

**WOLCOTT PLANNING & ZONING
PUBLIC HEARING AND REGULAR MEETING
WEDNESDAY, MARCH 16, 2011
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 he welcomed the new members (Chris Edquist as a regular member and Tim Sullivan as an alternate member) and then attendance was taken.

Roll Call Attendance

MEMBERS PRESENT: Cathe Sherman, Bill Olmstead, Chris Edquist, Ray Mahoney

MEMBERS ABSENT: Pete Carmody

ALTERNATES PRESENT: Rich Delpier, Tim Sullivan

ALTERNATES ABSENT: Vanessa Malena

ALSO PRESENT: David Kalinowski, ZEO, Attorney Brian Tynan (7:40 p.m.)

PERMIT APPLICATIONS

1. #10-445 and #10-446 Wolcott High School – Special Use Permit and Site Plan Application for (45) additional parking spaces at 457 Bound Line Rd.

Chairman Mahoney read the public hearing script and then Dave Kalinowski said the members have a large scale plan that shows the whole entire property and high school parking lot as it exists now and the proposal of the additional parking spots. Dave Kalinowski said the location of the parking lot is not part of the (adjoining) parcel that was purchased a few years ago however all the trees along that line will be removed to install the parking lot. He also said the way the grass is graded now is the way it will be graded with the parking lot. He said they will remove the top soil to establish a base then they will curb it and pave it and the drainage for the surface flow will run into the existing parking lot drainage. He also said that questions might be asked as to why some things may be missing (on the map) and under regulations #41.13 it states that the Commission may waive pertinent requirements set forth in connection with excavation or grading, etc. when it is conducted solely by or on behalf of the Town.

At this time Cathe Sherman read a letter from Michael Bruce dated 3/16/11(see attached). Fran Hubeny said the parking spaces are for the overflow they get for outside activities and it will alleviate

some of the problems. He said for outside activities or even graduation they are parking on the field down below and that causes more of a hazard in the long run. He said with the property on the side, the Dr. Smyth house, they are not touching the back area but they are on the borderline of that property which is 439 Bound Line Rd. and they would like to take down the trees to give them the 64 feet they need for both sides (for the 45 parking spaces). Ray Mahoney said once you

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remove the tree line are there plans in place to put up a fence or trees for the headlights. Fran Hubeny said they would like to put up a stockade fence not only for a barrier but also so students do not drive across the property and exit out the driveway that is there currently. Rich Delpier said he goes to a lot of the football games and he thinks Wolcott should do what Naugatuck and Ansonia do. He said when they have big home games they make one way roads and let cars park on both sides of the road and that would create (allow for) a lot more cars to be parked. Cathe Sherman said her concerns were the buffer/setback area between the edge of the parking lot and the adjacent property. Fran Hubeny said the buffer between the properties is the old trees and they would be putting up the stockade fence which would essentially be on the Dr. Smyth property. Cathe Sherman said since these are two parcels of properties do we need to comply with the setbacks and is the Dr. Smyth property a municipality. Dave Kalinowski said he couldn't answer that but it is owned by the town. Cathe Sherman said maybe it should be (combined into) one property. Dave Kalinowski said obviously the setback requirements for a parking lot can be waived by this Commission and this parking lot is right on the line. Cathe Sherman said to comply with the rules and regulations and so we do not have to waive anything can we get the Town Attorney to make this all one property and Dave Kalinowski said he is sure properties can be combined but you would have to ask the Town Attorney. Fran Hubeny said that they (B.O.E.) take care of the house (payments) but as far as the property line he understands it is the towns. He said the Board of Ed maintains the house. Cathe Sherman said she lives across the street also and there is a drainage problem there and the culvert is completely filled and her concern is when you change the topography it will change the water levels. Bill Olmstead asked where the aquiver was that was referred to in letter from Michael Bruce and Mr. Bruce said it was the area across the street from the Smyth property and the High School. He said there is a large area there that is a marsh which is a wetland and that becomes an aquiver. He said there is 10 to 12 acres of marshland there and that is what services most of the wells. He said the drainage system that now exists is to the eastern side of an island (in parking lot now) and is where all the water flows now and you are going to add another paved area that will collect more water and bring it to that drainage area and his concern is can that system accept the amount of water that will be going there. Dave Kalinowski said in his professional opinion if he felt the drainage was a concern he would have had it addressed. He also said if this is something the Commission wants then the B.O.E. would have to hire an engineer to do a drainage study, calculations, etc. Bill Olmstead asked if this has to get approved by Inland Wetlands and Dave Kalinowski said once the permit is through then Inland Wetlands would review it but because there are no wetlands on the property on the location of the parking lot it would be a sign off and a formality. A brief discussion followed regarding the drainage, culvert, etc. and it was decided to see if there were topography maps to review before making a decision.

