

PZC Minutes JUNE 10, 2014  
Printer-Friendly Version

The Planning and Zoning Commission of the Town of Avon held a meeting at the Avon Town Hall on Tuesday, June 10, 2014. Present were Linda Keith, Chair; Carol Griffin, Vice Chair; David Cappello, Marianne Clark, Tom Armstrong, and Alternate Elaine Primeau. Mrs. Primeau sat for the meeting. Christian Gackstatter was present but did not sit. Peter Mahoney was absent. Also present were Town Attorney Kari Olson, Murtha Cullina LLP, and Steve Kushner, Director of Planning and Community Development.

Ms. Keith called the meeting to order at 7:30 pm.

APPROVAL OF MINUTES

Mrs. Clark motioned to approve the minutes of the May 13, 2014, meeting, as submitted. The motion, seconded by Mrs. Primeau, received unanimous approval.

PUBLIC HEARING

App. #4716 - Gladys Walker, owner, Oak Land Developers, LLC, applicant, request for 4-lot Subdivision, 4.99 acres, 354 and 362 Huckleberry Hill Road, Parcels 2810354 and 2810362, in an R30 Zone

App. #4717 - Gladys Walker, owner, Oak Land Developers, LLC, applicant, request for Special Exception under Section IV.A.4.p. of Avon Zoning Regulations to permit one rear lot, 354 and 362 Huckleberry Hill Road, Parcels 2810354 and 2810362, in an R30 Zone

Present were David Whitney, PE, Consulting Engineers and Oakland Developers, LLC, applicant.

Mr. Whitney explained that the proposal is for a 4-lot subdivision; one of the four lots is requested to be a rear lot. The proposal involves 2 existing parcels for a total of 4.99 acres; there is an existing house at 354 Huckleberry Hill Road. Deer Run is located to the north and Northington Drive is located to the south; existing homes surround the properties on all sides. The majority of the site is open field and large mature trees exist around the entire perimeter. There is a small area of wetlands (.25 acres) on the site that receives storm water runoff from Deer Run (road) and the wetlands on the other side of Deer Run discharge into a culvert into Tilson's pond. The topography rises up from the road to a high point in the back of the site; the grades range from 6 to 8% with a couple of areas near the road at 18-20% grade and there is a knoll to the rear with a small area with slightly steeper slopes. The density calculation allows 5.4 lots; the proposal is 4 lots. Three frontage lots are proposed and all lots are 30,000 SF or larger; the rear lot (Lot #4) is proposed behind the 3 front lots. Four individual driveways are proposed from Huckleberry Hill Road and public water and public sewer are available. Mr. Whitney explained that the lot layout for Lot #2 was tweaked slightly to move the driveway, at the request of the Wetlands Commission; a conservation restriction area around the wetlands is proposed. He noted that an approval was granted by the Wetlands Commission at their June 3 meeting.

Mr. Whitney noted that the proposed rear lot is 2.06 acres and exceeds the minimum lot size requirement. A 60-foot waiver of the required 120-foot front yard setback for the rear lot is requested to allow the proposed house to be moved forward on the lot as opposed to being crowded near the back. He explained that, normally, rear lots are proposed behind established houses but noted that in this instance the proposed rear lot would be located in front of existing houses on Deer Run and Northington Drive. He further explained that the requested 60-foot waiver would allow the proposed house to be located closer to the middle of the lot and, in turn, would allow the house to be located farther away from existing houses. He explained that the total disturbance would be approximately 3.4 acres and noted that development would begin with Lot #2. A boulder wall would be established at the limits of the conservation restriction area. After Lot #2 is built and stabilized, construction would begin on Lots #3 and #4. He noted that there would be approximately ½ of an acre of disturbance for Lot #1. He explained that the whole site would not be open all at once and development would occur in steps.

Mr. Whitney addressed storm drainage from Deer Run (road) noting that some of it goes into the wetlands and some goes across the street through Country Side Park and discharges below the Tilson's house. He noted that the area in the middle of the site, approximately 3.8 acres flows down to Huckleberry Hill Road to an existing catch basin on the north side of the road; he explained that this is an existing, predevelopment condition. There is a larger watershed to the east that also flows down to Huckleberry Hill Road and drains to the same catch basin. He referenced the knoll on the site noting that it creates a divide, such that the water flows in two different directions. He addressed post development and explained that out of concern to the residents located at 370 Huckleberry Hill Road, the driveway proposed to the rear lot (Lot #4) would be reverse pitched (to the northeast) with a swale that would direct water to the catch basin. He clarified that all the water goes into the catch basin but currently some of the water goes down a different direction towards Huckleberry Hill. He explained that approximately 2 acres would be intercepted and the water directed to the catch basin; he further explained that, in this way, it can be noted with absolute certainty, that there would be no increase in storm water runoff from the subject site onto the adjacent site. He added that the soil on the site is very well drained and therefore the runoff should be relatively low; the proposed grading plan assures that no water will be taken off of the subject site and onto anyone else's land.

Mr. Whitney displayed an alternate plan, proposing a 5-lot subdivision; a 250-foot road with a permanent cul-de-sac is shown with the rear lot eliminated. He noted that this layout would require a considerable amount of grading; the proposed site plan (4-lots) is a balanced site and no material would need to be trucked offsite.

Mr. Whitney addressed comments from the Town Engineering Department and noted that he prepared a sightline plan and profile to show the proposed driveways. He noted that there are about 16-17 trees ranging from 3 feet in diameter and smaller, in various sizes, located either directly on the property line or in the Town right-of-way that would need to be removed either for grading or for sightline. He noted that the trees proposed to be removed have been flagged for inspection by the Town and shown on Sheet 5 (sightline plan). He added that the tree labels will also be shown on the feasibility site plan. The Town Engineer recommends that a new catch basin be installed adjacent to existing catch basin #1; Mr. Whitney indicated that he could do that. He confirmed that the driveway for the rear lot (Lot #4) will pitch to the west and a swale will be located along the driveway; this is shown on the plans. He noted that the driveway has been offset to the west side so as not to disturb the row of large mature pine trees along the property line. He explained that other than the trees located along the road that he doesn't believe that the proposed 4-lot development is going to require any clearing of mature trees. He noted that the intention is to keep the existing buffer of mature trees around the property perimeter. Mr. Whitney addressed proposed grading between proposed Lots #3 and #4 relative to a reduction in water that would flow across 370 Huckleberry Hill Road (existing neighbor) and explained that approximately 2 acres of watershed would be directed to the basin as a result of the proposed driveway and site grading. He added that his estimate is 2 to 3 cfs for a 10-year storm, at the most.

Mr. Whitney addressed comments from the Planning Department and noted that the applicant feels the subject proposal with a rear lot meets the special exception criteria.

Mr. Whitney reviewed Section VIII of the Zoning Regulations:

A. Suitable Location for Use – he noted that all 4 lots comply with all the requirements of the R30 zone and all of the surrounding lots are generally of the same size. Proposed Lot #4 would be the largest lot in the neighborhood.

B. Suitable Structures for Use – he indicated that the applicant doesn't believe that 4 new single-family houses will diminish the value of the neighborhood.

C. Neighborhood Compatibility – he noted that the site conforms to zoning and the applicant doesn't believe that new construction will adversely affect the existing houses.

D. Adequate Parking and Access – he commented that a more-than-adequate sightline will be provided for the 4 proposed driveways via the proposed clearing of the trees and the proposed grading along the

shoulder of Huckleberry Hill Road. He added that the radii of the proposed driveways are more than adequate for fire and emergency vehicles.

E. Adequate Streets for Use – he explained that Huckleberry Hill Road is a collector road and added that this section of the road was improved and repaved a number of years ago.

F. Adequate Emergency Access – he pointed out that there is a fire station located across the street and added that the proposed sightlines and driveways meet all the Town criteria.

G. Adequate Public Utilities – he reiterated that the site has public water and public sewer.

H. Environmental Protection and Conservation – he noted that the proposal stays away from the wetlands and a conservation restriction area is proposed.

I. Consistent with Purposes – he referenced the Plan of Conservation and Development noting that the subject site is designated as buildable and listed in the category of potential development parcels less than 5 acres. He added that the site is not located in any aquifer protection areas and noted that while there is open space land nearby, there is no open space directly adjacent to the site.

Mr. Whitney indicated that he feels the proposal meets all the criteria found in the Plan of Conservation and Development and is consistent with the purposes. Mr. Whitney displayed an alternate plan proposing a 5-lot subdivision with a public road; all the driveways can meet the standards. He noted that this alternate plan is more intense than the current proposal but added that it would be permitted under the Regulations.

Mr. Kushner noted that the subject parcel has subdivision potential, in accordance with the Subdivision and Zoning Regulations, but also has some significant topography requiring grading that needs to be discussed due to potential impacts to adjoining properties. He noted that the Commission possesses a fair amount of discretion with regard to rear lots, as they often have significant impacts to existing adjoining properties. Rear lots do not have the required frontage on either an existing or proposed Town road. He suggested that the Commission should have a conversation about Section VIII of the Regulations noting that a reverse argument could be made to

Mr. Whitney's earlier comments/arguments regarding the impacts surrounding the subject lot. He noted that the alternate plan, 5-lot subdivision, has not yet been fully reviewed by Town Staff.

