they found, back in 1999 on older versions of the machine, that the noise emitted from the machine was nothing more than counter from ordinary road traffic and the emissions would be no more than what would be the counter from a furnace in a house. The machines that have been developed since are more efficient and are quieter and because they don't emit noxious fumes or emissions, they are not regulated. Another reason why the contractor wouldn't have to come before a board in Oxford or anywhere else to get permission. It's a standard piece of equipment that's used in this industry and I don't believe Oxford requires its contractor's to get approval again for each piece of equipment that it brings to its property, and I certainly agree if we were talking about an asphalt factory or asphalt facility, something like that like O&G has up in Southbury, it's a completely different story, this is a small, mobile, environmentally friendly piece of equipment that requires no permits from the state, no permits from EPA because they've already termed this an environmentally friendly, it poses no hazardous emissions and the noise is within acceptable limits. So to the argument that's being made that having these two pieces of equipment on the property are in violation of the zoning regulations, I say, no they're not, show me where, we have approval of a contractor's yard, we have approval for other uses as well, but we didn't forfeit our prior approvals, that's a concept that relates to non-conforming uses, that's not a concept that applies to a permitted use in a permitted industrial zone. He has the approval of the contractor's yard and yes at one time he got approval to put a dairy in too, but one wasn't exchanged for the other, the regulations don't require that, there's nothing in the application that required that there was no discussion before the board that you know, if you put a dairy in you can't have a contractor's yard. That was never discussed or contemplated. It wasn't the effect of the subsequent approvals. I'd like to have my client come up and I'd just like to have you hear from him, what he did before, what he did as far as communication with the Town before he had Burns Construction sign a lease and take up occupancy.

Anthony Russo, 16 North Larkey Road, Larkey Land Investors. Before Burns signed the lease on our property they had told us exactly what they would like to do, so on and so forth. I had sent an email to Steve Macary to introduce Burns Construction to the Town of Oxford and I explained to Steve exactly what Burns Construction was going to be doing, what they were going to be bringing to the Town and their hours of operation, including the process of recycling asphalt, which is part of their day to day operation. I had stated in my email that their daily operation would be asphalt recycling machine would be anywhere from 4:00 AM and 7:00 PM based on what their needs are for the day and what the emergencies are that come up. Burns Construction has three divisions, they have a water line replacement division, a gas line replacement division and they also kept their Dad's residential driveway division.

Should there be an emergency in the middle of the night where they have to dig up a gas line and prevent homes from catching on fire, make the repair, get the road sealed before early morning traffic and get everything moving, these plants would need to be started up, asphalt would be recycled so it's warmed and able to use again, road patches can be properly made and that traffic would carry on safely and efficiently. Burns operates in a very safe and efficient manner. We've had OSHA called down with an outside complaint to view their process and OSHA has found no violations, the DEEP has found no violations, the EPA has found no violations. Burns Construction is in complete compliance with everything that's happening on that property and they are gentlemen, as we are and they're willing to do anything possible to make sure that this happens in good fashion. I'd like to, while we are talking about the machines, the complaint about the smell, I also would like to draw your attention to the section of your zoning regulations, Schedule C on page 18, counsel talked about prohibited uses. Paragraph 1 states, any use which emits offensive dust, dirt, fly ash, smoke, odors, gasses or fumes into the air, is the important part, in violation of applicable standards of the State of Connecticut, Federal Government, or any other applicable jurisdiction is prohibited. It goes on; the point there is you don't prohibit an activity or use that may have some smell if its offensive to a neighbor or (inaudible), what's prohibited is smells that violates applicable standard of the State of Connecticut or Federal Government. There's been no evidence submitted that whatever smells are emanating from the machine violated any applicable standards. Therefore, it is not prohibited and I would argue by convert that its permitted, otherwise it would have been written differently. In sum, as to the asphalt recycling machine, the trailers, 2 mobile units they are customary pieces of equipment that are permitted by this Town's interpretation and the Zoning Enforcement Officer's previous interpretations of its zoning regulations did not require a separate permit, it did not require separate approval, and it is in violation of no zoning regulation in the Town of Oxford. The other complaints have to deal with the buffers, and I want to give everyone a copy of the map, counsel has already introduced it into the record. My first position on the complaints about the buffer are very simple and straightforward. What counsel is attempting to do tonight, what we have here is counsel and his client are impermissibly, what counsel and his client are attempting to do impermissibly, collaterally attack, after the fact, a zoning approval that was made back in October of 2015. This map was approved, the use was in the back strip, the use is all along the back of the property and truck trailer parking all along the side. The decision was done at a public meeting, the decision was published and Ms. Kasmin, if she was unhappy with it, had fifteen days to appeal, she didn't. This is a final, binding decision. It protects the town and it protects my client, my client has invested a lot of money on reliance on this decision and he didn't just run with this approval, he went to the town before Burns came in and said I have this, Burns is going to come in, can I use this, and the answer was yes. You got advice from the Town Attorney on this issue, this ends the inquiry as far as I'm concerned. If this was an application tonight, these would all be very interesting arguments to make, but this application was heard back in October, it was approved, it was not appealed. The Zoning Commission could have required buffers but it did not, and I think that is really the end of the inquiry. The Zoning Commission has the discretion on what buffers to put, where and how they should be laid out. They are not dictated by the regulations automatically as to where buffers will be and what they will be. Attaching standard conditions doesn't change the fact that the zoning commission reviewed and approved it and did not require any buffering at all along the back of the property or the side of the property where it permitted the additional storage trailers, miscellaneous use and the truck and trailer use. So my first rebuttal on the arguments on the buffer argument is it's too late, we got approval, it may have been for a dairy at the time, it may have been for something else, but it doesn't make any difference to the neighbors or anyone else whether they are pointing cars to the dairy or pointing cars at a

