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MINUTES
JANUARY 14, 2013

The regular meeting was called to order by Chairman Robert Melillo at 7:30 PM.

Present were Jeffrey Barath, Christina Chieffalo, Sally Estefan, James Kelly, Robert Laber, Annette Zatkovich, Chairman Robert Melillo, and Alternates Kevin Haas and Robert Oravetz. Also present was Planning Director Dennis Elpern.

Absent were Rick P. Jowdy and Alternate Robert Arconti. Chairman Melillo explained that the Vice-Chairman Ted Haddad Jr. is not present this evening. He is recusing himself from both the items on tonight's agenda and today is the anniversary of his Mother's passing away so he is excused from this meeting. Chairman Melillo asked Mr. Haas to take Mr. Jowdy's place and Mr. Oravetz to take Mr. Haddad's place for the items on tonight's agenda.

Mr. Barath made a motion to accept the minutes of December 10, 2013. Mr. Kelly seconded the motion and it was passed unanimously by voice vote.

Mr. Haas led the Commission in the Pledge of Allegiance.

CONTINUATION OF PUBLIC HEARINGS

Chairman Melillo announced that although they had heard these two petitions together at the December 10, 2013 meeting, tonight they would be heard and discussed separately.

Petition of Caraluzzi's Danbury Market, LLC for a Special Permit for the Sale of Grocery Beer at 102 Mill Plain Rd. (#C14014).

Attorney Paul Jaber said he is prepared to give his rebuttal to the comments made by the opposition at the previous meeting. Chairman Melillo said since they are looking at how alcohol sales will affect the traffic, he would grant Attorney Jaber some leeway in his rebuttal comments. He reminded the Commission that at the previous meeting, they had stopped after the opposition spoke, so Attorney Jaber would pick up there. Attorney Jaber said they were looking at how the sale of grocery beer would affect the traffic and the safety of this area. He briefly reviewed the location, the zone and described the stores that are proposed in this shopping center. He said with him this evening were Marc Caraluzzi, a

principal in the corporation, land surveyor Matthew Reynolds from New England Land Surveying, Professional Engineer Benjamin Doto and Traffic Engineer Joseph Balskus from Tighe & Bond. He said at the previous meeting, the opposition had requested this hearing be continued so he could analyze the traffic report prepared by Mr. Balskus. Additionally, Mr. Kelly had asked a question about how this would impact the Aunt Hack intersection. Based on both of these, he asked that Mr. Balskus be allowed to speak. Chairman Melillo said they would allow this.

Joseph Balskus, PE and Director of Traffic & Parking at Tighe & Bond spoke next. He submitted a copy of the traffic study that was submitted to the Planning Commission with the special exception application and an additional memo dated today (labeled Exhibits A & B). He said when in preparing a traffic report, all traffic engineers use one reference book referred to as the ITE (Institute of Transportation Engineers) standards. This is a collection of traffic data compiled in conjunction with the Federal Department of Transportation. This book is considered the principal source of professional expertise and knowledge and everyone uses these standards to determine estimated traffic. The ITE does not differentiate between grocery stores that sell beer versus grocery stores that do not sell beer. It is assumed that if a grocery store does not sell beer, something else will be sold in its place. Mr. Balskus said the State Traffic Commission (STC) also does not evaluate grocery stores based on whether or not they sell beer. He referred to table 4 in the traffic study saying that to accommodate the traffic, they are proposing some road widening and restriping. There were some improvements required as part of the previous approval granted for this site and they will still be done. They will provide turning lanes into the site and they also have the accessway that is located between 100 Mill Plain Rd. and 104 Mill Plain Rd. which will allow people to exit the site via a signalized intersection. Mr. Barath asked if they have done traffic studies for other supermarkets and if there are any other standards used. Mr. Balskus said they have done grocery stores in other towns. He added that the ITE book is the result of years and years of studies and is the standard for the industry. It is used throughout the country in conjunction with local and state ordinances. Attorney Jaber then said when they talk about selling beer as a grocery item, they are talking about a small amount of space, possibly 30-40 linear feet containing four shelves. He added that this is a nominal amount of space compared to the rest of the store. He reiterated that the accessway, which will allow customers of the shopping center an alternate egress, was required by the STC thirteen (13) years ago as part of the development that was proposed at that time. There were no other questions for Mr. Balskus at this time.