In response to Mr. Armstrong's comment, Mr. Whitney confirmed that the proposal is for a 4-lot subdivision.

Mrs. Clark noted her concerns with soil removal due to the proposed grading and asked Mr. Whitney about the number of truck loads estimated and the possibility for blasting.

Mr. Whitney explained that you never know about blasting but added that there are not a lot of rock outcroppings on the site but there are large boulders. He indicated that the site is balanced such that no material would leave the site; the material will be moved around within the site. He clarified that the only material that would be brought onto the site is the material needed to construct the driveways and houses.

Mrs. Primeau commented about water that runs through the subject site, currently, and also about water runoff onto 370 Huckleberry Hill Road from other nearby sites and noted her concerns for all the houses if the proposed lots are not graded properly; she noted that there aren't a lot of trees or vegetation.

Mr. Whitney explained that the highest portion of the site is elevation 406 and the lowest elevation is 366; the difference of about 40 feet.

Mrs. Primeau commented that we don't know the extent of water coming through the site and causing problems after it's built. She noted that she thinks something should be determined with the runoff coming down onto this site from the properties that are already built; this information is needed for the new houses and the existing house.

Mr. Kushner explained that he talked with the Town Engineer today who has indicated his agreement with Mr. Whitney's earlier testimony such that there is a substantial watershed that drains to the property at 370 Huckleberry Hill Road (Farrar). Mr. Kushner noted that the Town Engineer's report

indicates that an effort/emphasis has been made to create a swale to cut off about 2 acres that would otherwise drain to 370 Huckleberry Hill. He communicated that it is the Town Engineer's opinion that the plan presented tonight will not make the current situation worse and, in fact, it should make it substantially better. He noted that it should be left up to the engineers as to whether or not the drainage plan could be improved. Mrs. Primeau noted her agreement. He noted, hypothetically, that if the rear lot is removed and the plan is reduced to 3 lots that would allow lots with a more uniform shape and could create additional separation from the wetlands. He noted further that the Town Engineer has indicated that if the driveway for the rear lot is eliminated then the swale would also be eliminated but it was further indicated that he (Town Engineer) would study ways to create a swale, or a way to cut off the water, and achieve the same advantages that the proposed plan offers. Mr. Kushner emphasized that the Town Engineer indicates that there has been an effort, via the proposed plan, to try to improve the current situation. He added that he doesn't know if it's the best that can be achieved but noted that the Town Engineer agrees that the proposal is an improvement over existing conditions, in terms of the volume of water that is coming down right now.

Mrs. Primeau noted her understanding and added that she would like to know if the Town Engineer has any additional suggestions.

In response to Mrs. Griffin's questions about driveway grades and the amount of water that could come down during a large storm,

Mr. Whitney explained that he has shown the driveways to be no steeper than 10%; the Town Regulations allow 14%. He noted that the grades vary but explained that he tried to match the existing topography and to minimize cuts and fills the contour of the land was followed, as much as possible. He indicated that a swale is shown on the left side of the driveway (rear lot) towards the catch basin; the driveway would be graded to the swale. He commented that the runoff from each individual driveway has not yet been calculated but noted that the total impervious surface is 6/10 of an acre in total; 12% of the site and about 4% of the total watershed, not a large amount. He explained that the intent/concern is not to have the increased runoff go where it goes now, which is on the right hand side of the site draining down to the road. He explained that the water will go down to the same catch basin it goes to now but via a different route. He added that he could analyze each lot individually if that served a purpose.

In response to Mr. Armstrong's questions, Mr. Whitney explained that the area between the proposed rear lot and the lot in front of it will be graded but noted that the area is currently an open field. He indicated that he has not calculated what effects the water that would flow across the street and into the pond would have on down gradient residents and during a ten-year storm.

In response to Mrs. Clark's comments, Ms. Keith commented that the pond level is controlled by a small dam. Mr. Whitney confirmed that a dam exists and also pointed out that the wetlands are a natural detention basin. He hypothesized that if a huge storm occurred that ponding would occur in the nearby wetlands.

In response to Mr. Cappello's question, Mr. Whitney explained that the storm catch basin goes under Huckleberry Hill Road; there are 2 catch basins at the entrance to Edwards Road that discharge next to the fire station, into the tributary out of the Tilson Pond, that eventually ends up in Hawley Brook.

Ms. Keith noted her concern with the proposed boundary lines noting that the Commission prefers lots to be more squared off so the property owners know where their boundaries are. She also noted that the property slopes quite a bit and asked about the grading/landscaping near the road. She noted her concerns with the house placement for proposed Lot #3 in relation to the proposed house placement and the waiver requested for the rear lot; she added that she is uncomfortable reducing the buffer area. Mr. Whitney explained that the layout is a feasibility plan noting that the house locations can be changed. He noted that he staggered the houses on purpose so they didn't line up perfectly because he always used to line up the houses, as engineers do, but was told that developers like to change offsets to add interest. He communicated his understanding that Huckleberry Hill is a collector road with a 60-

foot front yard setback due to the higher volume of traffic but added that he feels a 120-foot yard setback for a rear lot is not necessary as it won't be near any traffic. He added that the Commission has granted, over the years, a number of waivers for front yard setbacks for rear lots. He reiterated that the proposed plan is feasibility and house locations can be modified. He explained that the proposed house location on the rear lot is placed as such to provide more buffering to the existing adjacent homes. In response to Ms. Keith's questions, Mr. Whitney explained that proposed Lot #3 has a driveway with a 10% maximum and the driveway next to it is closer to 8% maximum. He noted that the proposed grading is due to the sharp rise in contours at the road. Ms. Keith noted that the grading will be a big disturbance to the existing neighbors. Mr. Whitney noted his understanding and explained that a construction sequence plan has been prepared such that development would occur on a lot by lot basis; the entire site would not be disturbed all at once.

Ms. Keith commented that there is a lot of water coming onto the subject site that is not generated by the site and asked Mr. Kushner to ask the engineers to look at the situation. She noted that there are inches of ice at certain times in the winter coming off of this site.

Mr. Kushner explained that water rights are governed by State law and added that water always drains downhill. He indicated that while the law allows water to drain from property to property, an existing situation cannot be made significantly worse, for example, by piping water to create concentrations and problems downstream. He noted that creative ways to make situations better are always investigated but explained that all the problems cannot be solved, as nature cannot be completely recreated. Mr. Kushner commented that the Town Engineer supports what has been represented tonight such that there is confidence that conditions will get better and there may be ways for even more improvement. He concluded by noting that no guarantees can be made that every water problem that exists in Town could be corrected as a result of a proposed subdivision.

In response to Mrs. Griffin's question, Mr. Whitney noted that there would not be a problem with water in the basements if the land is properly graded with a positive pitch away from the foundation; he added that houses have to be properly built (foundation drains and stone under basement floor) to avoid wet basements. He added that he doesn't feel the groundwater table in the area is very high.

In response to Ms. Keith's comments, Mr. Whitney explained that the shoulder of Huckleberry Hill Road would be graded to provide for the construction of a swale along the front of the proposed lots; a catch basin would be added. He commented that he believes the current situation would be improved. He noted that the parcel has an odd shape such that it is not at right angles to the road; squaring off the boundary lines may be difficult but he noted that he could try to straighten out the lines a bit. He added that Avon's Regulations do not have specifications (i.e., minimum square) relative to the shape of lots when creating a subdivision but noted that generally property lines are kept perpendicular to the road. He explained that the "jog" on proposed Lot #2 is to keep the driveway away from the wetlands.

Ms. Keith commented that she feels 4 lots is somewhat aggressive noting that she would prefer 3 lots. Mrs. Clark noted her concerns with steep driveways on Huckleberry Hill Road in the winter time; she asked that the driveways be made as level as possible for safety reasons. Mr. Whitney explained that, in accordance with Avon's driveway regulations, the initial part of the driveway coming off the road to the property line (generally for about 20 feet) is a maximum of 2% (flat area for vehicle). He further explained that at no point does a driveway come down and intersect Huckleberry Hill Road at grade greater than 10%. He added that the proposed grading, tree clearing, and properly designed and installed driveways would result in safer conditions than the existing driveway for the existing house.

Mr. Kushner commented that the Commission may want to invite the Town Engineer to the next meeting, as he has information that could be helpful.

Ms. Keith reiterated that she would prefer 3 lots and added that she doesn't know how many commissioners would agree that the rear lot is not preferred.

Mr. Whitney explained that Mrs. Walker is in a nursing home and this land is her nest egg; the desire is

to achieve a reasonable maximum development. He noted that the applicant feels that 5 lots would be the maximum development potential; 4 lots are proposed. He commented that if all the drainage concerns can be alleviated, that 4 lots seem like a reasonable request.

Ms. Keith stated, for the record, that several letters and an email [dated May 19, May 21, (response from Town Manager) June 2, and June 5] have been received from the Farrar family; these items are part of the record and have been handed to the Commission tonight for consideration in this application.

