

The Planning and Zoning Commission of the Town of Avon held a regular, hybrid (in person - Selectman's Chambers **AND** virtual GoToMeeting) meeting on Tuesday, December 12, 2023. Present were Peter Mahoney (virtually), Chair, Lisa Levin (in person), Vice Chair, Dean Hamilton (virtually), Joseph Gentile (In person), Mary Harrop (in person), Robin Baran (in person), Chet Bukowski (virtually – left meeting at 7:30pm), and Alternates Elaine Primeau (virtually NOT sitting), and Jamie DiPace (in person NOT sitting). Alternate Julie Rousey was absent. Also present was Hiram Peck (virtually) Director of Planning and Community Development.

Mr. Mahoney called the meeting to order at 7pm.

#### **MEETING MINUTES November 21, 2023**

Ms. Levin said that the minutes dated 11/21/23 had omitted our reference to the discussion that we had in November on the practice of approving and amending minutes and adding as a formal agenda item to the meetings to review the minutes. I would like these minutes to reflect that and I have also asked Hiram to talk with the Town Attorney about the practice of minute management and how we are going to handle it because our Board is doing it differently it sounds like from a number of other Boards in Town.

#### **NEW APPLICATION**

App. #5021 - DP3 LLC, owner, Khaled Ayad, applicant, request for Site Plan Approval to permit pizza/coffee shop/lounge, 300 West Main Street, Parcel 4540300, in a CR Zone

Khaled Ayad, applicant, was present.

Mr. Peck explained that the restaurant proposed is the same size as the previous restaurant in this location. Outdoor seating is proposed and permitted with any restaurant, per State Statute. The outdoor seating area will need to comply with the requirements of the Fire Marshal for safety. The only change proposed is the addition of a new door in the front of the building that will open when outdoor seating is being used; people can walk through the restaurant to reach the outdoor seating area.

In response to Mr. Mahoney, Mr. Peck confirmed that the outdoor seating area will have a fence around it to protect it from the parking lot.

There were no further comments.

Mrs. Harrop motioned to approve App #5021 subject to the following:

1. Applicant shall demonstrate compliance with all standards/requirements/codes of the Town Departments of Planning, Engineering, AWPCA, Building, Fire, and FVHD.
2. No change to the existing parking is permitted.
3. The outdoor seating area shall comply with all standards/requirements of the Fire Marshal, Building Official, and FVHD.

The motion was seconded by Ms. Levin and received unanimous approval.

#### **PUBLIC HEARING**

App. #5019 - Forty One Sandscreen, LLC, owner/applicant, request for Special Exception under Section III.H. of Avon Zoning Regulations to permit earth removal to regrade and add retaining walls and fencing, 41 Sandscreen Road, Parcel 3820041, in an I Zone

Present in person were Jeremy Vearil, owner; Attorney Bill Case, on behalf of the owner.; Tracy Gallagher, real estate professional, and Ashley Lauren. Present virtually was David Tompkins, PE, Spring Hand Corps, LLC

The public hearing for App #5019 was continued from November 21.

Mr. Vearil explained that additional plan modifications have been made to address concerns of the neighbors. He read aloud, for the record, his letter addressed to the Commission dated December 12, 2023.

Attorney Case confirmed that a letter was submitted for the record from the owners of Old Farms Crossing Associates as well as a letter/permit approval from Eversource to allow installation of the planting plan, buffer, and fence that are part of the subject plan. Permission is granted by Eversource to install in the ROW that crosses through the subject property. Permission is granted from the owners of the condo/apartments to install and maintain the fence.

David Tompkins displayed/shared maps of the site noting the changes. A wooden privacy fence has been added along the boundary with the condos; the fence will be continued all around the proposed wall and a 2½ foot berm will be added behind the wall. A row of evergreens will be planted on top of the berm. Visuals and overall privacy will be improved by these changes.

Mr. Mahoney asked if a 6-foot fence is sufficient on the condo side.

