

**WOLCOTT PLANNING & ZONING
PUBLIC HEARING AND RESCHEDULED REGULAR MEETING
WEDNESDAY, APRIL 7, 2010
TOWN COUNCIL CHAMBERS, 6:30 P.M.
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MINUTES

PUBLIC HEARING

Note: These are summary minutes. A tape recording of this meeting is on file in Wolcott Town Hall, Commission Secretary's Office.

Chairman Ray Mahoney called the Public Hearing to order at 6:33 p.m. with the Pledge of Allegiance and attendance was taken.

Roll Call Attendance

MEMBERS PRESENT: Pete Carmody, Cathe Sherman, Sam Zotto, Bill Olmstead, Ray Mahoney

MEMBERS ABSENT: None

ALTERNATES PRESENT: Chris Edquist, Vanessa Malena, Rich Delpier

ALTERNATES ABSENT: None

ALSO PRESENT: ZEO Dave Kalinowski, Mayor Thomas Dunn

PERMIT APPLICATIONS

- 1. #10-433 Robert and Christine Wright – Special Use Permit for a Daycare/Preschool Facility at 1790 Meriden Rd.**

ZEO said that the applicant called earlier today and asked to continue this public hearing as they do not have all the information that was requested. Chairman Mahoney said the public hearing is continued to 4/21/10 at 6:30 p.m. in the Council Chambers

- 2. #10-435A Al Podzunas – Special Use Permit for the Wolcott Youth Center at 48 Todd Rd.**

ZEO said that a site plan was delivered for this today and it shows where the building is located but it is obviously missing some items, such as sewer connection, water connection, elevations, etc. Al Podzunas said the land is virtually flat there so the surveyor just noted point marks on the plan. He said the well is located next to the Lion's barn and the reason they did not put it on the plan is because he's waiting for the engineer to give him the electrical load, do they go underground or have a pole put up. Mayor Dunn said when they went for the bonding they originally were going to put the Youth Center where the Lion's barn is but after further review it was determined to keep the barn for storage. He said this is the first Youth Center for the Town and is an opportunity for the kids to have dances, different activities, learning center, etc. Ray Mahoney said he knows it is flat there but the site has a history of holding water. Al Podzunas said he will be bringing in re-grind and taper towards the drains. He also said it is very hard to locate the sewer line until they

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take the building down. Vanessa Malena asked if there will be a revised site plan that will show the well and sewer as the Commission cannot make a decision on the plans before them and Al Podzunas said yes before he can proceed any further he has to have full signed off plans. ZEO said we definitely need a modification to this site plan, as well as the architectural.

At this time there were no more comments from the public or the Commission and the public hearing was continued to 4/21/10 at 6:30 p.m. in the Council Chambers.

**3. #10-430 Musco Propane – Site Plan Application (and Zoning Permit) (revised to)
(3) 10,000 gallon above ground propane tanks at 585 Wolcott Rd.**

Attorney Salvatore said that on March 25, 2010 he submitted a revised site plan consisting of 3 propane tanks, not the 4 originally applied for.

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to take a 5 minute recess at 6:57 p.m. At 7:01 p.m. Chairman Mahoney called the meeting back to order.