Mr. Kushner addressed open space and indicated that the applicant wishes to offer a fee in lieu payment. Mr. Whitney concurred.

Mr. Kushner noted that the site is very close to the Huckleberry Hill open space but is not immediately adjacent.

There were no further comments for Apps. #4716 and #4717.

Mrs. Griffin motioned to continue the public hearing for Apps. #4716 and #4717 to the next meeting, scheduled for June 24, 2014. The motion, seconded by Mr. Armstrong, received unanimous approval. App. #4719 - Brighenti Enterprises, LLC, owner, Daniel Leahy, applicant, request for Special Exception under Section VI.B.3.e. of Avon Zoning Regulations to permit dog grooming, 296 Country Club Road, Parcel 1940296 in an NB Zone

Present were Daniel Leahy, applicant, and Jeff Brighenti, owner.

Mr. Leahy explained that he would like to relocate his existing, 7-year dog grooming business located at 18 Sandscreen Road to 296 Country Club Road; he noted that there is a vet clinic right next door. He indicated that the average is 16-18 dogs on Wednesdays and Fridays; about 8 to 10 dogs on Thursday, and about 8 to 10 dogs on Saturday, which is a half day open 9am to 2pm. He explained that no dogs would be housed and no kennel request is being made; he noted that there would be no changes to the current business.

Mr. Kushner commented that the proposed location is in the NB (neighborhood business) zone; he noted that there is a veterinarian next door and it seems like a reasonable use for the location. The Farmington Valley Health District has noted that drains should be installed to catch dog hair.

In response to Mrs. Clark's comments, Mr. Leahy explained that the entrance will be in the rear of the building and added that recycling bags will be available for waste.

In response to Mrs. Primeau's question, Mr. Leahy confirmed that no overnight accommodations are proposed, just dog grooming.

There being no further input, the public hearing for App. #4719 was closed.

App. #4720 - Geoffrey and Kelly Nevins, owners/applicants, request for 2-lot Resubdivision, 10.3 acres, 408 Deercliff Road, Parcel 2090408, in an RU2A Zone

Present were David Whitney, PE, Consulting Engineers and Geoffrey and Kelly Nevins, owners.

Mr. Whitney explained that there is an existing house on the front portion of the site; there is also a horse barn and pool and open field/horse pasture. There are wetlands located to the rear of the site where the land rises up steeply. The density calculation results in 2.15 lots; the proposal is 2 lots. Mr. Whitney displayed the site plan showing the location of the requested property line division such that the existing house and barn would be located on proposed Lot #1 (3.5 acres for 408 Deercliff Road).

Proposed Lot #2 would be located on the cul-de-sac of Henderson Drive. Mr. Whitney displayed a subdivision map from 1958 showing the 12-lot Henderson Drive subdivision; he noted that the subject property was, initially, Lot #6 of the Henderson Drive subdivision. He explained that in 1957 there was a house under construction at 408 Deercliff Road and further explained that a 2.7 acre piece of land was to be deeded to 408 Deercliff Road but it never actually was deeded. Mr. Whitney noted that the property line went away and until 2003 there was an existing small lot with a house (approximately 2 acres) and the aforementioned Lot #6 was a separate lot, containing 8.3 acres. He noted that when the Nevins bought the property they actually purchased 2 separate lots; the Nevins combined the 2 lots in 2003 to form one piece of land. Mr. Whitney explained that the current proposal is to resubdivide the

parcel into 2 lots but with a different configuration.

In response to Mr. Kushner's question, Mr. Whitney confirmed that the lots were combined for tax purposes.

Mr. Whitney indicated that proposed Lot #2 has the required lot width of 200 feet on Henderson Drive; the proposal is for 2 front lots (1 lot on Deercliff Road and 1 lot on Henderson Drive). He noted that an approval was granted by the Wetlands Commission at their meeting on June 3. A conservation restriction has been proposed and extended to the existing stone wall such that development on proposed Lot #2 would not have any impact on the wetlands. The lot area that is not encumbered by the conservation restriction (the developable area for the house, etc.) is 2.3 acres in size; the total lot size is 6.7 acres, 40% of which is encumbered by a conservation restriction. The front of the proposed house would face the cul-de-sac with a view to the north; a short driveway with a flat grade is proposed and the entire site would drain to the wetlands at a 6% slope. Mr. Whitney noted that no tree cutting is needed to develop the site.

Mr. Whitney confirmed that approval has been received from the Farmington Valley Health District for the subject proposal. He noted that the Planning Department commented on the wetlands approval granted on June 3 and the Town Engineering Department had no comments for this application. Mr. Whitney concluded by noting that the proposal meets all the zoning requirements and offered to answer questions.

In response to Mr. Cappello's questions, Mr. Whitney demonstrated where he thought the original property lines were located noting that there were 2 acres for the existing house and the remaining land was Lot #6 of the Henderson Drive subdivision, totaling approximately 8.3 acres. He explained that the property line was turned to make the existing house lot 3.5 acres instead of the original 2 acres and created a 6.7 acre lot to the rear. He noted that about 1.4 acres adjacent to the wetlands on either side is undevelopable but added that not much could be done with the uplands area, although the slopes are relatively flat, located adjacent to the valuable wetlands. He noted that the site has been cleared for many years up to the existing stone wall, which provides a natural barrier to the wetlands and conservation restriction area.. The house, the septic system, and driveway can be developed on the unencumbered area of the lot, 2.3 acres. Mr. Whitney confirmed that the stone wall would not be disturbed or moved.

In response to Ms. Keith's question, Mr. Whitney explained that the subject site abuts land owned by the MDC and noted that the rear property line is not Avon/West Hartford town line, as MDC owns land in between (MDC owns land in both Avon and West Hartford).

Mr. Kushner noted that the MDC may own as much as 2,000 acres, most of which is located in West Hartford.

In response to Ms. Keith's comments about open space, Mr. Kushner noted his agreement but explained that the MDC has indicated, in the past, that they wish to maintain controlled access points to their land and do not want access via open space.

Mr. Kushner addressed open space and noted that the applicant has suggested that possibly the open space requirement could be satisfied by the significant amount of area that is subject to a conservation easement. He explained that Avon's Regulations do not have a provision for this and the Commission has not wanted to do this in the past. The applicant could either transfer land to the Town or make a payment in lieu of land donation.

In response to Ms. Keith's question, Mr. Kushner indicated that based on what was discussed that a fee in lieu would be the choice in this instance.

In response to Mrs. Griffin's question, Mr. Whitney explained that blasting for the foundation may be needed due to the bedrock on the site. He noted, however, that the rock on site can be ripped with a backhoe, as the rock is fractured.

In response to Ms. Keith's question, Mr. Whitney indicated his estimation of somewhere between 30 and 50 truckloads (depending on truck size) of sand material (approximately 500 yards) would be

brought onsite for septic systems. Mr. Whitney clarified that no material would come off the site. In response to Mr. Armstrong's question, Mr. Whitney explained that the intent of the proposed boundary line in connection with the stone wall is to allow the owner to be able to fix the stonewall, if necessary. He noted that if the stone wall is encumbered by a conservation restriction a clause would be added noting that stonewall repair be permitted.

There being no further input, the public hearing for App. #4720 was closed, as well as the entire public hearing.

#### PLANNING AND ZONING COMMISSION MEETING

Mrs. Griffin motioned to waive Administrative Procedure #6 and consider the public hearing items.

Mrs. Primeau seconded the motion that received unanimous approval.

App. #4719 - Brighenti Enterprises, LLC, owner, Daniel Leahy, applicant, request for Special Exception under Section VI.B.3.e. of Avon Zoning Regulations to permit dog grooming, 296 Country Club Road, Parcel 1940296 in an NB Zone

Mrs. Griffin motioned to approve App. #4719 subject to the following condition:

1. Compliance with the Farmington Valley Health District's comments, dated June 9, 2014, shall be demonstrated.

Mrs. Clark seconded the motion that received unanimous approval.

App. #4720 - Geoffrey and Kelly Nevins, owners/applicants, request for 2-lot Resubdivision, 10.3 acres, 408 Deercliff Road, Parcel 2090408, in an RU2A Zone

In response to Mr. Kushner's question, the applicant indicated that they are not offering a fee in lieu of open space dedication. Mr. Kushner explained to the Commission that the open space requirement should be discussed further and suggested that the application be tabled to the next meeting.

Mrs. Clark motioned to table App. #4720 to the next meeting, scheduled for June 24. The motion, seconded by Mrs. Primeau, received unanimous approval.

#### NEW APPLICATION

App. #4721 - Two Fifty Five West Main LLC, owner/applicant, request for Site Plan Modification to restripe portions of existing parking lot, 255 West Main Street, Parcel 4540255, in a CR Zone  
Present was Guy Hesketh, PE, Hesketh & Associates, representing the owner.

Mr. Hesketh explained that a certain number of parking spaces are stipulated in the lease agreements for this site. He noted that there is a cross-hatched area near Big Y that could be striped for parking as well as an area in the commuter parking lot that is inefficiently striped.