There were no more comments from the Commission or the public and Chairman Mahoney stated the public hearing was continued to the 4/6/11 meeting at 6:30 p.m. in the Council Chambers.

REGULAR MEETING

At 7:13 p.m. Chairman Ray Mahoney called the Regular Meeting to order and Roll Call Attendance was taken. (Same as above)

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At this time Rich Delpier was seated as a regular member.

APPROVAL OF MINUTES

Upon **MOTION** by Cathe Sherman, seconded by Chris Edquist, it was unanimously voted to **APPROVE** the minutes from the 3/2/11 Regular Meeting.

PUBLIC REQUESTS

There were no Public Requests at this time.

APPROVAL OF BILLS

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. #11-447 Musco Propane, LLP – Site Plan Application for Use #C-16, C-16a and C-19a under Schedule A – Permitted Uses.**

At this time Chris Edquist read into record the letter from Mark Garrigus, Chairman of IWWC, dated 3/16/11, (see attached).

Attorney Salvatore came forward and formally requested that this matter be scheduled for a public hearing to allow them an opportunity to question Mr. Garrigus regarding his requirement for a detailed statement of use and in addition to that they would like A.J. Panico and Mark Possidento to participate to allow them to question them relating to their correspondences.

At this time Chairman Mahoney asked for a motion to take a 5 minute recess.

Upon **MOTION** by Cathe Sherman, seconded by Chris Edquist, it was unanimously voted to take a

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5 minute recess at 7:18 p.m. Chairman Mahoney called the Regular Meeting back to order at 7:21 p.m.

Attorney Salvatore then said he would like to renew the request that he made before the break (see above). Chairman Mahoney stated for Atty. Salvatore to go ahead with his presentation and let the Commissioners decide after whether they are going to schedule a public hearing or approve or deny. Atty. Salvatore said they received correspondence from Mr. Garrigus dated 2/8/11 whereby he requested various information related to vehicles, activities, safety information and Conn. Storm Water runoff. Atty. Salvatore then responded that the site conditions were not changing and the request was strictly to allow wholesale of propane sales at the site of the existing 30,000 gallon propane tank that was approved in 2006. He also said they did submit a statement of use (in 2006) which they believed complied with the requirements of the Wolcott Zoning Regulations. He said Mark Garrigus, in his 3/1/2011 correspondence, concludes that they are changing from retail to wholesale and that cannot be determined without a detailed statement of use. Atty. Salvatore said again there is no change, they are doing the same thing they were in 2006 that they are presently and that is retail sales of propane. He said the purpose of this application is due to the fact that they have been classified by the Town, specifically the Zoning Board of Appeals, as a wholesaler and they dispute that classification. However, in order to come in to compliance with the regulations they submitted this application. He said in 2006 his client was issued IWWC permit #06-003 which he gave a copy of to the Commissioners. He also said since the installation of the tank there have been no changes to the site and if you look at the permit that was granted in 2006 from IWWC it indicates that the permit is effective for a period of 5 years, commencing on 6/5/06 and expiring on 6/5/11. He also said Mr. Garrigus, in his letter dated 3/1/11, also said that a detailed statement of use was not included in the application. Atty. Salvatore said this application was made under 3 sections of the regulations, under C16, C19, C19a and their position remains that if the Town classifies them not as a retailer and wholesale businesses are not described in the regulations, then they fall under these sections. He also said that Mr. Garrigus goes on to talk about his examination of the site plan and he observed that there are parking violations or he alleges there are parking violations and that they did not comply with the planting plans. Atty. Salvatore said these are, in his opinion, threats because obviously Mr. Garrigus has ways of enforcing the regulations, whether through the Zoning Enforcement Officer or himself. He also said they believe the statement of use that was submitted is in sufficient detail and complies with the Zoning Regulations. Chairman Mahoney then said with all due respect Atty. Salvatore the last time you were here you said we all had our minds made up and trashed all of us and now you are doing this to Mr. Garrigus, so could you just stay on focus on task.

