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CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING & ZONING DEPARTMENT
(203) 797-4525
(203) 797-4586 (FAX)

March 23, 2007

To: Mayor Mark D. Boughton
Members of Common Council

From: Dennis I. Elpern

Re: Stricter Traffic Controls
Item 10, March 2007 Common Council Meeting Agenda

We have been asked to provide a report regarding Item 10 on the March 2007 Common Council meeting agenda. The purpose of the item was

to make recommendations to amend the planning and zoning regulations to impose stricter regulations, parameters and standards of review on any proposed project or application that includes any increase in motor vehicle traffic on any municipal or state road so that the aggregate motor vehicle traffic will be considered.

This request stems from the controversy surrounding the proposed construction of a Dunkin' Donuts on Osborne Street, a site zoned General Commercial (CG-20). To my knowledge, this zoning district has been in place for over twenty years and includes, among other uses, Germantown Plaza and medical offices.

Under current regulations, any use which will generate over 500 motor vehicle trips per day automatically becomes a special exception requiring Planning Commission approval pursuant to a public hearing. After several rejections, the applicant came back in with a much smaller proposal which, according to formulas in the Regulations, will generate 498 trips per day. Accordingly, this proposal now only requires review by this Department, not the Planning Commission. No public hearing may be held.

Let's begin by acknowledging that any amendment to the Zoning Regulations will only apply to future applications for site plan approval and cannot be retroactively applied to the Dunkin' Donuts proposal. Nevertheless, zoning amendments can help mitigate future problems of this nature.

Setting.

Over the years, Danbury has been generally pro-development. For many, zoning has been used primarily as a means to prevent the worst from happening rather than as a tool to direct future development. Although concerns about 'over-development,' increased traffic congestion, and a continued loss of open space have always existed to a degree, such concerns seem to have grown in recent years. Concurrently, as prime development land has diminished, land use attorneys have searched for loop holes in the Zoning Regulations to allow development in ways and places never before envisioned by the City. We can expect this kind of behavior to continue in the future.

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The extreme choices facing the City are to allow development at any cost or, conversely, to take drastic actions to severely limit future growth. While both extremes may have their advocates, I suspect that the vast majority of residents would prefer a middle ground, a strategy that promotes balanced growth where the benefits of development are enjoyed without further sacrificing the quality of life of the City. To this end, much has already been done:

- the Planning Commission adopted a *Plan of Conservation and Development* in 2002, the first since 1980, which provided a comprehensive strategy for balanced growth;
- the City prepared it's first-ever *Parks and Recreation Plan* in 2003 and *Transportation Plan* in 2005; and,
- numerous public improvements have been completed to expand schools, improve roads, increase parkland, and to finalize downtown redevelopment.

More recently, the Mayor has promoted the preservation and expansion of open space and advocated enhanced design review through an architectural review board.

Zoning has also been improved. There was a time when office buildings could locate in single family neighborhoods up to 1½ miles from an intersection of I-84, when strip clubs could locate on Main Street, when drive-in restaurants were allowed downtown, and when drug treatment centers could be located in any residential district. No more. There was a time when environmentally sensitive regulations did not exist for public water supply watersheds and a time when the City provided no incentives for the development of affordable housing. And, amendments were enacted two years ago to improve the function and design of our multi-family neighborhoods.

Existing Regulations Affecting Traffic.

The current Zoning Regulations contain a number of provisions intended to mitigate the impact of new development on traffic congestion and safety.

- All special exceptions must be sent to the Planning Commission for review and action pursuant to a public hearing. In addition, any proposed use, even if initially listed as a permitted use, is converted to a special exception if it is determined that it will generate over 500 vehicle trips per day. As such, the owner must file a Traffic Impact Analysis with the application for approval.
- All site plans, whether reviewed by this Department for permitted uses or by the Planning Commission for special exceptions, are referred to the Highway Department, Traffic Engineer and Traffic Authority (i.e. Police Chief) for review and recommendations.
- Detailed requirements are specified in the Regulations governing the location and design of driveways.
- The Planning Commission may require reasonable improvements to special exception site plans to ensure that the proposed use will not create conditions adversely affecting traffic safety or cause undue traffic congestion.

This process has been in existence for years and has been responsible for preventing many traffic problems stemming from new development. In most cases, this has gone unreported and has never received the credit it deserves because it has been successful in its efforts. Usually, only failed efforts gain publicity.

Future Actions.

But, that is not to say that improvements to the process cannot be made. This requires an understanding of some basic zoning principles before one begins to regulate what people can do with their land.

- Zoning conveys rights to landowners to develop their land as specified in the regulations. It does not give government the right to arbitrarily deny applications or to unreasonably restrict development. An entire body of law exists which restricts the degree to which private land can be regulated.

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- Zoning cannot require new development to make public improvements to solve existing traffic problems. It can only address problems created by the proposed development.
- Accordingly, government is limited in the extent to which it can demand improvements. Requiring improvements which go beyond the vicinity of the development site is typically not looked upon with favor by the courts.