He indicated that restriping these areas could result in the needed additional spaces. He noted that currently there are 793 parking spaces and 813 spaces are required to satisfy the lease agreements; restriping the aforementioned areas results in a total of 814 parking spaces.

Mr. Hesketh noted that he has discussed with Mr. Kushner and is aware of some violations (pallets and trailers) on the site behind Walmart and Big Y. He also noted that there is dedicated employee parking to the rear and side of Walmart, which was part of the original approval. He indicated that it has been pointed out on this site plan modification that no outside storage is allowed and that specific spaces are dedicated for employee parking only and will be delineated in yellow paint. Mr. Hesketh explained that he worked with the State DOT, in connection with the commuter lot, and the restriping plan has been approved and meets ADA requirements. He added that the owner's upcoming lease negotiations with the State DOT for the commuter parking lot will include the restriping for that area. He noted that both the property owner and the Town are working with the manager of Walmart to achieve amicable zoning compliance (outside storage) as soon as possible. Mr. Hesketh commented that Mr. Juster has indicated his willingness for enforcement action and take legal action if necessary.

In response to Ms. Keith's question, Mr. Hesketh explained that he doesn't know what kind of lighting exists in the employee parking areas but noted that he could check into it. Ms. Keith indicated that she wants to make sure the area is safe for employees. Mr. Hesketh noted his understanding.



In response to Mrs. Primeau's question about access from the rear of the building, Mr. Kushner noted that he believes the employees enter and exit the building via the front door. He explained that when the site plan was approved in 1999 Walmart agreed to provide about 50 parking spaces for employees. He noted that the employee parking worked out well for awhile but added that Walmart changes store managers frequently and, overtime, instructions to employees didn't always take place. He commented that he has observed recently that at least half the employee spaces still get used.

In response to comments from the Commission, Mr. Hesketh explained that there isn't an employee entrance to the rear of the building and added that Walmart wants to maintain control of employees entering and exiting the building from the main front entrance.

Mr. Kushner explained that the property owner is very motivated to restripe the parking lot to clear up a private issue he has with his lender. He noted that the restriping plan proposed by Mr. Hesketh for the commuter parking area is much more efficient than what currently exists. All the pavement edges remain the same and none of the landscaping is lost. He noted that Town Staff has been working with Big Y and Walmart to correct ongoing zoning violations. Walmart's violations relate to outdoor storage trailers and pallets to the rear of the building as well as some outdoor storage in the front of the store. Big Y has 2 storage trailers to the rear of the building that are being used for storage; they also have numerous old shopping carts and wooden debris in the back. He noted that Big Y's store manager is working to correct these violations. Mr. Kushner indicated that the proposed site improvements are very positive and recommended that the Commission approve the proposed site plan but with a condition that no work take place until the violations are corrected to the Town's satisfaction.

In response to Ms. Keith's questions, Mr. Hesketh communicated that it is Mr. Juster's intention to continue to pursue site compliance and he would use legal means if need be. He noted that he would hope the approval condition would be strong enough but reiterated that Mr. Juster is willing to take legal action if he has to.

Mr. Kushner indicated that he's comfortable with the approval condition.

Mr. Armstrong indicated that if the site plan is approved and the owner doesn't get any cooperation from the tenants in 45 he could return to the Commission.

There were no further comments for App. #4721.

Mrs. Primeau motioned to approve App. #4721 with the following conditions:

- 1.No site plan work/parking restriping shall take place until the existing conditions/violations behind Walmart and Big Y are corrected to bring the site into compliance with Avon Zoning Regulations.
- 2.Adequate lighting shall be provided for the employee parking areas. Compliance with IES Standards for Shopping Centers shall be demonstrated; a report shall be submitted to the Director of Planning.

The motion, seconded by Mrs. Clark, received unanimous approval.

#### OUTSTANDING APPLICATIONS

App. #4708 -Meredith Corporation dba WFSB-TV, owner/applicant, request for Special Exception under Section IV.A.4.a.of Avon Zoning Regulations to replace communications tower and add Doppler Radar weather system, 375 Deercliff Road, Parcel 2090375, in an RU2A Zone

App. #4709 -Meredith Corporation dba WFSB-TV, owner/applicant, request for Site Plan Approval to replace communications tower and add Doppler Radar weather system, 375 Deercliff Road, Parcel 2090375, in an RU2A Zone

Ms. Keith announced that the public hearing for Apps. #4708 and #4709 is closed and noted that no public comment can be received. A discussion amongst the Commission members will take place. She explained that a vote is scheduled to take place at the Commission's June 24 meeting.

Attorney Olson addressed Ms. Keith and noted that she and Mr. Kushner were instructed at the last meeting to prepare motions in both directions. She confirmed that she did meet with Mr. Kushner and it was decided that more input is needed from the Commission to prepare such motions. She provided to the Commission information/language (in chart form as originally provided by Attorney Hollister) regarding the regulatory provisions contained in the Zoning Regulations to help the Commission with

their considerations. She noted that if the Commission feels that there are other sections of the Regulations that apply those sections can also be discussed and considered.

Ms. Olson clarified that the Commission should not feel constrained by this information/language but added that it may provide an orderly way to review the Regulations. She explained that the “chart” contains excerpts from the Avon Zoning Regulations.

Ms. Olson asked that each Commissioner state, for the record, their qualifications to participate in this discussion.

Mrs. Clark stated that she was present for all three public hearings (Feb 18, April 8, and May 13).

Mr. Armstrong stated that he attended all the hearings (April 8 and May 13) since his appointment (March 6, 2014) and added that he has listened to the meeting tapes from the February 18 meeting and has reviewed all the documentation.

Mrs. Primeau stated that she was present for all three public hearings.

Mrs. Griffin stated that she was present for all three public hearings. Ms. Keith clarified that Mrs. Griffin sat for both the February 18 and May 13 hearings and was present for the April 8 meeting but sat in the audience. Mrs. Griffin concurred and confirmed that she has reviewed all the documentation received into the record at the April 8 meeting.

Ms. Keith stated that she was present for all three public hearings.

Mr. Cappello stated that he was present for both the April 8 and the May 13 hearings but noted that he has listened to the tapes and documentation from the February 18 meeting.

Mr. Gackstatter addressed the Chair and stated (from the audience) that he is a regular Commission member and was told that he could not sit because he missed the first meeting (Feb 18) but noted that he has reviewed all the documents from the February 18 hearing. He added that he attended the second meeting (April 8) and noted that he missed the third meeting (May 13) but indicated that he has listened to the tapes from the third meeting and reviewed all the documentation. He asked if he is allowed to sit. In response to Ms. Olson’s question, Mr. Gackstatter stated that he did not listen to the tapes from the first proceedings because at that time they were not made available to him but reiterated that he has read all the documentation that he was given. He reiterated that he participated in the second meeting and reviewed all the documentation and listened to all tapes and reviewed all the documentation from the third meeting.

In response to Mr. Gackstatter’s comments, Ms. Olson noted her appreciation for the steps taken to become information/prepared for tonight’s discussion but explained that there is a requirement that all the tapes be listened to if absent from that proceeding or read the transcripts. Ms. Olson noted that since the transcripts are most likely not available at this point, that is not an option. Mr. Gackstatter stated that he read the minutes from the first hearing. Ms. Olson clarified that she’s not talking about the meeting “minutes” but rather the transcripts.

Ms. Keith addressed the document submitted by Town Attorney Kari Olson “Meredith Corporation d/b/a WFSB-TV, Applicant’s Compliance with Avon Zoning Regulations, (Emphasis Added)” noting that the discussion will begin with Section IV, Residential and Rural Zones.

Mr. Kushner suggested that a discussion relative to modifications and/or replacements would be in order due to the significant amount of testimony received about the similarities or differences between radio transmission and radar. He noted that he believes Mr. Chase provided quite a bit of testimony as to whether or not something can be modified that doesn’t exist.

Ms. Keith concurred with Mr. Kushner’s comments and asked if criteria relating to consistency of use have been met, under Section IV of the Regulations.

Town Attorney Olson agreed that the Commission could discuss whether it is agreed that the proposal is a modification to or replacement of at the same site of an existing transmission station and tower.

Mrs. Primeau asked about the definition of modification noting that the proposal is to take down the existing tower and put another one up. She asked what is considered, legally in this case, a modification.

Ms. Olson explained that both the terms, modification and replacement, must be looked at. She noted that if the Commission doesn't feel the proposal is a modification, it still must be determined whether the proposal is a replacement, under the Regulations. She added that if the term "modification" or "modify" is not defined in the Town's Regulations the court is going to make an interpretation from the general use of the term, in general parlance. She noted that she can provide actual dictionary definitions, if the Commission wishes.

Ms. Keith commented that what exists now are whips and some discs as opposed to the proposal to put in a radome. The discussion should be whether the radome is a modification or a replacement at the same site or whether the proposed radome meets the modification or replacement criteria.

Mrs. Griffin asked how the proposal could be a replacement if a radome hasn't been on the site for 39 years. She noted that it is her opinion that it is not a replacement.