Atty. Salvatore said there has been no change since 2006 and it is the same exact site plan that was before the Commission in 2006 for which the IWWC permit still complies and is still effective so for them to receive this unfavorable letter from Mr. Garrigus today, he feels it is inappropriate and on that basis he disagrees with the IWWC conclusion.

Bill Olmstead said he understands (Atty. Salvatore's) frustration and we should be able to give them an answer irregardless of whatever Inland Wetland issues they have because as far as I know the only thing you are in violation of is that you park a truck within the buffer zone. Bill Olmstead said it does seem like the Inland Wetland issue is an excuse for us not to have to deal with this right

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away. Atty. Salvatore said adopting the Commissioner's comments he again formally requested that Mr. Garrigus and the other individuals that he asked earlier just be invited to a public hearing to allow him to question them. Chairman Mahoney asked Atty. Salvatore to please continue, that it is up to the Commissioners to decide after he presents his application. Atty. Salvatore asked if the decision was predetermined and Chairman Mahoney said no and if you would like to continue you may and Atty. Salvatore said he would like to continue. Bill Olmstead asked if he could ask another question and Chairman Mahoney said to let him (Atty. Salvatore) continue. Bill Olmstead then said I am not allowed to ask any questions and Chairman Mahoney said when he (Atty. Salvatore) is done with his presentation that is the normal protocol.

Atty. Salvatore said as he stated at the last meeting the letters he received at the last minute and the bulk of the information received were designed as obstacles to prevent this application and he asks this Commission to keep in mind what applicant has been requested to provide the amount of information that these letters ask to be provided. Chairman Mahoney said as we spoke the last time it was said to you (Atty. Salvatore) this was the first time that we have ever had anybody ask for propane for wholesale application.

Atty. Salvatore said that Mark Possidento prepared a letter to the Chairman, which he also received the day of the last meeting and he goes on to say they need more detailed information necessary for compliance to Section 44 of the regulations, specifically #44.3, #44.4 and #44.6. Atty. Salvatore said he then goes on to request information related to NFPA 58 requirements, the activities at the facilities and their compliance with the NFPA 58 and this is all information that is already in possession of the town's Fire Marshal. Atty. Salvatore also said the Fire Marshal has been actively involved and inspected this site and the Wolcott Fire Personnel attended training sessions performed by Relco Engineering. He handed in a letter from Relco Eng. dated 3/14/11 that confirms the involvement between them and the Wolcott Fire Dept. and it also confirms that the facility as it stands now the 30,000 gallon tank exceeds the National Safety levels. Atty. Salvatore said in October of 2009 the Wolcott Fire Dept. itself requested training related to propane and propane transport and he gave the Commissioners a copy of an email from Daren Havens from LP Transportation where he states the training program took place October 21, 2009 and numerous members were present. Atty. Salvatore then went on to say he had letters from Russ Emons, (one to Peter Parks and one to Randy Petroniro), Certificate of Occupancy and Certificate of Compliance all from 2006 regarding the 30,000 gallon tank. (All these letters are on file in the P&Z Office under #11-447). Atty. Salvatore said related to Mr. Possidento's letter they are conducting the same activity that has been ongoing since 2006 and there has been no evidence of noxious fumes, odors or any safety issues and they have to continue to comply with all the State and Federal Rules and Regulations and therefore he believes that (Mr. Possidento's) request is just unduly burdensome. He said finally related to Mr. Panico's letter he kind of reiterates the same points in this letter (as the one from several months ago) specifically that he (Mr. Panico) claims that the Commissioners at the time of the drafting of the new regulations completed an updated Plan of Conservation and Development along the Rte. 69 Corridor and they did not wish to allow fuel terminals and wholesale fuel distribution facilities in the Town of Wolcott. Atty. Salvatore said they object to that classification, however, where in the regulations does it say that this is not allowed in that zone. He also said all three permitted uses sections cited are allowed as a matter of right on their application and they believe their application should be granted. He also said that