ZEO said the original proposal was for (4) tanks and revised it to (3) tanks to be placed in front of the existing 30,000 gallon tank on property. He said the site plan shows the path for tractor trailers coming in and out of the driveway, parking locations, elevations, etc. Attorney Salvatore submitted the approval from Inland Wetlands that he received today. Attorney Salvatore said that Musco is a home heating fuel dealer that is family owned and operated. He said Musco is currently licensed by the Dept. of Consumer Protection as a home heating fuel dealer and they also have a distributor's license for special fuel distribution by the Dept. of Revenue Services. Atty. Salvatore said Musco's business is home heating fuel and they distribute to approximately 5,500 customers and 5 or 6 dealers. He said these dealers are propane dealers that do not have on site bulk storage. He said the site plan complies with all requirements, which include parking, setbacks from Rte. 69 and the Residential Zone, site line and traffic requirements. He said page two of the site plan shows the traffic flow for deliveries of propane coming from southbound direction and page three shows northbound flow of delivery trucks. Chairman Mahoney said he thought they were cutting it awful close, that is if perfect conditions for trucks coming in and out, and you are showing a 48 foot truck when today's trucks are actually 53 feet. Atty. Salvatore said they are showing a 48 foot trailer and a 15 foot cab – totally 63 feet. Chairman Mahoney said the average truck on the road is probably around 70 something. Atty. Salvatore said the D.O.T. guidelines provide for the truck movements to be for a 63 foot tractor trailer, it was reviewed by the ZEO and they made changes to the parking area because when the tail end of the trailers swung around it would interfere with that parking and that is why they relocated the parking area. ZEO said part of the requirements for a site plan application, such as this located on the Rte. 69 Corridor, would be for the D.O.T. to look at the plans. Atty. Salvatore agreed and is satisfied that this will meet their expectations. Cathe Sherman said the regulations state that the Commission has to worry about the health and safety of the people in Wolcott and she is worried about traffic congestion especially if two trucks arrive at same time from different directions. She asked how this would not back up into Rte. 69. Atty. Salvatore said he did not know if the property would allow for two trailers to

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enter or exit at the same time and he said it is virtually impossible considering the layout. Cathe Sherman said it is possible for two trucks to come in at once and her concern would be where the trucks would park when waiting to enter property. Atty. Salvatore said the physical layout of the property does not allow for that (2 trucks) and the activity and the traffic generated by Musco Propane and its business is mostly its trucks delivering as they have 5,500 customers to deliver to. He said she is presuming that there are a multitude of trucks entering and exiting the property and that is not the case. Cathe Sherman said then you would only have one truck at a time and Atty. Salvatore said correct. She asked are you ever going to have someone trying to unload (deliver gas) and a dealer truck leaving and Atty. Salvatore said "simultaneously". Cathe Sherman said yes and Atty. Salvatore said that is not proposed and he does not think it is physical possible. Chairman Mahoney said he has seen trucks there and bobtails there at the same time and if a trailer truck happens to come along and needs to pull in where is he going? Atty. Salvatore said you are making it sound like there is a backup of traffic on Rte. 69. He also said that is presuming that the addition of 3 tanks is going to increase Musco's business to that extent where they would have trucks coming and going but most of their business is delivery, not pick up. Cathe Sherman said you stated there would be several dealer trucks also accessing property and Atty. Salvatore said they have 5 or 6 customers right now.

Mike Morrissey from Morrissey Consulting said he is also the State Director to the National Propane Gas Association and offered to assist the Attorney in better answering questions. He said it is common that you could have a bobtail being loaded and a transport vehicle arriving to off load and the site plan accommodates that. Chairman Mahoney said he understands that but where does the transport truck go while waiting for the bobtail to fill up. Mr. Morrissey said the transport vehicle because of its size will line up horizontally or parallel to the existing 30,000 and proposed (3) 10,000 gallon tanks while waiting to hook up. Vanessa Malena said isn't a matter of just business planning on when loads come in and out. She also said the transport trucks she has seen there before are usually off loading in the evening when the business is closed. Mike Morrissey said because there is more tanks it doesn't mean there will be a change in procedures, they are still going to get the same amount of deliveries. He said what the added storage does is provide them an additional buffer to back up their deliveries to primarily to retail customers so they have more inventory. He said there is a bottleneck in the secondary storage level now and because the industry is growing and many marketers are adding additional storage based on the recommendation of a permanent study that was done years ago. Cathe Sherman said you are doubling your storage therefore you will be doubling your on and off loading traffic. She also said if doubling capacity is this for retail sale only? Mike Morrissey said it will support all activities that are currently going on at this location. He also said they are delivering to a lot of residential customers and some commercial/agricultural applications. He said as a retail or variation of retail operations they deliver to re-selling dealers who sell to garden centers, hardware stores, etc. He said Musco supports dealers who do not have bulk storage. He said trucks come in and fill their tanks and they take their trucks and make the same retail sale. The only difference is where the point of delivery is made and in the case where the trucks come in that are not Musco's the point of delivery would be at their location verses the location where the re-selling dealer may be. He said they are both essentially a retail activity. He said that Musco's documents will verify that he is