Mrs. Primeau commented that according to what has been represented, when the dome was at the Science Center there was a building on site that was used for support of the dome. She noted that she needs clarification as to the legal definitions of "modification" and "replacement" because the documents indicate that part of the dome had working parts at the Science Center.

Ms. Keith indicated that the Zoning Regulations state inactivity for "X" number of years.

Mr. Kushner noted his understanding of Ms. Keith's comment and added that Attorney Hollister made it clear that he is not claiming any rights under the non-conforming provisions of the Regulations.

Ms. Olson confirmed that the Commission doesn't need to consider this point.

Mr. Kushner explained that Attorney Hollister never said that he would never claim some non-conforming rights, perhaps in the future; he noted that Mr. Hollister said in connection with this application, this issue does not need to be discussed because the provision/language about modification or replacement exists by way of special permit, which is what has been applied for.

Ms. Olson explained that Attorney Hollister relies on the fact that the proposal is a modification or replacement to an existing communication transmission station or tower, both conforming and nonconforming. She noted that Attorney Hollister took the position that conformance is not relevant because what is being requested is to modify or replace, at the same site, an existing communication transmission station or tower. She explained that conforming or nonconforming really doesn't play into the Commission's decision but added that the Commission needs to consider where the proposal is a modification to or replacement of an existing telecommunications transmissions station or tower, which also includes changes to the accessory buildings, facilities, or equipment.

Mr. Armstrong conveyed that he would conclude that the applicant has met the requirements relative to the tower or the building; he noted that he leaves open, at this point, the issue of Doppler and the radome. He noted that there was a tower there that is proposed to be replaced and there was a building there that is proposed to be replaced.

Mr. Cappello noted that there is no mention of equipment on the tower, just the tower.

Mr. Armstrong noted that he is not making any decision at this point about the dome or the radar.

Mr. Kushner asked Mr. Armstrong if he would be comfortable with the application if it was merely to erect a new tower, similar to what's described in the application, but instead of a discussion about a radome the discussion was about adding a new whip-style antenna at the top of the tower to support a radio station. Mr. Armstrong confirmed that he would be comfortable with Mr. Kushner's scenario and noted that he would be comfortable that the applicant has met everything but explained that he wants to think more about the radar piece.

Ms. Olson pointed out, as a legal matter in connection with the language and interpretation of the Zoning Regulations, that the Regulations allow modification to or replacement of the tower but also allowed are modifications or replacement of accessory buildings, facilities or equipment. She noted that such modifications or replacements must also meet the criteria contained in other sections of the Regulations not discussed yet.

Mr. Armstrong noted his agreement and reiterated that he feels the applicant has met the requirements

for the tower and the building but noted that more thought is needed regarding the equipment.

Ms. Keith addressed the site plan requirements and noted that she believes the testimony has been that the height of the radome would not exceed the existing heights of the tower and what is currently on the tower, even though what is on the tower now is not a radome.

Ms. Olson indicated that she believes what was submitted to the Commission is that the radome would exceed the existing heights on the tower but that the applicant is willing, as a condition of approval, to lower it.

Ms. Keith noted her agreement with Ms. Olson.

Mrs. Griffin commented that the Commission does not have to accept such a condition.

Ms. Olson confirmed that the Commission does not have to accept that condition.

Mrs. Griffin commented that the Commission can vote on the application, as presented.

Ms. Olson concurred.

Mr. Kushner noted that, in addition to the discussion/testimony about lowering the tower by 18 inches, there was also a discussion about how one goes about measuring the height of the tower and whether there is a substantive difference between a radio style antenna versus the 18-foot diameter radome that would sit on top of the tower. He noted that there is a requirement in the Regulations that states that any increase in height shall only be permitted when in the judgment of the Commission the following is provided – the radiation level at the nearest property line is reduced.

Mrs. Griffin commented that she doesn't think that a reduction in radiation has been demonstrated.

Mr. Kushner noted that although the testimony provided indicated that the amount of radiation to be generated from the proposed radar meets the standards in the code, there is still some increase in radiation. He indicated that the only way radiation could be reduced would be if one or more of the existing radio antennas were removed. He added that he doesn't believe it is known what this would result in, as no testimony was provided.

Ms. Olson referenced Mr. Kushner's comments and explained that she has communicated with Attorney Hollister as to the interpretation of the Regulations as to whether the provision of modification and replacement and height would include the tower plus all appurtenances or just the tower. She remembered that Mr. Chase indicated that there could be a tower that is only 1 foot high with large antennas. She explained that it is her legal opinion that, based on the Zoning Regulations, modification and replacement regarding height restriction would have to include all proposed appurtenances, even the ones being offered as a modification. She further explained that it is her opinion that when considering overall height, it would include the appurtenances and not just the tower itself; it would include antennas and Doppler. She added that she could provide a more formal discussion on how she arrived at this conclusion based on the Regulations. She noted that in discussions with Attorney Hollister, this issue became a moot point as he felt that he could offer a condition of approval to lower the height. She added that she remembers at least one Commissioner being concerned about whether the applicant had met the site plan requirements by establishing what exists on the tower today. Ms. Olson indicated that she doesn't know if the Commission reached any type of consensus as to whether the applicant has met the site plan requirements in the Regulations. In response to Ms. Olson's comments, Mrs. Griffin noted that she was the person who asked the question and added that she believes part of the applicant's answer was that they (applicant) could not give her a list of everything existing on the tower today.

Ms. Keith noted that the applicant provided confirmation for 4 items on the tower but noted that there are other items on the tower that could not be confirmed (i.e., height, style) by the applicant.

Mr. Kushner recollected a conversation at a prior meeting with Meredith Corporation's engineer about what would remain on the tower and noted that the engineer could not provide clear information about what would remain. Attorney Hollister offered a condition where he would agree to come back at a future date to clarify this information and present it to the Commission.

Ms. Olson noted that she doesn't remember this issue being offered as a condition but noted, rather,

that she remembers someone offering to communicate with the Commission after the close of the public hearing. She stated that her advice was that this scenario could not occur.

Ms. Keith noted her agreement with Ms. Olson's recollection.

Mr. Armstrong noted his recollection such that the applicant offered to remove all other communications from the tower and not replace them until the applicant reapplied to the Commission for approval. Ms. Olson and Mr. Kushner concurred.

Mrs. Griffin commented that she finds it troubling to have received from the applicant so many differences in facts stated and then retracted and then come back with other figures. The applicant wants to replace items but they can't tell us what's there now or what's to remain and they don't know how long items have been on site. She asked if any of the provided figures can be relied upon.

Ms. Keith commented that the research provided was not clear and some of it wasn't backed up at all.

Mrs. Clark noted that she believes that the existing Doppler at Bradley Airport is 250kw and asked for confirmation whether the proposed Doppler is 350kw.

Ms. Keith commented that she believes that the applicant did confirm that the proposed radar is 350kw as opposed to what exists at Bradley Airport, in the 200 number range.

Mrs. Griffin commented that she thinks it was Mr. Chase who indicated that what was ordered was the higher number and not a replacement.

Ms. Keith addressed electromagnetic radiation levels and noted that 2 engineers have provided data in this regard and no one on the Commission is an expert on this topic. She noted that the Commission's engineer/expert agreed with the applicant's engineer with respect to being within the guidelines of the more stringent requirements of the State of Massachusetts. She noted that the engineers are not doctors or physicists and provided information based on an engineering viewpoint.

Mr. Armstrong indicated that, in his view, the applicant has met the requirements of Section IV.a.(2) based on the submission of the report. He noted that if he were to approve the application a series of conditions would be needed with regard to NIER levels but added that, as worded, the submitted report does conclude that the required testing results are below the MA standards; he noted that the Commission's expert also agrees.

Mr. Armstrong offered the following conditions, in the event an approval is considered:

Doppler shall operate between a frequency of 45, 50 and 5,600 MHz

Doppler shall be powered at not more than 350kw and shall not drop below a zero degree elevation to the horizon, as this is directly related to EMFs

Safeguard/redundancy features provided by the manufacturer to shut down the system, both onsite and offsite, in the event the beam malfunctions.

Reports shall be provided to the Town Engineer if there is a reduction in the NIER standard for the general public or residential communities

Commission reserves the right to reopen application to examine exposure to the general public or the effect on the environment, if the lowering of standards causes these issues to be reconsidered. More standards, such as screening, may be imposed to reduce EMF levels

Annual reports showing an increase of 15% in any of the criteria is a means for reopening the application for health or environmental risk factors

Any property sold from the approximate 21 acres on the site is a means for reopening the application

In response to Mrs. Primeau's question about a 15% increase, Mr. Armstrong explained that 15% is the increase from the baseline that was provided in the application; he noted that noise would also be included and decibel readings together with EMFs on the annual reports.

Mr. Armstrong noted that has a provision related to the operation:

If the Doppler radar is discontinued for a period of a year it must be removed the following year unless restarted again (abandonment)

Mrs. Clark commented that Mr. Chase indicated that the noise data provided by the applicant is unreliable.