Mr. Tompkins noted that compared to today where you can see right through; there are a lot of broad leaf trees but not many evergreens. It's going to be much better than it is now. The pushing back of the embankment doesn't affect the view at all because the fence and plantings will be on the upside of the embankment. There will be no visual difference, whether there is excavation going on or not.

Mr. Case clarified that the existing fence is 4½ feet high and in disarray; the proposed fence will be about 2 feet higher and also raised up on additional block.

Mr. Vearil said that from his side the fence will be approximately 10 feet to the top but from their side, because of the berm between the properties, they will be getting 6 to 7 feet of blockage. Right now they have about 4 feet and their fence is currently about 30 feet into the woods. We are bringing the fence right to the property line which will also give more height coverage and a complete block down into my rear yard.

Mr. Case stated that the right of way and the area that faces Sylvan Street currently has no visual screening. This area will have a fence that currently doesn't exist at all as well as a berm; a large amount of coverage and blockage will be provided, as well as the addition of evergreen/arborvitae trees.

Mr. Vearil said that currently from his property he can see into yards/houses on Sylvan Street; this proposal pushes the embankment back, adds a berm with higher plantings, and adds a solid fence.

In response to Ms. Levin, Mr. Case explained that from the subject site visually you will first see the fence, then the berm, then the plantings on top of the berm.

Mr. Vearil explained that there will be a small berm that will raise the plantings up to a little higher than the fencing such that when looking from the neighbors down you will see trees then in the background of those trees a bit lower you will see the top of the fence; this provides 6-7 feet of block.

In response to Mrs. Harrop, Mr. Vearil explained that he's leaning towards spruce trees as they are strong and have better longevity. He confirmed that he is happy to work with Town Staff on details.

In response to Mr. Gentile, Mr. Vearil explained that the long-term goal is to create a continuous hedge row. The initial planting would be 5-6' spruce planted/spaced 6-foot on center. Spruce trees should grow to 60-70 feet high while arborvitae may grow to only 30 feet.

Ms. Baran asked that the day to day business activities currently being conducted on the site be described; also describe the day to day activities that are intended to be conducted if the subject earth removal application happens.

Mr. Vearil explained that the activities will be the same. He has one landscape crew that maintains lawns for commercial properties in Avon. He has an excavation company that is two crews that do foundations, drainage, and septic – all phases of outdoor activities that relate to excavation including snow plowing. The subject application is to give us area to push the equipment back and be more organized. We need materials (stone, mulch, etc.) on a day to day basis; currently we buy one yard at a time and have to truck it to a job. If we have these bins we can get one load delivered, which creates a more efficient workplace for us.

In response to Ms. Baran, Mr. Case said that if more materials could be delivered to the site it should result in less/fewer vehicles on the site because there will be materials on site as opposed to having to be brought in on a regular basis. There would also be more functionality to the property; more efficient storage and better utilization of equipment. The buffer improvements proposed should help to keep the noise on the site adding that there will likely be a decrease in noise on the site. There are currently no noise violations, per standards in the noise study. There is currently noise coming from the nearby bus yard as well as Sanford and Hawley.

Ms. Baran said that her concerns are for the special exception itself which uses the word harmony in relation to all the properties in the neighborhood; she asked if the applicant could speak to harmonizing. A lot of material has been received with noise complaints, foul smells, fumes, not being able to open windows. She said this is a huge issue for her.

Mr. Case noted his understanding adding that the historic use of this site has been industrial since the 1940s and likely well before that; all the nearby residential neighborhoods were built later. There is a very limited amount of industrial use land in Town such that it would be unfortunate to limit the ability of an owner to use their land to provide essential services. The Town dump was previously located in this zone; there was a railroad crossing and an oil depot. The owner wants to be a good neighbor but also wants to be able to utilize the property; additional screening is being provided and the land is not going to be used any differently than it already has.

