

**WOLCOTT PLANNING & ZONING
PUBLIC HEARING AND REGULAR MEETING
WEDNESDAY, MAY 5, 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 6:34 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: Vanessa Malena, Rich Delpier

ALTERNATES ABSENT: Chris Edquist

ALSO PRESENT: ZEO Dave Kalinowski

PERMIT APPLICATIONS

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

ZEO said the applicants dropped off new plans today and he did not have a chance to review it yet.

ZEO said the concerns were the parking, wetlands in the back, sequence of construction and traffic flow. Steve Giudice from Harry Cole and Son said there are two buildings on site that house restaurants, medical office, service establishments and retail space. He said they are proposing 55 parking spaces and 53 are required. They are proposing a play area in back with concrete filled bollards around it. He said they anticipate most of the drop offs and pick-ups to be in back of the building. ZEO said we would have to notify Cheshire because it is within 500 feet of the Cheshire line. Cathe Sherman said we have to notify C.O.G. also. Rich Delpier asked if the play area was going to be wood chips and it was stated it would be asphalt. Christine Wright said it would only be asphalted outside the play area and there will be mulch inside the play area as the state requires 8 inches of soft mulch. Steve Giudice said there would be signs stating one way traffic and more grassy area in back to eliminate any truck traffic, etc.

Chairman Mahoney said the public hearing on this application would be continued to 5/19/10 at 6:30 p.m. in the Council Chambers.

**2. #10-430 Musco Propane – Site Plan Application (and Zoning Permit) (revised to)
(3) 10,000 gallon above ground propane tanks at 585 Wolcott Rd.**

Chairman Mahoney said he contacted the Town Attorney because of all the talk about a matter of

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right and things of that nature and we just received a response at 3:00 today so he asked to have this read into record. Pete Carmody then read the letter dated 5/5/10 from Attorney Tynan into record, (see attached). Chairman Mahoney said he did some more research regarding wholesale and asked Cathe Sherman to read the information he found and to put this into record.

ZEO said he did look into the parking setbacks (talked about at last meeting) and he did talk to Steve Giudice about it also. ZEO said regulation 25.8.2 states that in commercial districts no part of the area required for setbacks from a residential district boundary line shall be used for off street parking or loading. He said Steve Giudice does have revised plans where he moved the parking areas out of the 50 foot area of a residential district line. Chairman Mahoney said that they (Musco) park two vehicles behind the existing tank, one on the side and one in the back. ZEO said that would be within the 50 foot setback of the residential district line and this plan does not show vehicles being parked there. He said if the vehicles are being parked there then we would have to look into that. Steve Giudice said they did move two parking spaces out of the residential setback and the situation with the truck behind the tank will be eliminated as that is not a parking space on the plans. He said that if the truck was parked within the fenced area it would have to be relocated.

Chairman Mahoney said parking spots 7 and 8 are where the existing loading area is now and where the trailers off load. Steve Giudice said the proposal is to bring the trucks around and be parallel to the existing tank. Chairman Mahoney asked where are the bobtails going to load and unload and Steve Giudice said there is still a considerable amount of room around the two parking spaces (for the trucks to load in). Chairman Mahoney questioned why they only show the trucks coming in on one direction only. Steve Giudice said Dave Kalinowski requested showing the trucks coming in northbound and southbound but he doesn't remember splitting the entrances. Chairman Mahoney said when he goes with the scale (model truck he made) he cannot make it work either way and he is a CDL Driver. He also said you are saying under perfect conditions you can make that turn so that is without a vehicle being in there and nothing in the way. Steve Giudice said they use a program that uses the standards for vehicle turning movements.

Attorney Salvatore formerly requested that Chairman Mahoney recuse himself from any vote made on this application because he has demonstrated a prejudice to the application by doing his own research on the definitions (wholesale) and submitting evidence which indicate a predetermination of his decision on this application. Atty. Salvatore said second of all he (Ray Mahoney) could be called as a witness because he has stated on several occasions that he has personally witnessed certain things that take place at the Musco site and I presume he will be adding the small scale tractor trailer to the record and if that is the case in the event that this application does go to court then of course we would ask that Mr. Mahoney be called as a witness and in that case we ask that he recuse himself.