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Mr. Panico goes on to allege that the tank that is there now is illegal and not in compliance with the zoning regulations which is not before this Commission, the tank exists there and the reason for their application is the Town has classified them as a wholesaler. Atty. Salvatore also said that Mr. Panico, despite claiming that the draft of the regulations back then didn't desire fuel terminals and dispensing facilities, he has not pointed to any documents or any meeting minutes. Atty. Salvatore said the record is entirely void of anything other than his word, (Mr. Panico's), his letter, and his conclusions that were written after his client (Musco) tried to expand their business operations in 2009. Atty. Salvatore also said that Mr. Panico goes on to say that the zoning regulations do not allow fuel terminals and fuel distribution facilities. So Atty. Salvatore's question to Mr. Panico is "what materials are allowed under C-19 and C19a of the regulations"? Atty. Salvatore then submitted two fire safety analysis' that were prepared one related to the 2006 application and one that was submitted when his client sought to expand and it confirms that (Musco) exceeds state and federal safety regulations. Again, Atty. Salvatore requested a public hearing be held to allow Mr. Panico, Mr. Possidento and Mr. Garrigus to be questioned by him and this Commission related to the issues that were just raised.

Bill Olmstead said that he did not think it was fair to say, no one has to rebuttal I just wanted to put it in the record, but I feel bad personally for the lawyer. He also said he doesn't feel that he (the lawyer) trash talked anybody he felt his was very professional through this whole thing. He also said he just wanted to stick up for him because he would want someone to do the same thing for him.

Cathe Sherman said (the lawyer) was saying there were threats being made against his client by our Inland Wetland Commissioner and Atty. Salvatore said in reading the letter from Mr. Garrigus he was threatening violations related to the parking and to the failure or alleged failure to install landscape plan. Cathe Sherman said so the threat is that he went on the property and did an inspection and found violations, noted them and that was a threat? Atty. Salvatore said he says threat in that he concluded in his letter, in review of this application he is not only requiring something that shouldn't be required because he has already examined the site but he is going a step further and essentially threatening them to remove alleged parking violation and planting plan.

Cathe Sherman said Mr. Garrigus is required to look at the new site plan and that 2006 has nothing to do with it. She also said that (Atty. Salvatore) stated that in "06" Mr. Panico said the 30,000 gallon tank was inappropriate and that Atty. Salvatore thought that was an inappropriate statement but yet you (Atty. Salvatore) gave us all sorts of 2006 data which we cannot evaluate as we have to look forward from day one now and the application in front of us where you are asking for an approval from retail to wholesaler. Atty. Salvatore said they had no choice but to file an application as we have been doing the same business since 2006 but the Town classified them as a wholesaler.

