

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
NOVEMBER 17, 2008**

ROLL CALL:

Members Present: David Wichman, Chairman
Eugene Sierakowski, Vice Chairman
Joseph Diminico, Secretary
Kevin Dougan

Alternates: Eric Prause (sitting)

Absent: Salvatore Mancini
William Cherry

Also Present: Mark Pellegrini, Director of Neighborhood
Services and Economic Development
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chairman opened the Public Hearing at 7:02 p.m. The Secretary read the legal notice for the application when the call was made.

WAL-MART REAL ESTATE BUSINESS TRUST – Zoning Regulation Amendments at Article II Section 8.03.24 and Table II 8-1-CUD Zone (W-137)

Attorney John Knuff, 147 North Broad Street, Milford represented the applicant who wished to amend the zoning regulations to enable the sale of gasoline in a CUD zone. He said this is a critical customer service issue for his client, Sam's and Wal-mart. He reviewed the text of the proposed changes. The change will apply only to the CUD zone, and gasoline sales will be permitted only on the same lot as a wholesale or retail establishment that exceeds 100,000 square feet. Only Sam's Club, Wal-mart, and Home Depot currently fit that description, Mr. Knuff said. He stated that theoretically another retailer could expand to meet the 100,000 square foot threshold, but the lot itself would have to be large enough to accommodate such a store. Gasoline sales cannot be located within 200' of residential use, must have setbacks of 60' in the front yard, 25' in side yard, and 30' in rear yard, and pumps cannot be closer than 25' to any property line under the proposal.

Attorney Knuff explained that when considering a zoning regulation change, there are four criteria that must be considered, two of which are mandatory and two of which are advisory. The two mandatory requirements are that the change must be in accordance with the Comprehensive Plan and it must be related to the Town's police powers. The two advisory criteria are to consider the Plan of Conservation and Development and to consider the character of the district and suitability of the use.

In response to a question from Mr. Prause, Attorney Knuff explained that the 100,000 square feet was intended to limit the number of sales facilities. He is aware that in the past there was a concern about automotive uses in this zone, so he tried to make the change as restrictive as possible, he said.

Ms. Bertotti stated that there are no outstanding staff comments.

Chairman Wichman asked anyone wishing to speak in favor of or in opposition to the application to come forward.

Conrad R. Decker of Drake Petroleum, the owner of the Extra Mart on Buckland Street, opposed the zoning regulation amendment. The applicant applied for a special permit several years ago and was denied. BJ's was allowed to sell gasoline by special permit. Mr. Decker said that when Drake built its gas station, it pursued the proper location and secured a special permit. He suggested the applicant should find an appropriate location in a Business 5 zone. Mr. Decker stated any retailer over 100,000 square feet can apply for gasoline sales without a special exception. He is concerned about safety issues. At the minimum the sale of gasoline should be considered through a special permit process, he said.

Nathan Dale, Alliance Energy Corp. said he has the same concerns that Mr. Decker brought forth. He also brought up the number of parking spaces required for a building and whether installing a gas station would reduce the number of parking spaces.

Attorney Knuff noted that the two people who spoke in opposition are both competitors. Sam's and Wal-Mart will be selling gasoline only and will employ the same safeguards currently in place. Attorney Knuff explained that the size of 100,000 square feet was chosen to restrict the number of retailers. A two step process is still required in the CUD zone, a preliminary and final plan approval. He is aware of past denials but feels it is important to make one last attempt.

There being no further public comment, Chairman Wichman closed the hearing on this item.

KONOVER ACQUISITIONS, LLC – 184 and 188 Spencer Street – request to change existing RR zoning at 184 and 188 Spencer Street to GB – Zoning District Change from RR to GB (K-66)

Attorney Daniel Kleinman represented the applicant in its request for a zone change from RR to GB. He described the area to the west and north of the applicant's property as zoned GB; the area to the east residential; and four other smaller parcels on the north side of this location, three of which are GB and one is RR. Attorney Kleinman noted that the Plan of Conservation and Development specifically advises against rezoning Rural Residential to General Business in this location. He pointed out that the economic situation of the nation has radically changed since the adoption of those guidelines. The applicant is financially solid and has a number of interested tenants, none of which are interested in going into the old K-Mart building. He believes that building will not be reused without a complete teardown.

In response to a question from Mr. Wichman, Michelle Carlson, Vice-President of Project Management at Konover, stated that some clients have looked at the K-Mart site but feel it is set back too far from the road. The potential tenants of this project are not in Manchester at this time or are in a different area of town and feel this is another trade area they would like to explore.

Chairman Wichman asked anyone wishing to speak in favor of or in opposition to the application to come forward.

Attorney Marjory Shansky, representing Waverly Markets, spoke against this application. She said the Plan of Conservation and Development urges the Commission not to make changes in the short term. From March, 2008 to November, 2008 is genuinely short term. There were a number of commercial building vacancies listed as of January 2007 and there have been additional vacancies added since then. Attorney Shansky believes changing RR land to commercial would be ill-advised. This land provides eco services for many neighbors. If the application is approved, it will instead serve a single applicant and its prospective tenants. She

urged the rejection of this application.

Mr. Wichman asked if she represented a property owner in the area and Mr. Sierakowski stated that Waverly is the owner of Shop Rite.

Mr. Pellegrini noted a memorandum dated November 12 sent to Commission members explaining the surrounding zoning. He thought that between the applicant and Attorney Shansky, the core issues of the staff memo had been presented.

Mr. Wichman wondered if a new commercial development in the area would improve the desirability of the K-Mart plaza. Mr. Pellegrini thought that depended on what development is being brought to the area. There are opportunities for ancillary activities to occur but he can only speculate.

Mr. Wichman stated that agricultural land is assessed at minimal tax rates and commercial land will be assessed at higher rates. Mr. Pellegrini stated that the idea of agricultural use as an economic activity is gaining some footing. If the Commission does depart from the Plan of Conservation and Development, it will need to provide its reasoning for the record, he said.

Attorney Shansky shared a book from the Connecticut Conference of Municipalities about planning for agriculture with Commission members.

Attorney Kleinman stated he cannot divulge who the tenants will be. By way of summary, he said the Plan of Conservation and Development was completed in March of 2008 during more fluid economic times than we are currently in. Because zoning is fluid, the Planning and Zoning Commission has the right to amend the Plan. The prospective tenants are not interested in occupying the K-Mart plaza. The property owner of 184 and 188 Spencer Street should not be penalized because prospective buyers are seeking a zone change. We have an owner who wants to sell, a developer who wants to buy, and tenants that want a new state of the art facility. Attorney Kleinman asked the Commission members to be flexible.

There being no further public comment, the chairman closed the Public Hearing portion of the meeting at 7:47 p.m.

NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO. 1007, 1008