Chairman Mahoney said he is not going to back out as everyone in town goes by this and they have all spoke so if you are going to call everybody that is here then that is what you are going to do. Atty. Salvatore went on to show what they have done to the property since purchasing it and the number of awards they have received for its beautification, a community service award and a official citation from the State of Connecticut in recognition of renovating building, etc. Atty. Salvatore again said they deliver home heating fuel to 5,500 customers and it has 5 resellers who they sell propane to. The resellers pick up the propane in a bobtail truck because they do not have

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their own on site storage.

Atty. Salvatore submitted a propane education and research council report for the files. Chairman Mahoney asked Mr. Petroniro how many propane customers are in Wolcott and Atty. Salvatore instructed Mr. Petroniro not to answer that question and not to disclose his customer list. Mr. Morrissey said he believed the 5,500 customer base was a combination of fuel oil and propane customers. Mr. Morrissey said typically for a propane market the majority of the customers would reside within a 20 to 25 mile radius of the business itself but he does not know how many are Wolcott customers. Pete Carmody asked Mr. Morrissey if he had looked into the question he asked at last meeting about the possibility of underground storage tanks and he replied he had not.

Atty. Salvatore asked Dave Kalinowski after his review of the site plan with Mr. Giudice does it now fully comply with all site plan requirements. Dave Kalinowski said to be perfectly honest the plan was dropped off yesterday and he had not yet reviewed it. Atty. Salvatore said as of today the one issue was just the parking and Dave Kalinowski said the parking issues, safety issues, he said if you want to know right now does this plan show the setbacks, yes everything is outside the 50 foot setback of the residential district line. Atty. Salvatore said they have complied with the site plan, setbacks, parking, etc. He said the only question so far is the use and there has been a lot of documents submitted about the type of use and what Musco does. He then showed an illustration that identifies the propane supply infrastructure. Mike Morrissey said the illustration is produced by the Energy Information Administration. He also said once the product is produced it then is transported by ship, a pipeline or it can be stored in underground storage. He said typically the wholesale in this industry is the actual pipeline terminal, (New Hampshire, Conn., N.Y. and one reopening in MA). He said you can also go to the E.I.A. site and put in wholesale pricing and it will show you where the wholesale price is set in our industry and how the retail price is set. Mike Morrissey said that if Musco continues to grow, which it will, he will have to find another location to support that growth. He also said Musco's has about a two day supply of propane. Rich Delpier asked why the plant in Massachusetts was originally closed and Mr. Morrissey said it was closed because of economics.

Bill Olmstead said the issue isn't whether Musco's needs another tank it is public safety and the depreciation of the properties. He said safety and congestion in their parking lot is still a concern.

Atty. Salvatore asked to add to the records the New England Propane Supply Infrastructure Brochure which includes the illustration shown tonight. He also handed in a copy of the 2002 Petroleum Products Vendor Registration – Public Listing of Petroleum Vendors and it indicates that Musco is a retailer of propane and a copy of U.S. Energy Information Administration Independent Statistics and Analysis showing weekly heating oil and propane prices from Oct. 2009 thru March 2010. Cathe Sherman said now that you have provided evidence to how much the wholesale and retail prices are then how much does Musco charge to customers vs. the other bobtails. Mr. Morrissey said that information would be considered a trade secret. Atty. Salvatore said C17 of the Zoning Regulations allow retail sale and distribution of heating fuel and natural gas as of right, excluding storage tanks in excess of 10,000 gallons. He also said permitted use C16a allows warehousing and storage of reasonable quantity of retail merchandise and supplies

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necessary for a permitted use being conducted on the same lot. He said the permitted use being conducted on the same lot is the sale of home heating fuel. He also said that this Commission cannot make up its own limitations if one does not exist in the regulations. The only limitations that exists in the regulations is the size of the tank not the number of tanks. ZEO said we are not debating wholesale/retail, we are here for a site plan for the installation of (3) 10,000 gallon propane tanks. ZEO said we are talking about supplies coming from Canada, etc., let's talk about the Rte. 69 Corridor, the site plan before us, safety, screening and what the regulations allow us to talk about, that would be his recommendation. Atty. Salvatore said he respectively disagreed with Mr. Kalinowski's opinion that this Commission's only job is to determine what is appropriate on the Rte. 69 Corridor. Atty. Salvatore said that is an overlay district which means in addition to the permitted uses allowed in the regulations, this Commission is to consider the property values, safety, traffic, aesthetics, etc. but the Rte. 69 Corridor District is not the magic wand. In this case he said the permitted uses allow for retail sales and distribution and/or storage of that retail product. He also said if the Commission decides that were are not a retailer he hopes it would be stated on the record. He said if you do determine that (Musco's) is a wholesaler, wholesale is not defined in the Zoning Regulations and under C16 wholesale and warehousing businesses are allowed without any limitations. ZEO said we are not here to debate; we are here for the application before us. ZEO said we have regulations before us and I am not here to debate every sentence.