He also said wholesaling businesses are allowed in other various sections of the regulations and after an informal request to the Zoning Office in August about modifying the 2006 permit to come into compliance and receiving no response they filed this application. Cathe Sherman said she misunderstands, are you saying he was always doing wholesaling and now there won't be any difference. Atty. Salvatore said no, I was saying he was always selling propane and the Town has classified them as a wholesaler. Atty. Tynan said they had gone to court and they have a stipulation that while the 3 cases are pending in Superior Court, Musco would limit the number of

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companies wholesaling and hours (to 6 particular companies and certain hours during the day). After concerns from Cathe Sherman that there would be more drop offs and pickups if wholesaling was granted and Atty. Salvatore said no that would not change because the amount of sales is not restricted now. Atty. Tynan said it is to the 6 companies approved now and that what the Commissioner is getting at is that if we do approve wholesaling operation you could expand it well beyond the 6 companies. Cathe Sherman said that's what she is trying to say that you could go to 60 (companies) and Atty. Salvatore said we only have one tank and Cathe Sherman said you could fill it every day and this would open the door. Atty. Salvatore said he cannot agree with her.

Dave Kalinowski (ZEO) said he is not going to debate what was presented tonight but he wanted to let the Commission know what they have in front of them. He said we have a permit for wholesale, despite the definition of what Atty. Salvatore might think wholesale is and how we think the Town of Wolcott interprets it. He said I will read a couple regulations and not tell you how to vote but in my opinion how we should proceed. He then stated 3.1 of the regulations and it means you can interpret a word the way you want, he can get it from propane companies and from distributors of the meaning of propane however, the words that this Commission has to use have to be commonly used of what wholesale is. He then said Cathe (Sherman) made the comment about more trucks being serviced (at Musco) and that is why applications come before us with site plans and that is exactly why if this Commission determines that this is a permitted use then he would recommend a public hearing be held because this is by far a completed site plan review. He also said other than comments by Mark Garrigus and comments about statement of use, which is definitely not included in this (application), he thinks this Commission needs to understand if this is a permitted use before this can continue. Dave Kalinowski then referred them to and read Regulation #23.2, Prohibited Uses and #23.2.4 and if in fact the Town of Wolcott was to allow wholesale of petroleum products do you think the regulations would say that we can't bulk store things in tanks bigger than 10,000 gallons. He then referred them to C17 (permitted uses) of the regulations and stated does it specifically say retail, does it specifically refer to petroleum products and he said yes it does. He then said does it specifically say anything about warehousing, wholesaling petroleum products and he said no, it does not, so what does that mean to me. He said as a Zoning Enforcement Officer he interprets regulations and looks for guidance in regulations so when you look at the way these were put before us why wouldn't it say retail and wholesale and distribution of heating fuel because it is not the intent of these regulations to allow wholesale of petroleum products. He said if this Commission feels this is a permitted use then he would ask them to schedule a public hearing but if the Commission feels this is not a permitted use then time frame would make us act on this tonight.

Attorney Tynan said he is not going to advocate one way or another in regards to whatever decision you (the Commission) make, you have the materials already submitted and he just wanted the Commission again to bear in mind the substantial evidence rule. He said whatever decision you make to just list out the reasons or the rational for the decision so someone else reviewing the matter can state that there was justification for whatever decision you made.

A **MOTION** was offered by Bill Olmstead to grant Atty. Salvatore's request to invite Mr. Panico and Mr. Garrigus. At this time Bill Olmstead stated that Dave Kalinowski was shaking his head