Chairman Melillo asked if there was anyone to speak in opposition and one person came forward.

Attorney Gregory Cava said he represents two entities: SBBJJB, LLC and Goodhouse Package Store, located at 71 Mill Plain Rd. He added that one of the principals of the LLC lives in the immediate vicinity also. He said his clients would be happy to see the traffic that a grocery store will bring to this end of the road. But when you look at the total project, and review

the applicant's traffic report, you see that they need a special exception because they have nine times the traffic that is allowed. He said nowhere is it listed how many trips He said they are not giving a number; instead they are giving an "extrapolation from a supposition"; which means because they can't give the information, they are saying it will have no effect. He said they did not find the information because they looked in the wrong place. You cannot find this information in the ITE standards; the way to get this information is to consult other grocery stores, package stores and experts in grocery store planning. They are saying that they are going to sell beer because people want to be able to buy it where they buy their food. Their supposition that that none of the traffic will be caused by the sale of beer is false. He said his clients say that most of their business is from the sale of beer, so it is reasonable to assume that the sale of beer will generate a significant amount of traffic. So they are wrong to say the beer is just coming along for the ride with the groceries. He said the next question is whether or not the alternate egress is really a good thing, especially because it is shared with an office building. He said he has taken a portion of the applicant's traffic report and if you look at the impact the additional traffic will have on intersections, etc. during peak hours, you see that the level of service (LOS) will deteriorate to an E once the store opens. At this point, Chairman Melillo asked him to stick to the grocery beer aspect, not the grocery store itself. Attorney Cava then said since the applicant has not presented the necessary information to analyze just the sale of grocery beer, there is no evidence to support their contention that it will not have a negative impact on traffic congestion and safety. He said there is nothing in the record and they looked in the wrong place for the information.

Chairman Melillo asked if there was any other opposition and there was none. He then asked Mr. Elpern for staff comments.

Mr. Elpern asked if the Special Exception that is under review by the Planning Commission is for both the grocery store and package store. Chairman Melillo said based on conversations he has had with Planning Department Staff and Corporation Counsel, the package store use would fall under the previous special exception approval for retail but since it was not called out in that application, it is specifically included in the current special exception application.

Attorney Jaber spoke in rebuttal to the opposition's comments. He said the State Traffic Commission (STC) controls the traffic on Mill Plain Rd. and they required the owner of this property to obtain the easement to the traffic signal. That was thirteen years ago so it was required by the State to get easy egress from this site. Mr. Balskus added that the site plan shows a daily trip generation (based on City standards) of 4,000 trips, but if you look it up in the ITE book, it shows 3,200 trips. He said the opposition's attorney is not a traffic engineer, but he is, so he is the expert on this topic. The ITE standards do not include or exclude the sale of beer because it does not affect the trip generation. If it did, it would be called out in the ITE book. The STC would not allow them to reduce the number of trips generated based on whether or not they sell beer. Mr. Elpern pointed out that if they didn't sell beer in the

grocery store, they could still sell it in the package store, so it would generate the same amount of traffic.

Chairman Melillo said a thirty-five (35) day extension has been received so they can keep this public hearing open until the February 11, 2014 meeting. He asked for a motion to continue this until that date, which would mean they would not revisit this petition until that meeting. Attorney Jaber then said if the Commission requests it, they would be willing to give them another thirty (30) day extension because they do not believe the Planning Commission will make their decision until their February 19, 2014 meeting. He suggested with the additional thirty (30) days, this Commission could continue this until their February 25th meeting, the week after the Planning Commission meeting. Chairman Melillo requested an additional thirty (30) day extension which would bring the total extension time to the full sixty-five (65) days. Attorney Jaber then submitted an extension letter for the additional time. Chairman Melillo asked for a motion. Mrs. Estefan made a motion to continue this public hearing until the February 25, 2014 meeting. Mr. Kelly seconded the motion and it was passed unanimously. Chairman Melillo said this will be listed as a continuation of public hearing on the agenda but no action will be taken on it until the February 25th meeting.

Petition of Caraluzzi's Wine & Spirits, LLC for a Special Permit for a Package Store License at 102 Mill Plain Rd.(#C14014).