In response to Ms. Baran, Mr. Case confirmed that the owner has responded to all concerns raised by neighbors. Mr. Vearil has relationships with two of the homeowners on Sylvan Street who are using part of his land for their back yards.

Mr. Case explained that the only item that requires the Commission's review is the request for earth removal; this is the only reason for the subject application. He referenced the letter submitted by Tracy Gallagher (Coldwell Banker - dated December 12, 2023) which notes that in his professional opinion property values would not be diminished by the proposed plan and the added buffering/screening may add value.

In response to Ms. Levin, Mr. Case confirmed that when the current owner bought the subject site two years ago he did not need a special exception or site plan approval. The prior permitted existing industrial zone uses were continued, as they are compliant with the Zoning Regulations.

In response to Ms. Levin, Mr. Peck confirmed that the current business and the expected future/expanded business on this site is a permitted use in the industrial zone; there is no need for a special exception application. Earth removal is the only item for consideration tonight.

Ms. Levin asked if Eversource has the right to relocate or remove any of the permitted improvements in the ROW.

Mr. Case confirmed that the approval from Eversource always reserves the right if they decide at some point to reenergize that strip. He said, however, that in speaking with the real estate department at Eversource that they would not have granted their approval if there was going to be a future use of the ROW area.

Mr. Vearil said that when he met onsite with the Eversource engineers they stated that the plan as submitted did not interfere with their ability to put power lines back in.

Ms. Levin asked what the elevation of the Sylvan property is.

Mr. Tompkins explained that the elevation is at about 272 feet; it slopes down to the neighbors. The berm will be at elevation 271; the bottom of the wall is at 255 feet. Everything below the wall is going to be hidden from anyone's view; no one will be able to see the bins. The view will be better blocked by low evergreen trees rather than the high trees because most of those trees are just blocking the sky. The elevations are sloping down at about 10% toward Jeremy's property.

Ms. Levin asked what the neighbors are going to be able to see: will they be able to see all the equipment?

Mr. Vearil said that currently he can see into the upper windows but with a six-foot fence and a two to three-foot berm with plantings on top of it, essentially you will not be able to see the building products on my site.

Mr. Case said that there's a big grade difference between Sandscreen Road and Sylvan Street; currently Sylvan homeowners can look down straight through but after the changes there will be a block at the eyesight level.

In response to Ms. Levin, Mr. Vearil said that a bond is not required by the Town, nor should it be.

Ms. Levin said that bonding requirements should be discussed with the Town Attorney, in accordance with the language in Section III.H. of the Zoning Regulations. If an approval were to be granted she wants a bond in place in case the trees or fencing don't work out.

Mr. Case agreed to talk with Town Staff about bonding adding that his understanding is that bonding in this instance is for excavation and not the site improvements.

Mr. Peck said that he's happy to discuss bonding with the Town Attorney. CGS 8-3(g) speaks to bonding and the Town can bond erosion and sedimentation controls but the Town is limited to what it can bond relative to landscaping and other items on the site, regardless of what the Regulation says. He confirmed that any landscaping issues that may arise that were required as a condition of any site plan approval are handled through Town zoning enforcement not bonding.

Ms. Levin asked what the current hours/days of operation are and what are the expected hours/days of operation if the proposed removal was permitted.

Mr. Vearil said that his typical hours of operation are 7am to 4-5pm, Monday through Friday, depending on the season. He goes in on Saturdays occasionally to work around the shop. The snow plowing hours are as needed; the trucks go out and they're gone. The Town garage is one property away from this site.

Mr. Case said there would be no change to the use and hours of operation based on an approval.

In response to Mrs. Harrop, Mr. Vearil confirmed that there has been no change from the previous owner relative to snow plowing operation on the site.

Mr. Gentile asked if the fence and the wall are going to be constructed on the ROW.

Mr. Case confirmed that it's on the edge of the ROW but not on the ROW.

Mr. Tompkins said that it's about a foot outside the ROW.