Pete Carmody asked Atty. Salvatore if there were any other above ground 10,000 gallon storage tanks on the Rte. 69 Corridor from the Bristol to Waterbury Line and Atty. Salvatore said we know that there are underground tanks that exceed that. Pete Carmody said we are talking above ground tanks 10,000 gallons and above. Mike Morrissey said he is not aware of any but he is not from around here and does not have the familiarity that we might have. Chairman Mahoney asked if they happened to do an architectural drawing of how the three tanks are going to look. Atty. Salvatore said he was advised the architectural drawings were not required because it (the tanks) are not a structure. Chairman Mahoney asked if there were any planned screenings and Atty. Salvatore said there is no planned screening as the site plan is laid out other than chain link fencing but they would certainly comply with any conditions of screening. There was also a brief discussion about the strength of the lolly columns.

ZEO said to clarify a statement by Atty. Salvatore that (the tanks) are not a structure he read the definition from the regulations for a structure and said that it is clearly considered a structure. Cathe Sherman said with that definition in mind what visual screening will there be in a way of aesthetics, will there be more landscaping, etc. Atty. Salvatore said they would take into consideration whatever (the Commission) would recommend as long as it was approved by the Fire Marshal. Mike Morrissey said the only guideline he would offer to the Commission when it relates to screening is to take into consideration the Fire Department as you do not want to create a screen that would prohibit a responding Fire Dept. from being able to get cooling or application water on the tanks themselves.

Atty. Salvatore said at a previous meeting, Joe Rose, President of National Propane and Gas Association of New England, testified that Musco's exceeds fire standards and in the 26 years he

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has been president of the association there have been no accidents. Atty. Salvatore said Mr. Rose also indicated that public health safety and the property values would increase as a result of that and Atty. Salvatore said there were comments about property values depreciating but he doesn't think there is any evidence saying that. He also said in 2009 when Musco Propane applied to install an identical 30,000 gallon tank and as part of that process they had a fire and safety analysis performed and he would like to submit a copy for the records. Mike Morrissey said that if this proposal meets with the Commission's approval they would have to still go through the same process of a new fire safety analysis.

Adolph Birkenberger said his property goes right up to the land where the existing tank is. He said the middle of the river is not the line. He requested the Planning and Zoning Dept. measure his property line from Potuccos Ring Rd. to the river and you will find it will be within a foot or two of the edge of the river. ZEO said he is not a licensed surveyor however what we have before us is a stamped (plan) from a licensed engineer in the state of Connecticut. He said it is an A-2 survey that he has to go by and it is not up to the Commission to go out and measure (his property). Mr. Birkenberger said Musco does not comply with the Zoning Regulations because the trucks that are in back and side of the 30,000 gallon tank are not 50 feet from his property line. He also talked about the propane issue that happened in Time Square.

Tom Lagasse said that last week alone he saw two tractor trailers in front of Sandy's (T.V.) trying to get in (to Musco's) and there was a lot of traffic and congestion in that area. He also said he has always had concern with the propane tanks, the trucks that are parked in the gated area and in the garage there is an oil truck filled with oil and he thinks fertilizer for the lawn business is stored in there. Mr. Lagasse said they should find another place to put the extra tanks and everything looks good there but he is growing too fast for that area. He said this is Wolcott and it is not suppose to look like Railroad Hill St. in Waterbury.

Gary Biolo said besides it being a safety issue he would like to know what is Wolcott going to get out of this. Mr. Biolo said there was a garden center that was told they were not fit for that stretch of Rte. 69 and they were a garden center that had piles of mulch. He said when people come out from his condominium and if you try to sell it, when you come out of Munson Road you are looking at a tank farm. He also said Wolcott doesn't get anything out of this (as far) as taxes, property taxes, etc.