Mrs. Primeau commented that Mr. Chase didn't base his comments about noise on anything.

Mr. Kushner indicated that he believes Mr. Snelson's testimony was that the site he (Snelson) chose in Kansas City for the noise study was removed from noise being generated by jets and highway noise; a more isolated quiet site, similar to the subject site, to be used as a basis for comparison.

Mr. Armstrong commented that he thought they used either a 34 or 43 decibel which he noted that he feels is a bit high. He noted that his overall assumption is that within 60 days of operation the applicant will go out and perform all the testing for their first annual test. He noted that this testing would also become part of the operating baseline. He suggested that they should also sample what would be considered background.

Mrs. Primeau noted that the site is already there and questioned what happens if it is found to be not in compliance. She asked what the recourse is and whether antennas get removed.

Ms. Keith commented that if the Doppler radar is increasing from 250kw to 350kw, they may have to back it down.

Mrs. Primeau noted her agreement with Ms. Keith and added that they might also have to take things off the tower to reach compliance. She asked if this application has been before the CT Siting Council.

Mr. Kushner explained that he spoke with the acting director of the CT Siting Council who indicated that the Siting Council has no jurisdiction over this matter.

Mr. Kushner explained that the subject proposal/material is well outside the expertise of any person in the Town of Avon. He noted that if an approval is considered that includes a long list of operational conditions and required testing, a review of the special exception criteria in Section VIII of the Zoning Regulations should also be reviewed to ensure satisfaction. He pointed out that if the list of conditions is long and onerous and is necessary to have a greater chance of compliance with the special exception criteria then possibly this is reason to give pause.

Mr. Armstrong noted that he doesn't disagree with Mr. Kushner but noted that if there was an increase of 15% over the baseline that the applicant may not change the Doppler but noted that there are other stations that could be changed that would affect EMFs. He commented that he believes the residents need protection from a change in standards and added that he would be unwilling to grant a special exception without allowing the Commission to go back and revisit the issue if the standard ever dropped. He noted that if an approval is granted, the operations at the site must be accommodated while at the same time making the area safe for the residents today and in the future.

Ms. Keith indicated that she agrees with the 15% standard and the need for the applicant to return should that standard change. She noted that it is her understanding from the manufacturer's information that it doesn't have to be the strength that is proposed and the Commission could force changes to the exterior and also to the radome itself and what that sends out in terms of wattage. She noted her agreement with Mr. Armstrong's comments such that if there is a reduction in the standards in 10 years that the Commission could require the applicant to come back for review.

Mr. Armstrong noted that they may have to shield the system or reduce the EMFs on the other towers. He noted that no one can predict the future but the Commission should reserve the right to re inspection.

Ms. Olson explained that it is her interpretation of the Regulations that the measurements of the ambient non-ionizing electromagnetic radiation must include, and she quoted..."it shall be those sources existing and proposed on the site". She noted that, in her view, the applicant has to meet the NIER standards for everything that's on the tower. Regarding concerns about the applicant being able to go above the NIER standards by putting on additional antenna, etc., Ms. Olson clarified that she doesn't read the Regulations as restricting the NIER measurements to the Doppler and added that it applies to everything that is put up on the site.

Mrs. Primeau noted that she read somewhere in the documents that the radome is less problematic than

some of the radio towers.

Mr. Armstrong agreed.

Mr. Kushner noted that he doesn't recall any testimony that the Doppler radar is less dangerous.

Mrs. Primeau noted that she is not saying that the radar is less dangerous but rather just that the radar gives off less.

Mr. Kushner indicated that he thinks there was testimony that the radar operates at different frequencies so it results in less interference to some ordinary household items (i.e, security systems and garage door openers). The radar operates at a much greater power. He noted that both experts (applicant's engineer and the Town's engineer) agree that the standards for NIER measurements referenced in the Zoning Regulations have been met. He also noted that a third expert, hired by the neighbors, Dr. Carpenter, a medical doctor who ran the public health program at the State University of New York, made some strong statements that in his judgment that the NIER standards do not adequately public health. Dr. Carpenter also indicated that the existing radiation levels in the neighborhood today could be the subject of some concern.

In response to Mr. Kushner's question about expert testimony, Ms. Olson explained that it is up to the Commission to decide who they (Commission) find credible. When expert testimony is provided on a particular subject matter the Commission cannot just disregard the testimony without some expertise in that area. She explained that if the Commission has expertise in that area it must be disclosed during the public hearing. If the Commission applies their own knowledge in opposition of an expert's opinion on a particular subject, the Commission is required to disclose, during the public hearing, what level of expertise the Commission has. She noted that she usually recommends that the Commission subject a resume or describe their expertise on the record. She reiterated that the Commission has discretion regarding which expert testimony they choose to believe or which expert they find more credible. Ms. Olson explained that there are 2 issues in this instance. The first is for the Commission to apply their Regulations as they are written; what is required of an applicant who wants to avail themselves of this particular special permit and whether it meets the criteria. She noted that the second issue that the Commission must consider is the competing concern about whether the proposal meets the general health safety and welfare of the public. She noted her agreement with Mr. Armstrong's earlier comments such that an interpretation of the Regulations, as written, is needed. If the applicant has met the NIER standards, in accordance with the Regulations, such that there are 2 experts that have said that the applicant has met the NIER standards, then the applicant has likely met that provision of the Regulations. She noted that this doesn't mean that there isn't some other basis for which the Commission feels that the proposal doesn't meet other standards in the Regulations. She indicated that while she wasn't present for all the meetings, she noted that she doesn't know that there is any competing expert testimony indicating that the application doesn't meet the NIER standards. She commented that she could be wrong but noted that it is her recollection that both Meredith Corporation's expert and the Town's consultant expert agreed that the NIER standards have been met. Mrs. Griffin commented that Dr. Carpenter disagreed with the experts' reports.

Ms. Olson commented that Dr. Carpenter did not disagree that the experts' reports met the standards but rather he disagreed as to whether the standards are safe enough.

Mr. Kushner commented that it seems safe to say that the NIER standards have been satisfied but noted that a medical doctor with a career in this field has suggested that there is still reason to be concerned about harmful effects on public health.

In response to Mr. Kushner's comments, Ms. Olson noted that the issue of harmful effects on public health would relate to a different section/criterion in the Regulations.

Ms. Keith commented that she feels that the public health concerns would fall under Section IV.4.(a) (7) in the outline. She noted that she feels Section (2) has been met, as far as the engineering reports are concerned. She indicated that she feels many on the Commission are having problems with the health and well being issues.

Mr. Kushner and Ms. Olson noted that IV.4.(a)(3) doesn't apply.

In response to Ms. Keith's question about item (4), Mr. Kushner noted that, to his knowledge, there are no strobe lights proposed but noted that if an approval were granted, lights would become a condition of the approval. Ms. Olson concurred.

Ms. Keith commented that item (5) regarding street/property lines is not applicable. Ms. Olson concurred.

Ms. Olson indicated that item (6) regarding employees/offices would be a condition of approval.

Mr. Kushner noted that item (6) recognizes that towers are located in residential neighborhoods and commercial activities should be kept to a minimum, to include a prohibition on full-time employees on the site. This would also prohibit Channel 3 from relocating their broadcast studios to Deercliff Road.

Ms. Keith concurred.

In response to Ms. Keith's comment, Ms. Olson confirmed that sections (7) and (8) are repeats and already contained in section (2).

Ms. Keith addressed section (9) noting that she believes there was testimony that plantings are proposed for the residents.

Ms. Olson commented that she remembers that plantings were proposed in one area but it was felt that plantings in another area would not be worthwhile because of the slope.

Mr. Kushner commented that he feels that "visual intrusion" speaks to the changes that have occurred on this site over the last 15 to 20 years. He addressed the history of this site noting that when Travelers Insurance owned both the TV and radio station they owned a very large parcel of land. He noted that it was easier to satisfy the special exception criteria relating to visual intrusion and buffering from adjoining residences when the site was much larger. He noted that the former Traveler's Cliff House was torn down and the land subdivided into 3 lots, which are located closest to the subject site.

Travelers owned all the land that became the Brocklesby and Sky View Subdivisions, as well as all the land located on the east side of Deercliff Road that was purchased by Channel 18 in the mid 1980s. He noted that the "visual intrusion" now becomes more difficult, as there is no longer a large buffer; he added that the rest of the special exception criteria also become more difficult.

Mrs. Griffin commented that there is a big difference between the appearance of a whip antenna versus a huge radome; she added that you barely see a whip antenna but added that the radome sticks out.

Mr. Kushner noted his agreement and that he is on the "same page" with Mrs. Griffin's comments.

Ms. Olson noted that the applicant provided photos taken from the top of the tower but also noted that she remembers information provided by either residents or Mr. Chase that suggested that the aforementioned photos were not accurate as to what would truly be visible. She noted that there appears to be conflicting information and the Commission will have to decide whether they feel that there would be a visual intrusion.

Mrs. Primeau noted that she finds the applicant's proposal to install white pines unacceptable and noted that White or Norway spruce would be better. She noted that the site is very messy and needs to be cleaned up; she pointed out that a tree fell over the fence and it was never repaired. She indicated that screening is needed along the road and not just along Deercliff Road.