In response to Ms. Levin, Mr. Vearil confirmed that the berm and trees are on the edge of the ROW.

Mr. Tompkins explained that Eversource is limited to what they can clear for trees. They have an envelope of 10 feet for their power lines. If they were to put power lines up and clear within 10 feet of them they still would not touch these trees; these trees would remain as they are on the edge of the ROW.

Ms. Levin asked if the applicant submitted a written report stating the purpose of the earth removal operation, the period operation, and the proposed dates of operation for removal, grading, restoration. The Regulations require a report.

Mr. Vearil said that a written report would be submitted to Town Staff when we get to the point of knowing when the excavation will take place; he is not sure when excavation would begin. It would be based on finding a home for the material; hopefully we can find a place that can take it all in a short time period or in one shot.

Mr. Tompkins said that the excavation timetable is set by the Regulations.

Mr. Case said that the purpose was set forth in the application, to level the ground and the dates are subject to the Regulations; we can work with Town Staff when we find a home for the material.

In response to Mr. Case, Mr. Mahoney said that Tracy Gallagher's letter is part of the record and therefore does not need to be read. Mr. Mahoney said that this includes all the letters from the public too.

The hearing was opened for public comment. Each speaker was permitted 3 minutes for public comments.

Mike Blase, 70 Sylvan, said the purpose of the industrial zone is to establish a place for light manufacturing; the previous owner had a light excavation business that was very quiet but it's a very different situation today. How is it harmony when I have to smell gas and diesel fuel. The EPA has called this a carcinogen, possibly, and you're talking about moving it closer to my backyard so how is this possibly being discussed. I have to put up with dust from trucks constantly; hearing abrupt metallic clanging noises; backup beepers and loud engines. The area is not zoned for working on trucks, cleaning oil and material – there is no place to

put the oil and pollution is going into the ground. Is it polluting our wells and the aquifer. Excessive light pollution is not in harmony. Property has been in noncompliance for many years. In 1985 the trees (large oaks) planted were a requirement when the building was constructed – also required was a bank of dirt, which absorbs sound, and the lower evergreen trees. He lived there at that time in 1985 and that should be in the minutes. You are planting new trees and adding a fence but the large oak trees are what block the entire industrial area – taking them down will create a new problem. Elevation is very steep incline from the backyard but not the front yard – we see a lot of trucks, equipment, boats, trailers oil delivery trucks – is this in harmony with the neighborhood – I don't think so. He respectfully disagreed with Mr. Peck that a special exception is not needed for snow plowing – it's a different operation than excavation and runs completely different hours – 4:30am wake up time and trucks back late at night - we can have five months of the year with frost and trucks out on the road. A public hearing and special exception are needed for snow plowing.

Jim McGarrah, Sylvan Street, said that he went to the Town offices today between 12:30 and 1pm and there was no Old Farms Crossing agreement and no new letter from the applicant in the file. This is wildly frustrating – we don't get the information until live at the meeting so it's very difficult to comment on. Avon does not have a noise ordinance – this is the only objective reference the public could have to say whether a property is in compliance. The noise study included in the file doesn't help much – limited time window and the activities are controlled by the payor. The applicant is making efforts but they are not going to be sufficient. There are mixed messages throughout this application about the vision for the site – about the problems that exist now that are in violation I believe of whatever prior conditions may have existed. There is nothing about this property on the land records in terms of the equivalent of the special exception activities under industry zone. We've heard very vague references to what's permitted for industry. Today's version of zoning says the only thing you can do without a special exception in an industry zone is a professional office – that's it. Anything that's going on – any activity on this land has to be covered by something and right now no one can answer the question of what that is. I did research in the land records – my neighbors asked the Planning Department – they don't know. We have a vague situation here – the application is to remove 7,100 CY of land – that's permanent – that's the limited focus of the application but all the surrounding information begs the question of what is permitted on this land and we don't have the answer for that so if you allow this earth removal to take place you can't go and put the land back when you find out that the activities do require a special exception. So I did one other thing the commission may be interested in – I looked for other special exceptions in the industry zone on Sandscreen road and here's what I found - 1982 – 30 Sandscreen – storage yards and buildings for building materials – 1990 – 19 Sandscreen – special exception to permit automotive/autobody and detailing shop – 1992 – special exception for Old farms crossing – 2000 – 18 Sandscreen – special exception to operate a dog daycare – 2007 – 18 Sandscreen – special exception to permit Saturday hours 9am to 5pm at existing dog care. If a dog care facility has to get a special exception to adjust hours how can it be the case that this business adding snow plowing – adding a 24-hour service which we've heard the applicant acknowledge – how can it be and if you allow the removal the presumption is that activities are going to occur. Something is out of order here – I don't understand why they can't come back having the proper special exceptions in place and ask you the question again – propose alternate ways – there are good attempts here but not enough based on the underlying permanent changes. Permission given by Eversource expires when he sells the land so what happens if the earth is taken away and he sells it the next day and the buffer permission from Eversource is gone. Too many crazy things involved in this and you should deny it right now.