Attorney Paul Jaber spoke in favor of this petition also. He briefly reviewed the location, the zone and described the stores that are proposed in this shopping center. He said with him this evening were Marc Caraluzzi, a principal in the corporation, land surveyor Matthew Reynolds from New England Land Surveying, Professional Engineer Benjamin Doto and Traffic Engineer Joseph Balskus. He said this use is under the purview of the Zoning Commission, as they have the authority to issue a special permit. He said he did not want to reiterate the lengthy presentation from the last meeting, they had continued this because the opposition had questioned the traffic impact a package store would have on this area. He said the trip generation for this proposed package store is less than four hundred (400) trips per day. He explained that when they talk about trips; they are counted both ways. He said on their site plan they list sixty-five (65) trips for every 1,000 gross square feet, but they included the other retail space so the actual number is less. Mr. Elpern asked the actual amount of retail space. He said the package store is listed as 6,000 sq.ft. (5,200 plus 800 to be used for storage) and the other retail is 2,000 sq. ft. Mr. Elpern asked if that meant 390 trips for the package store and 195 trips for the other retail for a total of 585 trips. . Attorney Jaber said that is how it breaks down, so there really is not reason to lump the retail with the package store.

Joseph Balskus spoke next; he said in addition to being Director of Traffic & Parking at Tighe & Bond, he is a Licensed Professional Engineer in the State of CT and also a nationally certified professional traffic operations engineer. He said he has a history of work on Mill

Plain Rd. starting with the prior approval for retail on this site as well as Interstate Business Center on Prindle Lane, Boehringer Ingelheim, the Trader Joes shopping center, development on Turner Rd and The Reserve. He said he used retail counts because the ITE does not have a specific count for package stores. They do look at some businesses more specifically but this is not one of them. He said for 5,000 sq.ft. it would generate twenty trips, which is a very low number. Also it is a small percentage of the traffic that will be generated by the entire shopping center. He said he wanted to reiterate the comments he made during the previous public hearing about the road improvements that are being proposed. He said even with the type of congestion that Attorney Cava described, you will still be about to get out of the driveway. He said with over 15,000 cars traveling on Mill Plain Rd. per day, twenty additional trips will not have much of an impact. Mr. Barath asked who is paying for all of the road improvements. Mr. Balskus said the applicant is paying for them. Chairman Melillo asked Mr. Elpern if they could condition the approval with the traffic improvements. Mr. Elpern said he hopes they would just wait for the Planning Commission to make their decision and in that case, a condition would not be necessary. Chairman Melillo asked if the proposed restriping and widening are part of the previous approval for this site. Mr. Balskus said they were; the turning lanes are the additional improvements being offered as part of the current application. Mr. Laber asked where this is in relationship to Westwood Dr. Mr. Balskus pointed it out on the map saying that it is pretty far away from this site. Mr. Kelly asked if the accessway is part of the take-out lane for the Duchess Restaurant. Mr. Balskus said the accessway does not connect to the Duchess site at all. He pointed out the exact area of the accessway on the map. Mr. Kelly asked if it would interfere with the Duchess. Mr. Balskus said it has nothing to do with the Duchess property, it runs behind it. Mrs. Chieffalo asked if the office building was occupied when this accessway was approved and if it would be a conflict for the people working in that building. Attorney Jaber said the owner of the office building had sent a letter to the Planning Commission stating he was in favor of this proposal. He also explained that accessway came about as a result of a legal contract between the two property owners. Chairman Melillo added that is an issue that falls under the purview of the Planning Commission. Attorney Jaber added that the Planning Commission approval consists of a formal document containing a list of all maps; and the approval is conditioned to comply with all of the maps. Mrs. Chieffalo asked how long this site has been vacant. Attorney Jaber said when it was sold to the present owner twenty-five (25) years ago, there was a small house on it; but it has been vacant since then.

Chairman Melillo asked if there was anyone to speak in opposition and one person came forward.