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and Dave Kalinowski said he is not and is not making a comment to him whatsoever. Bill Olmstead said what harm would it be if we just send them a letter and if they don't want to show up then they don't have to but if they do show up maybe we can all learn something by it. Bill Olmstead said he is not trying to be biased or cause any waves (by this). Dave Kalinowski said apparently Mr. Olmstead did not understand me when I spoke the last time. Dave Kalinowski said the time frame is up, we cannot continue this unless we do continue it through a public hearing. He also said this Commission has a responsibility, we are not here to debate or to go back and forth, if you want to entertain a motion fine, your opinion is all noted. He said he is shaking his head because you (Bill Olmstead) are misunderstanding what I am saying to you and Bill Olmstead apologized as he was unaware that we are unable to put it off. Dave Kalinowski said you have 65 days to conduct this meeting and we have to schedule a public hearing within that 65 days if we choose to go on. He said from that point we have 35 days to conduct the public hearing and from that time we have an additional 30 days to make a decision. Attorney Salvatore said he believes the applicant can request a continuation and Dave Kalinowski said yes they can ask for an extension in writing or formally but the Commission does not have to grant that extension if they feel they have enough material in front of them to render a decision. Atty. Salvatore said he would gladly put it (an extension) in writing but he thought the way (Dave Kalinowski) was explaining it to Commissioner Olmstead was that the time was up and they had to make a decision. Atty. Salvatore said to the extent that the Commission would like him to draft a request, he would gladly do so to allow what Commissioner Olmstead has expressed here.

Again a **MOTION** was offered by Bill Olmstead to continue this one more meeting. There was no second therefore motion does not carry.

A **MOTION** was offered by Cathe Sherman, seconded by Chris Edquist to **DENY** #11-447 Musco Propane, LLP – Site Plan Application for Use #C-16, C-16a and C-19a under Schedule A – Permitted Uses, due to C17, which is more applicable, and (regulations) #3.1, 23.2 and 23.2.4. Cathe Sherman went on to state that C17 was more applicable because it does address the petroleum products and storage of gas, 3.1 gives the definition of permitted use, 23.2 because I think it's a prohibited use and 23.2.4 because it addresses specifically the prohibited use of bulk storage of gas in excess of 10,000 gallons. It was stated a roll call vote be taken (to deny the application) and the outcome was as follows:

	Yes	No
Cathe Sherman	X	
Chris Edquist	X	
Bill Olmstead	X	
Rich Delpier	X	
Ray Mahoney	X	

(Motions carries with a unanimous 5 yes votes to deny application #11-447)

2. #10-445 and #10-446 – Wolcott High School – Special Use Permit and Site Plan Application for (45) additional parking spaces at 457 Bound Line Rd.

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Chairman Mahoney said the public hearing was held on this tonight and it was continued to the next meeting on 4/6/11 at 6:30 p.m. in the Council Chambers.

NEW BUSINESS

There was no New Business at this time.

ZONING OFFICER'S REPORT

ZEO Dave Kalinowski said we need to have an Organizational Meeting at the next meeting because Commissioner Carmody was working tonight (not able to attend tonight) and he will be at the next meeting and we will have a full body of members and we should have it at 6:15 prior to the public hearing. ZEO said it should be put on the agenda if we are going to have a full body of the acting members and Chairman Mahoney said he rather it be at 6:00 p.m.

ZEO said zoning permits in Town have been slow, questions have been asked and people are trying to buy homes and add on, garages or additions. He said as far as any new construction or subdivisions we have nothing before us. He said he will be meeting with Mr. Warner sometime next week as his 5 years is up (to complete subdivision off Pleasant St.). ZEO also asked Atty. Tynan if he had heard anything regarding Onofreo's road (Eva's Terrace), if they posted the bond, etc. Atty. Tynan said no but he has been in contact with the developer's attorney and they sent him some hold harmless agreements and there was some issues whether the people who would be affected would be agreeable to it and that's where it lies. ZEO said we should put this on the agenda and send a notice out that we are going to discuss where the road is at now as the five years is up and we did give them ample time and they did say they would have everything to us within 1 week, then 2 weeks and we have received nothing. ZEO asked if everyone was in agreement in sending a letter to (developer of Eva's Terrace) and the Commission members said yes.

EXECUTIVE SESSION

There was no Executive Session at this time.

ADJOURNMENT

Upon **MOTION** by Cathe Sherman, seconded by Chris Edquist, it was unanimously voted to **ADJOURN** the Regular Meeting at 8:30 p.m.

APPROVED:

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Ray Mahoney, Chairman
Planning & Zoning Commission

Edna Henderson, Recording Secretary
Planning & Zoning Commission

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