Louis Bonalumi, 84 Sylvan, said I'm not really good at this. All those exceptions - all those businesses are close to Old Farms Road – you over the railroad tracks and get to old farms crossing then you get to his business – so all those exceptions are near residential areas – so take that into consideration – what he's doing is going to be right in our backyards. Call me dumb but we've asked before – how many feet from the berm are you going out because I measured from the berm to the property line to the residential – it's 50

feet – I don't care about the ROW – that's 50 feet from the berm walking straight through the woods to Sylvan Street. You talked about at the last meeting – their goal was to drive vehicles around the building – how the hell are you going to get those tractor trailers or those dump trucks with the 40 and 50-foot trailers hauling excavators going to make it around that corner – impossible. I don't know what he's thinking but I know from things that I've seen before - once you do something – oops, oh well it got messed up, so what. This is irreversible. Also I thought we were adults – but apparently after the last meeting retaliation started – I don't have it with me right now but I sat in my house and the decibel reading from their machinery was at 70.4 at 2:30pm and went on for about an hour - that's in the front of their building to the front of my building – in front of my home. That's pretty freakin loud. Second of all I'm a disabled combat vet. There's constant banging going on and people think it's a freakin joke – oh, let's get this guy to react. When something happens it's not gonna be funny – now I'm not threatening anybody and I'm not saying anything and I want it for the record that I'm not suicidal and I'm not homicidal and I don't own any weapons and I don't believe in violence. I don't believe in the destruction of people's property either. So any of those little games he wants to start playing – you know – it's not me but this is ridiculous. I've been there all my life – the snowplow stuff is crap because there's never been a snowplow business there before. When he talks about being near the town garage – their facility is pushed a lot further to the railroad tracks and you got a cemetery and a huge open field and then you have Sylvan Street so they don't hear the noise from there. There's was other stuff but I'm probably over my time so that's it.

Linda Blase, 70 Sylvan, said she's like to quote Avon Zoning Regulations – the Commission may require additional landscaping or more mature planting when unusual conditions require more extensive screening or for noise abatement to prevent the depreciation of adjoining residential properties – which would be us. I strongly believe that the abutting residence to this property have these unusual conditions. This is due to the non-compatible uses in industrial and residential zones. The Eversource ROW regulations for trees and plantings – the lights, the fumes, the intrusive noise such as the revving and idling of large trucks – this also has the potential for property value depreciation. Separately from denying this application I'm asking the Commission to require more extensive screening and additional space for that screening with mature plantings which Town Regulations do allow for. in any case at a minimum this property should be made to conform with previous buffering requirements. I ask each of you to drive down sylvan street at night and you will see how bright it is down there – this is what we see every night. By removing the large trees and the little screening that we have will only make this issue worse for us. If this application is approved the character and peace of our neighborhood will be dramatically and forever changed. We will have no meaningful barrier between the neighborhood and this heavy – not light – industrial operation. Beyond the persistent disturbance to residents this will result in diminished home property values and quality of life. Also if this application is approved the applicant has described plans that will be in effect an expansion and change of use of this site bringing in large trucks and equipment operations closer to our homes. These issues go from bad – that is what we are now enduring – to much worse resulting in severe (few inaudible words). How much more do we have to put up with. I respectfully ask all of you to deny this application for special exception.