Attorney Gregory Cava said he represents two entities: SBBJB, LLC and Goodhouse Package Store, located at 71 Mill Plain Rd. He added that one of the principals of the LLC lives in the immediate vicinity also. He said there are a couple of traffic issues and some things that just don't make sense. He questioned the way they measured the distance because the Regulations talk about main entrance to other entrance, but his client's store has two

pedestrian entrances. He then submitted a photo of his client's store that was labeled "OPP-C1". This photo had arrows pointing to the doors of the store which were labeled pedestrian entrance and applicant's mapped entrance. This was designated Exhibit A. He noted that the Regulations do not specify main entrance for the existing store. He then said when you compare the rendering of the shopping center to the distance map; they don't match. The main entrance to the proposed package store is shown in different places on these documents. Also their distance measurement goes through the parking lot and there is no mention of going through parking lots or buildings in the Regulations. He said if you did what the Regulations said you would measure from the door of the proposed store to the other store. Chairman Melillo stopped him at this point and read the Regulations aloud. Attorney Cava said the Regulation had two parts and was redone in 2012. He submitted a copy of that petition which was labeled "OPP-B" and designated Exhibit B. He said he highlighted this section and wanted to talk about the new language. The first part of it says as measured from door to door along the public streets. This was changed from the old Regulation under which they would have started at the front door and drawn a circle 2,000 feet around it and no one could locate within that circle. He said suppose this was done under the old Regulation, the applicant would not be able to meet the distance requirement. The amendment petition says that the purpose of the proposed changes were to clarify this Regulation. He submitted copies of the minutes labeled "OPP-B1 & OPP B-2". These were designated Exhibit C. He said these say the changes will clarify the existing language, but they only briefly touch on the changes being made. He also submitted a copy of the Planning Commission 8-3a referral on this petition. This was designated Exhibit D. He said he listened to the tapes of both the public hearing and the decision meeting. There was nothing other than what was in the minutes; nowhere does Mr. Elpern say they want to make this Regulation less stringent. Attorney Cava said based on these documents there clearly was no intent here to reduce the separation distance between the package stores. He said Mr. Elpern is a great public servant, who would not mislead anyone. He then said there is a good reason to not put package stores too close together. He continued saying that he has read studies showing reasons why they should be separated. He said in this case, they got the distance to be over 2,000 feet by going through the parking lot and into the wrong door of his client's store. They have maps prepared by Land Surveyor Paul Hiro, which shows that the applicant's calculations are wrong. He submitted copies of them for the record saying one of them shows that the applicant's entire property is located with 2,000 feet of his client's property. These were designated Exhibits E & F. The other map shows the measurement taken along the roadway, also totaling less than 2,000 feet. He said going back to the Regulations, the only place that makes reference to "along the road" is for the distance between the package stores; it does not mention it in the distance requirement from school, church, or place of worship. He then said that he understands the City standards on how we count traffic, and that is treated as retail, but there are different kinds of retail. All retail is not the same and as an example, he cited the difference between the traffic generated by a store like Forever 21 and a store like the Microsoft Store. He said His clients tell him that their store, which is under 2,000 sq.ft. generates almost as much traffic as the applicant says their 6,000 sq.ft. store will generate. And that is just on a regular basis,

there is much more traffic during holidays and weekends. He submitted an excerpt from the applicant's traffic study which was designated Exhibit G. He said this Commission has to decide if this proposal will have a negative impact on the traffic congestion and safety and if it will, they need to deny it. He said he believes that the applicant's estimate of 390 trips per day for the package store is an understatement. The fact that the intersections on this road are deteriorating is proof that additional traffic will have a negative impact. He said there is no public benefit to having more package stores. The sale of alcoholic beverages is extremely limited by the State; they are told the minimum price they can sell their products at. They all pay the same price for the merchandise so competition is not an issue. Having a concentration of package stores is not beneficial to anyone. The only benefit is a marketing advantage of being able to offer the service; otherwise all it does is force them all to struggle for survival. He said there have been several university studies done on the potentially bad effects of concentrating package stores and submitted some documentation on this topic. This was designated Exhibit H. Lastly he submitted a copy of Sec. 3.F.2.a. with the finding that this Commission has to make highlighted. This was designated Exhibit I.