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engaged in a retail, not wholesale, operation. ZEO said a cease and desist order was sent to Musco's for the wholesale end of the business. ZEO said that when Musco came in for their permit in 2006 it was for their own use. He said it is important for Commission to establish if this is for their own use or for other companies for retail. He also said that under Schedule A, C-16 and C-16a for warehouse for wholesale business, however it is not for bulk of liquid propane, gas stations, diesel fuel, etc. but if you read C-17 it specifically says retail sale of propane. He said the regulations say if it is not specifically listed under Schedule A is it prohibited in the Town and you will not find where it says wholesale of propane in these regulations. Atty. Salvatore says wholesale is not identified specifically in the regulations and ZEO said if it is not then what does that mean. ZEO then read again where it says if not listed in regulations it is prohibited and Atty. Salvatore says they respectively disagree with that classification. Mike Morrissey said Musco is not a wholesaler of propane for reasons stated earlier referencing State and Federal Statutes. Bill Olmstead said he is asking if Musco Propane is dealing wholesale not if he is a licensed wholesaler. Atty. Salvatore said he is a fuel dealer. Mike Morrissey said the primary activity of a dealer is shipping to residential customers, but there are some variations in the retail activity. Pete Carmody said then what you are saying is if we see a truck at Musco's from another company that is a retail sale and Atty. Salvatore said correct. ZEO said we can argue all day about retail or wholesale but if we are changing the use from Musco's own trucks to other trucks he thinks for the record that is what needs to be understood. Mike Morrissey said under the Federal Law Statutes it would be Public Law 104-284 which is the Propane Education and Research Act for 1996. He also said there are strict guidelines that relate to facilities of this nature. He said the proposal for the (3) 10,000 gallon tanks is not the norm but this is being proposed because the applicant is trying to follow the Town ordinances. He also said the applicant spent extra money to be extra safe.

Cathe Sherman said the Plan of Development (and Regulations) states the Rte. 9 Corridor adhere to certain standards of beautification and asked how these plans aesthetically improve the Rte. 69 Corridor. Attorney Salvatore said the Petroniro's improvements to the property is an example of how they maintain it and as far as the unsightliness of the (3) tanks as opposed to just (1) tank (30,000 gallon) unfortunately it is the regulation that is preventing them from doing just the (1) tank. Joe Rose, President of Propane Gas Association of New England, said he has 517 members throughout the 6 New England States and the Petroniro's facility is one of the finest. Bill Olmstead said does anyone have the capability in determining the risk factors involved with these tanks. Mr. Rose said modern plants have valves inside the tanks so when piping breaks the tubing installed is designed to shutdown and close all valves at a certain temperature. He also said he has been in this business for 26 years and because of the emphasis on safety there has not been an accident in New England. Atty. Salvatore said in 2009 Musco Propane applied for the installation of a 30,000 gallon propane tank and as part of that application and the Commission at that times request, Mr. Petroniro had a fire safety analysis performed. He said at that time they concluded that the design complies with the N.F.P.A. 58, Version 2004 and it does not pose an unusual hazard and the existing fire fighting resources greatly exceed NFPA 58 requirements. Atty. Salvatore said he believes C17 permits this use and as explained by Mr. Morrissey, Musco is not a wholesaler. He said a wholesaler is someone that owns the pipeline that distributes to the big trucks that deliver

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to Musco therefore whatever any of our presumed definition of wholesaler of propane is, Musco does not fall under that category per Federal Law and CT State Statutes. He also said if this Commission was to classify Musco as a wholesaler then they fit under C-16, which states warehousing and wholesaling businesses. Chairman Mahoney said Atty. Salvatore keeps saying retail, retail, retail, so he sees it as C17 under permitted uses.

Ms. DiParma stated that the 30,000 existing tank at Musco does not meet the NFPA Standards, as it does not meet the separation distances between containers, important buildings and adjoining properties. There is supposed to be a minimum distance of 50 feet between them. She said the existing 30,000 gallon tank there is only 10 feet away from the garage that stores Dr. Green Lawn's equipment and lawn care products. She also said that around 12 feet away is a chimney vent for some sort of heating unit, which is a source of ignition and is extremely dangerous. She said safety is the first and foremost concern and the Town of Wolcott Fire Dept. does not have the fire equipment available to contain a propane emergency. She said Musco Fuel has been selling propane wholesale to other companies. She said when all different trucks and bobtails are coming in and out of there, all different hours of the night, where are they going to go when a backup occurs. She also stated that she has seen drivers of these trucks violate the laws by leaving their trucks when loading and unloading, etc.