There were no further comments from the public.

In response to comments from Mr. Blase regarding the former owner's operation, Mr. Vearil said that he knows for a fact that Mr. Barnett had much larger equipment (D6 bulldozers, tri-axle trucks, etc.) because he was a site development contractor who developed roads in Town. He said that while he does have some large equipment he has mainly small stuff; the size of the equipment is irrelevant. He can't speak for the fumes because there are many vehicles that go through the neighborhood and he is not the only contributor. There are 30-40 school buses that leave at 6am every day from that area – he cannot be blamed for fumes from an entire industrial park. There is an approved salt shed built right into the bank on the next property

just past me because there used to be a landscaper who operated out of the building which is now an ammunitions builder. Wheeler Construction used to operate their paving business there and next door to that is the Town Garage which has a salt shed that holds thousands of tons of salt and operates 24/7 with a lot of lights in the parking lot and a clear view of the neighborhood; directly in line with my property. He's not sure what the comment about the fence along Old Farms without a permit means. He referenced the fence noted in the letter just submitted by Old Farms Crossing – that fence itself would not require approval by the Commission to be built – just the excavation part. He said that he's going to install the fence regardless because it needs to be done to help screen the properties and he wants to help the neighbors. He said that he's talked to Old Farms Crossing and they discussed reworking the berm on the other side of the property in conjunction with them to make the properties look better. He said that he does not have tractor trailers or 40-foot trucks to go around the building – the point of access around the building is to be able to get a small vehicle around the building and use the back of the building - that will now be tucked down low out of sight - to put away a lot of the clutter that is now in front of the building – the seasonal use stuff – in the back of the building and out of sight. There are a lot of trucks in the neighborhood with backup alarms - large delivery trucks and large tractor trailers – these are not his trucks. He may have a couple of trucks with alarms but the majority of his trucks are pickup trucks and do not have backup alarms. His trucks have trailers – guys go out and do their mowing and come back with no alarms. He estimates that he currently has about 10 trucks on site – each employee has their own. If the application is approved he may add a couple of trucks but noted that he is in the process of downsizing his fleet to reduce his headaches. He said seven of his large trucks that plow for the State of CT and Town roads are being sold. He addressed light pollution comments noting that there is one outdoor light on the building for security – there are additional lights on the exterior of the building that are motion sensor activated only. Other industrial properties in the area have much more intense lighting. The wall project has lighting proposed for the occasional use at night – it points away from the neighborhood and down – they are small motion sensor spotlights that people have on their homes.

In response to Ms. Levin, Mr. Vearil said that his Tri-Axle has a backup alarm and two of his small dump trucks have backup alarms. The excavation equipment has backup alarms per OSHA (for safety) and cannot be disconnected. Excavation equipment gets moved around the yard – taken off a trailer and parked in the building to be worked on – put back on a trailer and sent off to a job. We are not doing excavation on the site with that equipment.

Mr. Case pointed out that the backup alarms are all for safety reasons. Sanford and Hawley have a lot of lights and backup alarms – it's a significant lumber yard. He said that the applicant will be snow plowing at the same times that the Town is plowing. He said that Mr. Blase only quoted a part of the industrial zone regulations – the purpose is to establish a district for light manufacturing and other suitable uses, so it's not just for light manufacturing. This is a continuation of the use that was there before – the contractor who was there before did snow plowing and repair work – very similar to what Jeremy just testified to – the former owner was a major road builder and he did repair equipment and have construction equipment – it's in the record when the building was approved in 1984.