Mr. Elpern said he wanted to clarify that the reason Sec. 3.F.2.d.(1) was amended was precisely to prevent people measuring the distance between package stores by radius. He added that since you don't travel from one store to another by flying; you have to use the roadways. The section where it says you measure from pedestrian entrance to pedestrian entrance is the way they wanted it to read. At the time this Regulation was amended, no one spoke in opposition nor was there any appeal of the decision. He said he does recognize that a package store must have a separate entrance by State law. He said because this building is not yet built, they estimated where the main entrance would be. That estimate was to the center of the shopping center but that is not where the door will be, it is even further away. He said the provisions in the amendment made the distances further between stores, not closer. The reason they put the clause in there about measuring along street lines was so that no one could measure any other way. He said he believes it is very clear that you measure from pedestrian entrance to pedestrian entrance along the street. Mr. Barath asked if he is saying that the intent is that the measurement should be by radius, or if it should be taken diagonally or if one should extend the line to street from the door and measure that distance. Mr. Elpern said the measurement begins at the entrance to the package store, then out to the road to the other package store entrance; it does not matter how the distance is measured from the door to the road. Chairman Melillo said the Regulations are specific about from pedestrian entrance to pedestrian entrance which means door to door and further above it, it says along the road. Mr. Barath asked if it is measured diagonally and Mr. Elpern said no. He then reiterated it is 2,000 feet from the main pedestrian entrance of the package store to the closest pedestrian entrance of the other existing store as measured along the public street. Mr. Barath asked if that meant when you walk out to the street, travel down the street and into the other package store, that distance must be more than 2,000 ft. Mr. Elpern said that is correct and then brought up when Stew Leonard's wanted to open a package store (before they bought Discount Liquor) and they challenged the distance requirement. They wanted to measure the distance "as the crow flies" but that

is not how you travel from one store to another, so it is not a valid measurement. He said that is the functional definition of distance, how you would travel from one location to another location. Chairman Melillo restated the regulation and said it is pretty clear that the distance must be measured along City streets. Mr. Laber asked if there is a difference between pedestrian entrance and fire exit. Mr. Elpern said the pedestrian entrance is exactly that. Mr. Oravetz asked if you would measure the distance from the main entrance to the roadway perpendicularly. Mr. Elpern said you would draw a straight line out to the roadway. Chairman Melillo said Mr. Elpern has answered the question; you draw a straight line out to Mill Plain Rd. and measure along the roadway to the other package store and then draw a straight line in to the door.

At this point, Attorney Cava raised his hand and asked the Chairman if he could ask Mr. Elpern a question. Chairman Melillo said no because the opposition portion of the meeting has closed. He said the opposition had ample opportunity to speak and now it is time for rebuttal comments.

Attorney Jaber then spoke in rebuttal. He said first, he wanted to address their comments about the entrance to the proposed store. The original distance map was prepared before the store location was determined; they have since revised the map. The entrance to the package store, which has already been approved by Liquor Control, will be through an alcove. The people will enter the alcove and there will be separate doors to both the package store and the grocery store. There will be no sales in the alcove, if the State wants it done differently, they will put separate entrances on the front of the building. Next, he said they are saying we interpreted the phrase "closest pedestrian entrance" incorrectly; and that we used the wrong door for their store. He referred to a photo of their building saying it looks much bigger than 1,800 square feet and added that the door they are saying is the main entrance, has a sign over it that says "bottle redemptions". He said he also had their surveyor calculate the distance to that door in case this Commission agrees with the opposition that is their main entrance to their store. Another map was prepared showing the distance to this entrance and it is still over 2,000 feet. He said the ZEO interprets this Regulation that you measure from the door, through the parking lot, out to the roadway and to the door of the other package store. He said there was no "snaking" through the parking lot. He asked their surveyor to testify that this is how they did their measurement.