He said the awards (mentioned earlier) are wonderful. He said these mean nothing to him because he can give you a half a dozen affidavits that will give you the exact opposite of what they (awards) say about Musco Fuel and about them as business people and about how they care about the Town and their customers.

Sandy Marino said as a business man in Town that a lot of organizations, people looking to fundraise, customers coming into his store and the only way he can support the community is for people to come into his business and spend money with him. He said any business in this Town is a benefit to the Town. He said every taxpayer will benefit from an increase in business whether it

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is Musco Fuel or his own business and any business is good as long as the regulations are met and zoning laws are adhered to.

There were no more comments from the Commission or the public and the public hearing on this application was closed.

Upon **MOTION** by Pete Carmody, seconded by Cathe Sherman, it was unanimously voted to take a 5 minute recess at 8:23p.m.

REGULAR MEETING

At 8:31 p.m. Chairperson Ray Mahoney called the Regular Meeting to order and roll call attendance was taken. (Same as public hearing attendance listed above except Vanessa Malena had to leave at 8:25 p.m.)

PUBLIC REQUESTS

There were no Public Requests at this time.

APPROVAL OF MINUTES

Upon **MOTION** by Pete Carmody, seconded by Cathe Sherman, it was unanimously voted to **APPROVE** the minutes from the 4/21/10 Public Hearing and Regular Meeting.

APPROVAL OF BILL

There were no Bills at this time.

CORRESPONDENCES

There were no Correspondences at this time.

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.**

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Chairman Mahoney said the public hearing on this has been continued to the 5/19/10 meeting at 6:30 p.m. (in the Council Chambers).

2. #10-430 Musco Propane – Site Plan Application (and Zoning Permit) for (3) 10,000 gallon above ground propane storage tanks at 585 Wolcott Rd.

Chairman Mahoney said the public hearing on this has been closed and stated that members take the information that they have and to look at the regulations.

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to **TABLE** #10-430 – Musco Propane – Site Plan Application (and Zoning Permit) for (3) 10,000

gallon above ground propane storage tanks at 585 Wolcott Rd. to the 5/19/10 meeting at 6:30 p.m. in the Council Chambers.

3. #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.

ZEO said the Consulting Town Planner gave a list of recommendations for RSK and problems with the plan that has been forwarded to the applicant and the engineer that was here tonight. He recommended giving them time to review the list and schedule the date for the Public Hearing at the next meeting.

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to **TABLE** #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. to the 5/19/10 meeting at 6:30 p.m. in the Council Chambers.

NEW BUSINESS

1. #10-439 Jason White – Special Use Permit for a liquor store at 690 Wolcott Rd. – Suite 1.

Pete Carmody read letter from Jason White dated 5/5/10 which said he was withdrawing his application due to a state computer error and plans on re-applying at a later date.

ZONING ENFORCEMENT OFFICER’S REPORT

ZEO said he was going to look into possibly getting Mike Zizka, who wrote the book “What’s Legally Required,” to come and discuss with P&Z, ZBA and Inland Wetlands the way to conduct meetings, questions that we should ask, questions we should stay away from, etc. to help the new members. Sam Zotto said that Barnes and Noble has an abbreviated version of Roberts Rules that is terrific. ZEO said the Town Attorney and the Town Council is looking into a new blight

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ordinance. He also said the Plan of Development is going along as scheduled and he is hoping that by the middle of June we can hold the public hearing to accept it. Chairman Mahoney asked about the property (Wolcott Rd) where there was a fire and there is a trailer there and also about the Morrone Building (Wolcott Rd). ZEO said that is for the Building Official and he will notify him of the Commission's concern. Rich Delpier asked where the Youth Center stands and ZEO said they were just waiting for proof of insurance for those (contractors) working on it before continuing.

EXECUTIVE SESSION

There was no Executive Session at this time.

ADJOURNMENT

Upon **MOTION** by Cathe Sherman, seconded by Pete Carmody, it was unanimously voted to **ADJOURN** the Regular Meeting at 8:45 p.m.

APPROVED:

Ray Mahoney, Chairperson
Planning & Zoning Commission

Edna Henderson, Recording Secretary
Planning & Zoning Commission

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