Anthony Zaccagnino came forward and said in 2009 when Musco applied for another 30,000 gallon tank he passed a petition around and received 215 signatures to deny that an any other future expansion. He then explained what a BLEVE is and it explodes with tremendous force. He said the fire person that was at the 2009 meeting said you would need to evacuate one square mile area in the event of a leak. He then handed a map circling a one mile area and the petitioned names to the Commission. Atty. Salvatore objected to the admission of this as we are here on the site plan for (3) 10,000 gallon tanks and if this is a petition for the old 30,000 gallon tank then it should not be admitted. Atty. Salvatore directed the Commission to Mayor Dunn's letter dated 1/27/10 that advised this Commission not to consider what has been done in the past. Chairman Mahoney allowed the information to be admitted. Mr. Zaccagnino submitted pictures showing Musco property, crumbling pavement next to the river and a truck parked within 8 feet of the bank of the river where he is storing propane. He said Musco is in violation of Regulation #23.2 under several counts, (#23.2.4 and 23.2.5). Adolph Birkenberger stated Regulation #1.3.1, 1.3.2, 1.3.5 and 1.3.7, 1.4.2, 1.4.4. He said that 120,000 Lbs. of explosive material certainly does not promote safety for the people of Wolcott. He said it also doesn't lessen congestion in the street, conserve the value of land, etc. He said we do not need a tank farm on Rte. 69. He also stated Regulation #35.1.1 which is the purpose of the Rte. 69 Corridor District, especially #35.1.1c. Mr. Noble and Mr. Pater both said their concerns were the traffic and congestion due to back up of the trucks or an accident. Mr. Pater said there already is an issue with traffic when trying to pull out of MacCormack Drive and he is concerned about safety because of the added traffic and trucks due to additional tanks.

Joe Malena said that Musco's is not located in the middle of a neighborhood there are other businesses in the area and a few houses. He also said Mr. Petroniro would not have all his family

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working there if it was a safety issue. He said it is commercially zoned area and does not see a problem with adding these tanks.

Another concern of Karen DiParma was who is responsible to check these tanks for leaks and if anyone of authority has been back to Musco's since the 30,000 gallon tank was installed and inspected for leaks. Pete Carmody asked if there was an industry standard for going back and having the tanks checked. Ms. DiParma also said if Musco is wholesaling and they exceed more than fifty percent of their capacity storage as wholesaling they are subject to OSHA's Process Safety Management and EPA Risk Management Clean Air Act and who is monitoring that. Mike Morrissey said the person responsible for checking for leaks is the plant operator. He also said the Fire Marshal does inspections at the facility.

Atty. Salvatore said they are permitted as a matter of right to install the 3 tanks. He said it is this Commission's job is to determine they comply with all site plan requirements and as far as the safety concerns they exceed the national requirements. He said with that being said he respectfully requests that the Commission grant this site plan application and zoning permit this evening.

Sam Zotto said the Rte. 69 Corridor is set up for the Planning and Zoning Commissioners to decide how it is going to be set up. He said if you ask a business they will tell you they fall into all the rules and regulations. He also said that in the letter from A.J. Panico in February it states under #23.2.4 it sets forth a specific prohibition of bulk fuel storage tanks with a capacity in excess of 10,000 gallons anywhere in Town, regardless of zoning designation. He said the Rte. 69 Corridor (regulation) was enacted so the Commission can make the decisions on the type of businesses and how we want Wolcott to grow in said Corridor. Vanessa Malena said does that mean we do not go by the law, we go by what we want. Chairman Mahoney said no that there is a separate regulation for the Rte. 69 and Vanessa Malena says she understands that but you still have to go by the law and Chairman Mahoney said correct.

Chairman Mahoney said the public hearing for this will be continued to April 21, 2010 at 6:30 p.m. in the Council Chambers.

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to take a 5 minute recess at 8:50 p.m.