There are always those, of course, who would suggest that the City ignore clearly stated court decisions, case law or the Connecticut General Statutes, arguing that we should deny unpopular applications even if they pass constitutional muster. We do not agree, for if government so purposely rejects a non otherwise legitimate proposal in such a cavalier manner, then how can we expect others to comply with the law? We may be applauded by an unsuspecting public at first, but at the risk that they later discover that our pious positions were little more than posturing.

So, what should be done? Here are a number of zoning initiatives we are preparing now, all of which are consistent with the *Plan of Conservation and Development*.

1. Require that all uses with drive-in facilities, regardless of size or location, be defined as special exceptions, subject to review by the Planning Commission pursuant to a public hearing.
2. In all zoning districts, designate uses which are heavy traffic generators as special exception uses.
3. Review all uses allowed in commercial and industrial zoning districts to ensure that they promote the purposes of their respective districts, including those districts designed to limit traffic impacts.
4. Institute curb cut control plans for all development on major roads, based on engineering studies prepared for HVCEO, including Mill Plain Road, Federal Road, Pembroke/Padanaram Roads, and U.S. Route 7 south.
5. And finally, enhance the requirements for landscaped buffer yards separating commercial or industrial development from single family residential zoning districts.

And, it should be clear that we will continue to resist efforts to rezone land for uses which will result in significant increases in traffic congestion or a decline in safety.

Bear in mind that, according to the Charter, all amendments to the Zoning Regulations fall solely within the purview of the Zoning Commission and that Common Council has for many years refrained from becoming involved in zoning matters. While anyone can propose, only the Commission can enact.

One final caveat. I need not remind you that we live in an age of deregulation. We should resist the temptation to respond to crises with overly zealous reactions that may exceed municipal authority. Any increase in regulations needs to be a measured response which targets existing and potential problems, avoiding blanket encumbrances which may ensnare *all* proposals no matter how small or benign. Even a single family house creates some traffic. Over-regulation and excessive red tape veer too far from the concept of balanced growth and in time may too easily lead to an opposite and extreme reaction.



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CITY OF DANBURY
OFFICE OF THE CORPORATION COUNSEL
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

March 26, 2007

Honorable Mark D. Boughton, Mayor
Joseph Cavo, Council President
155 Deer Hill Avenue
Danbury, CT 06810

Re: March Council Agenda Item #10
Letter dated 2/22/07 requesting Ad Hoc Committee for
recommendation of Zoning Regulation Amendments
Thirty Day Report

Dear Mayor Boughton and President Cavo:

Please accept this letter in response to your request for a report concerning the above matter. The February 22, 2007 letter referred to above appropriately recognizes that the role of the Common Council regarding the adoption or amendment of zoning regulations is an advisory one. The Zoning Commission is charged by Connecticut statutes with the responsibility for considering and implementing any changes to the zoning regulations that it deems necessary in the exercise of its legislative function.

At the February Council meeting, this matter was also referred to the Director of Planning for a report. Mr. Elpern's report describes the initiatives that his department is taking to ameliorate traffic congestion. The report indicates that the department is reviewing all uses allowed in commercial and industrial zoning districts to ensure that their purposes are promoted. The department is also instituting curb cut control plans for all development on major roads.

In addition, Mr. Elpern proposes to amend the zoning regulations in three areas. First, he proposes an amendment that would designate uses which are heavy traffic generators as special exception uses. This would give the Planning Commission greater powers to require reasonable improvements to a development that may be necessary to accommodate traffic increases caused by the development. The Planning Commission in its review of special exceptions has clear authority to impose reasonable requirements in order to control traffic congestion.

Second, Mr. Elpern proposes an amendment that would make any drive-through facility a special exception use regardless of the size or location, or whether the facility generates 500 or more daily vehicle trips. The Zoning Commission has the power to specify uses which require special exceptions, and thus such an amendment would be within the Commission's legislative authority.

Laszlo L. Pinter
Deputy Corporation Counsel
l.pinter@ci.danbury.ct.us
(203) 797-4517
(203) 796-8043 FAX

Robin L. Edwards
Assistant Corporation Counsel
r.edwards@ci.danbury.ct.us
(203) 797-4516
(203) 796-8043 FAX

Dianne E. Rosemark
Assistant Corporation Counsel
d.rosemark@ci.danbury.ct.us
(203) 796-8004
(203) 796-8043 FAX

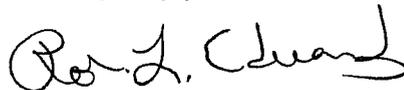
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Third, Mr. Elpern proposes an amendment to enhance the requirements for landscaped buffer yards separating commercial and industrial development from single family residences. Such an amendment is also within the Commission's legislative authority.

If you have any questions, please feel free to contact me.

Very truly yours,



Robin L. Edwards
Assistant Corporation Counsel

cc: Dennis I. Elpern, Planning Director
Robert J. Yamin, Corporation Counsel
Laszlo L. Pinter, Deputy Corporation Counsel