trucking company, or whether it's cars of the contractor. You simply can't attack it now, six months later when the decisions been published and the decision has become final. Counsel made some complaints and issues about light, I really don't know what that's about either. In the interest of having the meeting go on, I didn't object to that but I would ask the Commission to direct counsel if he's got complaint about light in violations of lighting ordinances, I think he mentioned a light section, that be put in a written complaint. Again, I don't think this was done intentionally to disadvantage us, I think Ms. Kasmin just has so many complaints that she just can't keep track of them and I would ask for fairness to state that she decide once and for all what her complaints are going to be at least for now on the existing state of things and get them in writing so we can respond intelligently and effectively to them. The light thing, I don't know what to say, it's a contractor's yard where you've given 24/7 access for vehicles and employees with no limitation on the hours, it has to contemplate some light. I think I'll save that for another day if the Commission is willing to instruct them to make that part of a new complaint as well. I'd like to not rest but, at least continue this to the next meeting to make any requirements that they feel necessary. That's all I have to present for tonight, but I will have additional argument at our next meeting.

Attorney Fran Teodosio: I'll reserve my right to rebut.

Attorney Peter Olson: Mr. Chairman I'd suggest we hear from members of the public first and then allow Attorney Teodosio to respond. So you don't have to do it twice.

Chairman Arnie Jensen: Alright. Would anyone from the public like to speak?

Roberta Olson, 126 Jack's Hill Road: I was here a couple of weeks ago, I live a mile away, I'm affected by the smell, I don't know how green it is, but the smell is vile. Everyday that I smell it, when I do, it can't be healthy. I don't understand so I'm just here to complain about that, I've also talked to a representative from the DEEP, I talked to him and as far as I know there's an investigation going on. So I don't know if they are compliant with the DEEP's standard of emissions.

Attorney Peter Olson: A brief rebuttal from Attorney Teodosio before we go to the Commission.

Attorney Fran Teodosio: Counsel stood here and said to you that your approval, your last approval somehow took away all the conditons that you placed on the previous approval here. If you go back and look at your minutes, especially the modification for the 24/7, it harkens back to the 09 approval where all the buffers were a requirement. Those buffer requirements are still there, just because they came in here to switch the use to 24/7 and they submitted that kind of map doesn't mean that they have the right to take down the trees that have been here and doesn't mean they don't have a responsibility to comply with your zoning regulations. Your counsel will tell you, you cannot make an approval or give an approval that is non-compliant with your own zoning regulations. You're bound by that also. I found it interesting that Mr. Russo said that he, in all those applications, all those communications to the town with regard to Mr. Burns was going to be doing on the property because 10 days ago I made a Freedom of Information request for all of those types of communications, I didn't see one.

Steven S. Macary, ZEO: You didn't see the letter that I gave the whole Commission when he introduced Mr. Burns? It was in the stack of emails that I gave you.

Attorney Fran Teodosio: Alright, show it to me and bring it to the next meeting. I didn't see anything like that.

Steven S. Macary, ZEO: OK.

Attorney Fran Teodosio: I'll also ask you, point blank, did you not tell me that you agreed with me with regard to the parking on this strip.

Steven S. Macary, ZEO: I don't recall that.

Attorney Fran Teodosio: Did you not go up to my client's property and tell them to get off the parking strip.

Steven S. Macary, ZEO: Yes, I was told by my Chair to do that, or by Attorney Olson to do that to keep the peace until we all got together, yes that is correct.

Attorney Fran Teodosio: The reason that those stationary units, those units are found not to be hazardous, if you read the fine print on what was submitted is because they're not stationary, they go all over with locations, when they are operated from one particular facility or one particular location there's no information about them in there. As a matter of fact, the language talks about them not being hazardous because they move. The DEEP has been on our property, has been on his property and has indicated to my client that once they smell the odor they are going to issue a violation. It sounded to me like tonight was an application for the processing. You have a responsibility to my client, please help her, thank you.

Chairman Arnie Jensen: Alright, we'll go to the Commission. Anyone from the Commission have a question for either party?

Commissioner Harold Cosgrove: My only concern is how long does the recycling happen in a given day or week and we understand by testimony that it starts at 4:00 AM and goes to 7:00 if I heard right.

Attorney Fran Teodosio: That is correct.

Attorney Tom Kaelin: Is the question, is it everyday? Every week? Every season?