REGULAR MEETING

At 8:55 p.m. Chairperson Ray Mahoney called the Regular Meeting to order and roll call attendance was taken. (Same as public hearing attendance listed above).

PUBLIC REQUESTS

Norbert Przybzl came forward to ask about leasing property he owns on Nutmeg Valley Rd. to a car repair business but he does not meet the criteria for said business. He was asking the Commission to see what they can do to accommodate this business. ZEO said this resident has

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been in the office a few times already and has been given a letter stating what he has to do to meet the requirements. ZEO said he does not meet the regulation for frontage and he does not have the lot area required for this. A brief discussion followed and it was determined Mr. Przybzl would have to file a plan that meets the Town Regulations.

APPROVAL OF MINUTES

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to **APPROVE** the minutes from the 3/22/10 Public Hearing and Rescheduled Regular Meeting.

APPROVAL OF BILL

There were no bills at this time.

CORRESPONDENCES

Recording Secretary said there were 3 appeals to the Zoning Board of Appeals and their meeting is April 14, 2010 and Chairman Mahoney suggested any member that can attend should to see what the ZBA board is about. Pete Carmody said there was a correspondence from Atty's. Yamin and Grant regarding Musco Propane.

SUBCOMMITTEE REPORTS

There were no Subcommittee Reports at this time.

OLD BUSINESS

- 1. #10-433 Robert and Christine Wright – Special Use Permit for a Daycare/Preschool Facility at 1790 Meriden Rd.**

Chairman Mahoney said the public hearing on this has been continued to the 4/21/10 meeting at 6:30 p.m. (in the Council Chambers).

- 2. #10-435A Al Podzunas – Special Use Permit for the Wolcott Youth Center at 48 Todd Rd.**

Chairman Mahoney said the public hearing on this has been continued to the 4/21/10 meeting at 6:30 p.m. (in the Council Chambers).

- 3. #10-430 Musco Propane – Site Plan Application (and Zoning Permit) for (4) 10,000**

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gallon above ground propane storage tanks at 585 Wolcott Rd.

Chairman Mahoney said the public hearing on this has been continued to the 4/21/10 meeting at 6:30 p.m. (in the Council Chambers).

NEW BUSINESS

4. #10-437 and #10-438 RSK Realty – Special Use Permit and Site Plan Application for 48 Non-Assisted Elderly Rental Units at Lyman Rd. and Potuccos Ring Rd.

Pete Carmody read the letter from Atty. Bruno's office dated 4/6/10 asking the Commission to accept these applications and schedule a public hearing at a date that is convenient for all involved.

Upon **MOTION** by Pete Carmody, seconded by Cathe Sherman, it was unanimously voted to **ACCEPT FOR REVIEW** #10-437 and #10-438 RSK Realty - Special Use Permit and Site Plan Application for 48 Non-Assisted Elderly Rental Units at Lyman Rd. and Potuccos Ring Rd. and to send the plans to the Consulting Town Engineer and Consulting Town Planner for review.

ZONING ENFORCEMENT OFFICER'S REPORT

ZEO commended Vanessa Malena for asking for the correct site plan to be submitted for review on the Wolcott Youth Center as we have to hold the Town to the same standards as everyone else. He also said he took offense to a comment made as he works for this Commission. He said what he does is quote the regulations whenever anyone comes in with questions. He also said when someone speaks under Public Request time you need to take the information in only and then call him with any questions, you are not suppose to have an open discussion and get into a debate. He also said don't ever hesitate to call him with any questions or concerns you may have regarding the regulations. ZEO said that there will be a new pizza place opening on Meriden Rd. and a dog grooming place on Wolcott Rd. He said we have addressed the sign issues brought up at the last meeting. He said after last rainstorm the work done on Red Fox Run to curb water issues on Nichols and Badger Rd worked great.

EXECUTIVE SESSION

There was no Executive Session at this time.

ADJOURNMENT

Upon **MOTION** by Cathe Sherman, seconded by Sam Zotto, it was unanimously voted to **ADJOURN** the Regular Meeting at 9:20 p.m.

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APPROVED:

Ray Mahoney, Chairperson
Planning & Zoning Commission

Edna Henderson, Recording Secretary
Planning & Zoning Commission

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