Matthew Reynolds, R.L.S., New England Land Surveying, said he spoke to Zoning Enforcement Officer Sean Hearty before he prepared the map. He wanted to make sure he was interpreting the methodology of measuring door to door as the City intended it to be done. This map was measured consistently as he had measured other locations: from the main entrance of the existing package store to the main entrance of the proposed package store. He said the original map submitted with the petition was prepared before the architectural details were prepared and now that they know where the main entrance to the package store will be, they have an updated map. The reason there was a jog was because they were anticipating avoiding the parked cars. If this jog was eliminated it would only

account for about ten (10) feet. They used the aisle between the rows of parking because that was where a person would walk to get across the parking lot to the roadway. He said with respect to the existing package store, the difference between the main door and the bottle redemption door would be about forty (40) feet. He added that he does not have the exact distance but can provide it. Mr. Haas asked if they were to measure a straight line from the main door to the street how much would it change the measurement. Mr. Reynolds said he wouldn't want to just guess at that, especially because that is not the way this has been interpreted by the ZEO. Mr. Haas asked Mr. Elpern the same question. Mr. Elpern said obviously you want as straight a line as possible, but if there are obstructions in the way, you have to go around them. Chairman Melillo said this is an unusual situation because generally they deal with a building that is already built. He added that the surveyor puts his seal on the plan, which is a certification that it was prepared in compliance with the State standards. He said every time they have approved a package store, there has been a sealed map to document the distance, but this is the first time he can ever recall a surveyor's work being questioned. Attorney Jaber said if the hearing is continued tonight, they will submit a map showing the straight line as described by Mr. Haas. He added that if it is too close, they will move the package store over. The location is not cut in stone. He said, as their surveyor indicated, they cannot measure through parked cars. He added that the Regulations were changed because the two sections were measured differently – it was done to ensure consistency in the way the distance is measured. He said he is not sure whose determination it is how they want it measured. Chairman Melillo said it is the Zoning Commission's determination.

Mr. Elpern asked Attorney Jaber if they can provide a plan showing the pedestrian walkway out to Mill Plain Rd. Attorney Jaber said the package store is being proposed on most easterly part of the building, but he believes Mr. Elpern asked where the sidewalk is in the parking lot. He continued saying if that is how they want it measured, that is an even further distance. Their measurement went from driveway down the nearest aisle to the main entrance. He said they will provide the information Mr. Elpern requested for the February 25th meeting. Chairman Melillo said it is better to wait until then, because the Planning Commission decision will be finalized. Attorney Jaber said the previous method of measuring was inconsistent and that is why it was changed. In closing he said the real issue here is competition, the opposition is trying to eliminate the competition that this store will bring.

Joe Balskus addressed traffic report/comments that were handed in by opposition. He said the trip generation created by the package store will not be noticed on Mill Plain Rd. Some of the approaches will be affected by the additional traffic from the shopping center but that is for the entire project not just the package store.

Chairman Melillo said the timing is the same on this hearing as on the previous one; an extension has been received to keep the public hearing open for an additional thirty-five (35) days. He added that since they requested the additional thirty (30) days on the previous petition, they would do the same for this one. He then asked Attorney Jaber for an

additional thirty (30) day extension to bring the total extension time to sixty-five (65) days. Attorney Jaber then submitted an extension letter for the additional time. Chairman Melillo asked for a motion. Mr. Kelly made a motion to continue this public hearing until the February 25, 2014 meeting. Mrs. Estefan seconded the motion and it was passed unanimously. Chairman Melillo said this will be listed as a continuation of public hearing on the agenda but no action will be taken on it until the February 25th meeting.

NEW BUSINESS

Petition of Dora Minchala d/b/a La Kubanita Restaurant, 35 White St. (#113059) For Restaurant Beer & Wine. Public hearing scheduled for January 28, 2014.

Petition of Plumtrees Green Wine & Liquors LLC d/b/a Warehouse Wine & Liquors, 61 (a.k.a. 63) Newtown Rd./Plumtrees Plaza (#L12018) for a Special Permit for a Package Store Permit. Public hearing scheduled for January 28, 2014.

Chairman Melillo noted that no action is necessary for these petitions. They will be heard at the January 28, 2014 meeting.

He asked if there was anything to discuss under Other Matters and there was nothing. He noted that the schedule of regular meetings for 2014 had been sent out to the members for the second time.

Chairman Melillo said listed under For Reference Only is the public hearing for the Moratorium on Medical Marijuana which is scheduled for the January 28, 2014 meeting. He added that he had spoken to Assistant Corporation Counsel Robin Edwards today and she confirmed that she will be in attendance for this hearing.

At 9:44 PM, Mrs. Chieffalo made a motion to adjourn. The motion was seconded by Mr. Haas and passed unanimously.