Mr. Kushner commented that the proposed planting program would help screen the tower but noted that the applicant provided testimony and photos such that the proposed radome would be visible from certain properties. He noted that the Commission must decide whether or not this is acceptable.

Mrs. Primeau noted that her concerns also relate to the entire site and added that there needs to be screening on the side street. She commented that the current condition of the site is unacceptable.

Mrs. Griffin commented that there is no way to screen the radome from the Valley.

Mr. Armstrong noted his agreement with everyone that the dome is going to be exposed no matter what. He added that the plan calls for trees at 6 to 7 feet and noted that he proposes trees at least 9 to 10 feet. Mrs. Primeau concurred. Mr. Armstrong commented that there should be 3 or 4 trees proposed in the gap located at the southerly end. He proposed that color options for both the tower and the building



be submitted to the Engineering Department for approval; colors should blend with existing backgrounds, as much as possible. He noted that he recommends the proposed color for the dome, either white or gray, also be submitted to the Engineering Department for approval. He indicated that the dome at the Talcott Mountain Science Center is bright white. He added that he thought the proposal was to cut down 1 tree but noted that it looks like the proposal is to cut more trees. He indicated that the Engineering Department should be notified about tree cutting and recommended a joint visit with an arborist. Preservation of trees is recommended, if possible, but allowance should be made for diseased trees. He noted that evergreens are the preference and added that pruning, rather than cutting, is favored in conjunction with approval from the Engineering Department.

Mrs. Griffin commented that if trees are cut they would have to be replaced. Mrs. Primeau agreed. Mr. Armstrong commented that the footprint of the new tower is tighter and the platform is smaller than the existing tower and asked why any trees, other than diseased trees, would need to be cut down.

Ms. Olson asked Mr. Armstrong if he wants to see additional trees around the tower base rather than fewer trees. Mr. Armstrong commented that he would like to see as many trees around the base as exist now and noted that he is not saying that there needs to be more trees, necessarily. He added that this would be at the discretion of the Engineering Department.

Mrs. Primeau commented that she would like to see trees around the perimeter of the site, the fence fixed, and the site cleaned up.

Ms. Keith addressed the special exception criteria contained in Section VIII of the Regulations.

Mr. Armstrong indicated that he feels the issues have been narrowed to A, B, C, and I, of the Special Exception criteria. He commented that concerns relating to emergency conditions and the need for a "shut off" have been raised and noted that this issue may be covered under A, B, C, or I but also may be addressed through another letter. He added that A, B, and C, are issues that need to be considered by the Commission. He referred to changes to the site over the years, as discussed earlier by Mr. Kushner, noting that this is one issue. He noted that the applicant pointed out that most of the opponents may have come to the site at a time when the station was already there (i.e, stations and towers, yes; Doppler maybe yes, maybe no). He noted that he feels these areas are the basis of the Commission's decision and added that he would like input from other members. Mr. Armstrong noted his understanding of Dr. Carpenter's theory on "pulsing" and communicated that if an approval is considered he would want some contingency added in the event Dr. Carpenter's theories became the standard and required a reduction of exposure. He clarified that he would rather focus on the non-health aspects, rather than the health aspects.

In response to Mr. Kushner's question about Neighborhood Compatibility (C), Mr. Armstrong noted that although issues such as color and height have already been discussed, there was testimony relating to value. He asked what the additional incremental effects on property would be; present without Doppler and tomorrow with Doppler. He noted that he doesn't think we can go back to day one, with and without the towers. He referenced a written letter submitted by one of the opponents (Mr. Kilcommons) which indicated that there was an adverse effect on property values but no quantification was provided; the information was more intuitive in nature. The applicant challenged this information indicating that a more complete report was needed. The applicant submitted a report from another site used for cell towers, using this information in support of the applicant's position that there would not be any adverse effect. Mr. Armstrong noted that the cell tower report doesn't entirely support the valuation, one way or the other, and he encouraged the Commission to read the submitted cell tower report to decide if they feel a conclusion is reached, one way or another. He pointed out that evidence on this issue was submitted from both sides and the question is which evidence is more credible.

Ms. Olson noted her agreement with Mr. Armstrong's comments and added that it is up to each Commission member to decide, in their opinion, which evidence they find more credible.

Mrs. Clark commented that Mr. Kilcommons said that he feels the subject proposal would have a negative effect on the nearby neighbors; she noted that she remembers asking him this question.

Mr. Kushner indicated that it seems as though the issue of neighborhood compatibility and the effect of the proposal on the nearby neighborhood correlates to how many homes are within close proximity to the subject facility. He noted that the applicant submitted an exhibit that shows the number of new homes built over the last 50 years. He asked if it seems reasonable that the burden of neighborhood compatibility increases, the impacts are greater, given the number of homes that exist nearby today as compared to the number of homes that existed 20 years ago.

Mrs. Primeau asked if there are statistics of recent house sales in this area with the existing towers. She noted that it becomes a personal judgment if there are no facts available.

Mr. Kushner explained that testimony to the Commission is such that there have been a large number of new homes constructed and sold and there is data on these homes. What isn't available, according to the experts, is a before and after condition. He added that many neighbors have testified/conveyed their concerns and appear emotionally distraught. He commented that a logical conclusion might be that these concerns bear some relationship to sales in connection with the neighborhood compatibility issue. He noted that the engineers/scientists have testified that the standards have been met but the general public has voiced their concerns. These may be the same issues raised in connection with power lines and while people may buy a home near power lines, given 2 options, most people would probably choose the house not located closest to power lines. Mr. Kushner noted that power lines are built in compliance with Federal and State standards but the public still has concerns.

Mrs. Griffin commented that a huge radome is so much more visible than a tower; she added that many people think of danger when they think about radar. She added that whether the danger is real or not it is perceived by any person looking to buy a home.

In response to Ms. Olson's question, Mrs. Griffin confirmed that she agrees with the opinion expressed by Mr. Kilcommons.

Mrs. Clark recollected the discussions about the cell tower that was installed near the church on Lovely Street and noted that those discussions seem like nothing compared to this.

Mr. Kushner noted that very similar types of concerns were exhibited during the public testimony in front of the CT Siting Council for the AT&T cell phone tower located at St. Matthews Church. He noted that although the power levels from cell phone towers is substantially less than what is being discussed for the subject application the public has the same kind of concerns.

Mr. Armstrong commented that he feels it would be a good idea to review what has been submitted, from both sides, on the issue of valuations.

Ms. Olson agreed with Mr. Armstrong that the Commission would want to weigh the information supplied from both sides and noted that Mr. Kilcommons is a professional appraiser. She noted that she believes Meredith Corporation provided a report but not an official appraiser. She explained that the Commission will want to weigh the testimony provided by Mr. Kilcommons with the other information provided to the Commission.

Mrs. Griffin commented that it has been stated that the radar would interfere with WiFi and asked what house is not going to have WiFi. She noted that there's a conflict such that baby monitors can't be used and noted that there are times that WTIC can be heard on the telephone.

Mrs. Griffin noted her agreement with Mrs. Clark, who noted that Mr. Chase indicated that there's a fine if a person's WiFi interferes with the radar.

Mrs. Primeau noted that the interference is happening now, without the radome.

Mr. Armstrong concurred with Mrs. Primeau and added that he believes there was testimony that the radio and TV towers are causing interference. Mrs. Primeau agreed.

Mrs. Griffin indicated that it is her understanding that the radome and WiFi operate on the same level, noting that this information was included in the written submission.

Mrs. Primeau commented that interference is happening right now and asked whether the radome is on the same wavelength.

Ms. Keith indicated that the testimony was that the radome operates on a different frequency and added

that she feels the problem right now is the Channel 18 tower. She noted that assurances were provided such that the radar would be on a different frequency to avoid conflicts. She commented that there's no way to force changes to Channel 18 and noted the possibilities for the radar frequency to interfere with something that hasn't had interference up to this point.

Mr. Kushner commented that everything in the Regulations really relates to neighborhood compatibility; the location relative to property lines; the buffering requirements; flashing lights; the NIER levels; and noise levels. He noted that he feels it's more difficult to demonstrate compliance with these standards when the condition is a greater number of homes proximate to the proposal; the special permit request involves the magnitude of the proposal. A proposal to recreate the tower exactly as is but keep only the radio antennae that currently exist seems like a different analysis, as the magnitude is different. He noted that towers have to be built on high points, on hills, and if they didn't, it's likely that the Regulations might only allow tower construction in industrial areas or areas more compatible. There would not be neighborhood issues. He explained that Deercliff Road is a high point and was zoned residential, and not industrial, because the soil conditions and slopes are not suitable for industrial uses. Mr. Kushner noted his agreement with comments from some of the Commission members such that, notwithstanding the technical standards discussed, the scope of the overall proposal and its impact on the neighborhood in accordance with the Special Exception criteria need to be considered.

Mrs. Griffin referenced Section IV.4.(a) (10) and noted that the applicant didn't prove that the radiation level is reduced nor has it been proven that the resulting impact on the ridgeline is improved.