Commissioner Harold Cosgrove: That's the question, in a weeks time how often?

Anthony Russo: The normal starting time for the recycling plan is 5:00 AM in the morning and it usually ends about 8:30 – 9:35 in the morning. Then approximately 1:00 PM in the afternoon should they have a additional call for sealant, road job, water line or gas line, they will call for the amount of material needed. Sometimes it takes about an hour to an hour and a half to produce the temps that they need.

Attorney Tom Kaelin: Does that answer your question?

Commissioner Harold Cosgrove: Very well, thank you.

Chairman Arnie Jensen: Any questions from anyone?

Attorney Peter Olson: Continue to the next meeting I guess is the suggestion then.

Chairman Arnie Jensen: Ok, alright.

Commission Secretary Pat Cocchiarella: Move to continue this hearing to our meeting on May 17th.

Attorney Peter Olson: Mr. Chairman is there anything that you would like me to look at based on the evidence here tonight?

Commissioner Harold Cosgrove: Is Attorney Olson going to be available?

Attorney Peter Olson: I won't be here at the next meeting unless it is later in the night, but we can work that out. I don't believe its appropriate to leave this sitting for too long so perhaps you can deal with parts of it at the next meeting. The two questions that I think I've heard tonight that need further investigation are (1) what was the effect of the Commission's approvals on the uses that are out there and (2) how does the Commission interpret the term "contractor's yard" and the definition of contractor's yard in its regulations. I'd like to know any past approvals for property and maybe that is something that can be researched before the next meeting.

Chairman Arnie Jensen: I agree, right, that should be researched, the definition of a contractor's yard was what I was thinking, yes.

Commissioner Harold Cosgrove: Second on the motion.

Chairman Arnie Jensen: Alright. All in favor.

Commission members: Aye.

Chairman Arnie Jensen: Nays, absentions, motion passes.

Attorney Peter Olson: Thank you counsel, both of you.

2. ZEO report regarding various items, complaints and zoning violations and anything else deemed necessary for discussion.

NEW BUSINESS #3 (TABLED UNTIL AFTER HEARING PROCEEDINGS)

Z-16-030 – 300 Oxford Road, Oxford Towne Center (Quarry Walk) – Phase 1A – Owner & Applicant: Oxford Towne Center, LLC (Site Plan Modification)

- a. Application Z-16-030 received on 4/28/2016.
- b. Plan dated 4/28/2016 prepared by Langan.

MOTION BY Commission Secretary Pat Cocchiarella to APPROVE application Z-16-030 – 300 Oxford Road, Oxford Towne Center (Quarry Walk) – Phase 1A – Owner & Applicant: Oxford Towne Center, LLC (Site Plan Modification), based on plan CS101 last revised 4/28/2016, prepared by Langan Engineers.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. Compliance with the Oxford Zoning Regulations in effect as of this date.
2. Applicant and their assigns must comply with all representations made at Planning & Zoning Commission meetings regarding this application.
3. Per Article 3, Section 3.19.1 of the Oxford Zoning Regulations the applicant shall be responsible for payment for any outside experts the Commission assigns to review this application from the initial review through inspection and issuance of a Zoning Certificate of Compliance.
4. This site plan approval expires if the work is not completed within 5 years of the date of this approval.
5. Compliance with all Town Ordinances in effect as of this date.
6. The applicant shall provide the Planning & Zoning Department with updated plans depicting the square footage and dimensions for each building shown on plan CS101.

The effective date of this approval is 5/3/2016.

Second by Commissioner Harold Cosgrove. VOTE: All (7) Ayes.

APPROVAL OF MINUTES

MOTION BY Commission Secretary Pat Cocchiarella to approve the following minutes as presented:

1. 4/19/2016 Regular Meeting Minutes

Second by Commissioner Harold Cosgrove. VOTE: All (7) Ayes.

INVOICES

1. Turner Miller Group Invoices
 - a. #5281 – Z-16-004 – Goodwill Site Plan (Tabled on 4/5/16) – Remains tabled.

The following invoices were approved:

- b. #5282 – Z-16-003 – Oxford Towne Center Site Plan Modification (Tabled 4/19/16)
- c. #5286 – Oxford Greens
- d. #5287 – Quarry Walk – Site Walk & Meeting

OTHER BUSINESS

No subcommittee updates presented.

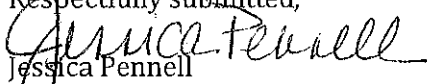
- a. Subcommittee Update - Plan of Conservation & Development

- b. Subcommittee Update - Policies & Procedures.
- c. Any other business the Commission deems necessary for discussion.

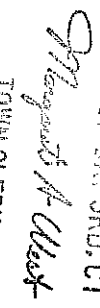
ADJOURNMENT

MOTION BY Commissioner Harold Cosgrove to adjourn the meeting at 10:28 PM. Second by Commissioner Glen Persson. VOTE: All (7) Ayes.

Respectfully submitted,



Jessica Pennell
Administrative Secretary
Planning & Zoning Commission

16 JUN 23 AM 12:10
TOWN OF OXFORD, CT

TOWN CLERK