Mrs. Primeau commented that the site is not on the ridgeline.

Mrs. Griffin commented that if it can be seen, it's on the ridgeline.

Mr. Armstrong noted that depending on how the term is defined and agreed that the term is undefined but noted that he believes the applicant would say that their planting plan satisfies this criteria. He conveyed his agreement that the applicant, notwithstanding that they have agreed to remove whatever equipment now exists on the tower, has not demonstrated that EMF levels at the property line have been reduced. He added that it cannot be assumed that elimination is equal to a reduction because there is an addition. He noted his conclusion that the only way the applicant can meet that criteria, and fall within it, is for the applicant to take the position that the tower is the structural tower and the equipment is not part of the structural tower. The structural tower height could not be any greater than 111 feet 10 inches and the equipment added on top would have to be considered as equipment and not tower.

Ms. Olson clarified that it doesn't matter what position the applicant is taking and explained that the decision is up to the Commission in accordance with its Regulations. The interpretation of the Regulations is up to the Commission. She communicated her opinion, based on the Regulations, that for the purpose of determining compliance with the tower height limitation, it includes all equipment and appurtenances. She added that she feels this is the only way that the Regulations can be read, as a whole, and be given the effect to which they were intended. She stated that the entire tower height with appurtenances cannot be any higher unless the criteria under Item (10) are met.

Mr. Armstrong asked for clarification such that the tower and the radar and the radome could not be higher than 111 feet and 10 inches.

Ms. Olson indicated that it would include all the existing whip antennae and all the radar; all appurtenances would be included.

Mr. Armstrong noted his understanding and added that his position is not inconsistent.

Ms. Olson noted that, right now, the existing tower with all of its equipment, antennae and everything on it is, hypothetically, about 120 feet at the highest point. She stated that it is her legal opinion that the Regulations, as written, would be interpreted by a court such that you could not modify or replace the tower or put anything on it, such as equipment, Doppler, additional whip antennae, flags, or anything, that would result in an overall height greater than 120 feet unless the other criteria could be met such that the radiation level is lower at the nearest property line and the impact on the ridgeline is materially

improved.

Mr. Armstrong commented that he doesn't believe the applicant can demonstrate that the EMF levels are lower. He added that if this were to be approved, the combined height, given the radome is 18 feet, could not be any greater than the lesser of 129 feet 10 inches or 111 feet 10 inches plus the tallest antenna or whip on the tower today. He added that he would limit the applicant not to go any higher noting that he doesn't think the applicant can meet the heights.

Mrs. Clark commented that the number in the minutes is 127.5 feet.

Ms. Olson reiterated her legal opinion, based on a court's interpretation of the Regulations, that if the applicant wishes to go above 127.5 feet they must meet the additional criteria contained in the Regulations. She pointed out that the applicant took the position that they would reduce the overall height of the tower and appurtenances to meet the Regulations so that they were not exceeding the existing height.

In response to Mrs. Primeau's comment, Mr. Armstrong commented that the applicant doesn't have to meet the requirement of lowering radiation levels at the nearest property line unless they increase the height of the tower.

Ms. Olson noted that she believes what is proposed right now is higher than what exists. Mrs. Primeau agreed.

Mr. Kushner commented that he believes the applicant indicated that they would reduce the height by 18 inches. Mr. Armstrong agreed.

In response to Mr. Kushner's question, Ms. Keith indicated that she doesn't feel enough of the information has been reviewed/discussed for the Commission to convey their position.

Ms. Olson explained to the Commission that when they make determinations on special permit applications that the Regulations need to be applied to the facts as presented or as concluded. She further explained that it is the Commission's discretion as to whom they decide to believe but noted that at the end of the day, any decision has to be based on substantial evidence. She strongly recommended that the Commission reread a lot of the material provided, as it will be much more helpful in drafting motions if the Commission can articulate, specifically, how they feel the proposal either meets or does not meet the Regulations based on the record evidence. She noted that it would be helpful in further discussion that if the Commission, for example, feels that the site plan Regulations have been met or have not been met, the reasons for taking either position need to be stated.

Mr. Kushner asked that if no consensus is reached tonight whether it is important that the same Commission members sit for both the June 24 and July 15 meetings, as opinions may vary.

Ms. Olson confirmed that it is advisable that all members sitting tonight also be present for the June 24 and July 15 meetings to be present for both continued deliberations and the vote. She reiterated that any decision must be based on the record before the Commission and added that she would be willing to attend a special meeting to continue the discussion. She noted that at this point she doesn't feel the discussion is complete enough to draft any motions.

In response to Mr. Kushner's question about taking a consensus, Ms. Olson explained that motions in both directions would be drafted.

Ms. Olson referenced the Regulation checklist being used to review the proposal and explained that the Commission may feel that there are other provisions in the Regulations that apply that are not listed; she asked that the Commission not feel limited by the list and to use their discretion. In response to questions from the Commission, Ms. Olson explained that the Commission can always ask for legal opinions after the close of the public hearing and specific questions can be routed through Mr. Kushner.

In response to Mr. Armstrong's question, Mr. Kushner indicated that specific issues that the Commission may have should be addressed in public forum. Ms. Olson concurred and explained that the Commission should not be communicating with each other outside the public forum.

After some discussion, it was decided that a special meeting will be scheduled for Monday, June 16,

2014.

#### OTHER BUSINESS

Nonprinted Item added to the Agenda

Mrs. Clark motioned to add an item to the agenda. The motion, seconded by Mr. Armstrong, received unanimous approval.

Correction to Zoning Map from Residential to Industrial Zone – Industrial Drive - Robert M. Meyers  
Mr. Kushner explained that a correction to a drafting error on the Zoning Map is needed for a site on Industrial Drive. He noted that a garage is proposed to be constructed to house contracted school buses for the coming year; he explained this will be the subject of a future site plan application.

Attorney Meyers explained that a portion of the former railroad right-of-way, adjacent to Industrial Drive and now known as “Rails to Trails”, has always been zoned Industrial. When Towpath was created there was a zone change to residential that did not include the ROW area. He noted that he and Mr. Kushner have researched this information and are in agreement. He explained that when the Zoning Map was updated as a result of the approved zone change, the ROW area was incorrectly included in the change to residential. He explained that the request is not for a zone change but rather to correct the Zoning Map to reflect what the Commission approved.

Mr. Kushner indicated that the correction would be made to correctly reflect what the record says; it’s different than a zone change.

Ms. Olson noted her agreement.

Mr. Armstrong commented that the Commission could approve the change, administratively, and the corrected map could be provided to the Commission at the next meeting. Mr. Kushner concurred.

Mr. Armstrong motioned to approve the correction to the Zoning Map. The motion seconded by Mrs. Primeau received approval from Messrs. Armstrong and Cappello and Mesdames Primeau, Keith, and Clark. Mrs. Griffin abstained as she had stepped down during this conversation.

Request for 2-year extension of conditional approval 3-lot subdivision 252 Lovely Street – Bill Grunewald (PZC Apps. #4239/40)

Mrs. Griffin motioned to approve the request for a 2-year extension of Apps. #4239 and #4240. The motion seconded by Mrs. Primeau, received unanimous approval.

There being no further business, the meeting adjourned at 11pm.

Respectfully submitted,

Linda Sadlon, Clerk

#### LEGAL NOTICE

#### TOWN OF AVON

At a meeting held on June 10, 2014, the Planning and Zoning Commission of the Town of Avon voted as follows:

App. #4719 - Brighenti Enterprises, LLC, owner, Daniel Leahy, applicant, request for Special Exception under Section VI.B.3.e. of Avon Zoning Regulations to permit dog grooming, 296 Country Club Road, Parcel 1940296 in an NB Zone APPROVED WITH CONDITION

App. #4721 -Two Fifty Five West Main LLC, owner/applicant, request for Site Plan Modification to restripe portions of existing parking lot, 255 West Main Street, Parcel 4540255, in a CR Zone APPROVED WITH CONDITIONS

Dated at Avon this 11th day of June, 2014. Copy of this notice is on file in the Office of the Town Clerk, Avon Town Hall.

#### PLANNING AND ZONING COMMISSION

Linda Keith, Chair

Carol Griffin, Vice Chair

#### LEGAL NOTICE

## TOWN OF AVON

The Planning and Zoning Commission of the Town of Avon will hold a Public Hearing on Tuesday, June 24, 2014, at 7:30 pm at the Avon Town Hall on the following:

App. #4722 - Proposed Amendment to 2006 Plan of Conservation and Development pertaining to Chapter 11, Neighborhood Goals and Policies; Town of Avon, applicant

App. #4723 - Proposed amendment to Avon Zoning Regulations pertaining to detached identification signs in commercial zones; Town of Avon, applicant

All interested persons may appear and be heard and written communications will be received.

Applications are available for inspection in Planning and Community Development at the Avon Town Hall. Dated at Avon this 9th day of June, 2014.

PLANNING AND ZONING COMMISSION

Linda Keith, Chair

Carol Griffin, Vice Chair