Mr. Vearil said that in 1984 Mr. Barnett who built the building stated on the record that it will be used to house his construction equipment and for repairs of such. There's a question of if I can or cannot work on my equipment I guess apparently, special exceptions or what not, but it was clearly in the record of 1984 what the purpose of this building being built was.

Ms. Levin said ok let's talk about this 1984 1985 – you're talking about the zoning board of appeals decision?

Mr. Vearil said that the application to the zoning board of appeals was withdrawn.



Ms. Levin said ok is that what you're quoting from because I feel like there's a lot of confusion in the record and I wanna set that – in 1985 there was a request by the owner of that property to build an addition and requested two variances – one for the front yard requirement and the second was for the buffer zone. The owner said they would make the addition smaller so that they would not have to go for the variance but the minutes from that meeting continue to talk about the need for the buffer requirement between the industrial zone and residential zone and actually the requirements for the oak trees and the buffer – I think somebody was talking 1985 – actually were put in according to the minutes in 1971 and that's when they said that the oak trees and the buffer were required. Clearly it has been dissipated over time.

Mr. Case said that this will add a revised buffer that's going to be way more efficient than oak trees – this is going to be solid.

Mr. Vearil said that that buffer also related to a building structure not a fence with a wall or excavation. His original application for the building was ten-foot wider which put him into a different setback for the building because building setback is separate.

Ms. Levin said that she doesn't know how relevant all the 1985 discussion was but that may be with respect to the front of the addition but the buffer was in connection with Sylvan and the property – that's how the minutes read.

Mr. Case said we agree it's not relevant – there's a whole new application before you – that one was withdrawn so I think Jeremy's point was just that the use is the same and the buildings and we are presenting you with this new plan with a buffer to address that.

Ms. Levin said is there any issue with retaining the oaks as part of your plan here – you heard that there was questions about the oak trees – I don't know how many are on the site.

Mr. Case said that any of the oak trees that are within the area to be excavated obviously will not remain and then any of the large ones as you go up the hill will be removed. Any of the oak trees in the area that's going to be excavated will get removed.

Mr. Vearil said that unfortunately to do a wall that is 12-foot tall we need to dig into the bank a little bit farther and the trees that are existing are not in the ROW – they're outside the ROW where I'm putting the wall. To get down that deep you need to dig in farther so those trees are going.

Mr. Case said it's 12 feet from Sandscreen to the top of the wall, then the fence and the berms and trees.

Mr. Vearil said in response to comments made that he is not retaliating against anybody here and has tried to work with all the neighbors over the years. I've gone to the expense of having license to use my property – I've made agreements with two of the properties – I've spoken with Mr. Blase over the years about property things but sometimes it's just hard to agree cuz I feel I'm right and they have their opinions. I'm not retaliating anybody. People are trespassing my property and the police were called. I just want to be a good neighbor and I don't appreciate the trespass and failure to leave my property. I am happy to give my phone number and we can talk – I'd be happy to put a couple of extra bushes in your corner – I'm trying to work with everybody here.

Mrs. Harrop said that she heard that you have a lot of problems with lights and exhaust and noise – do you have any problems with any of the other people that are working there. Sanford and Hawley is huge – do you have any problems with them – they must make a lot of noise and have a lot of light. This is the only

person establishment that you're having a problem with – could you please explain that to me.

Mr. Blase 70 Sylvan said that as far as other neighbors everybody is good – Sanford and Hawley has been a good neighbor – they do have backup beepers and that is an open issue but I understand they're going to be upgrading their equipment someday with what's called night --- quiet noise beepers so we're looking forward to that otherwise besides their lights – their lights are a big issue and that's the whole point here is that Jeremy is removing all the oak trees which opens up the entire Sandscreen road to us and all the light pollution that comes through – those oak trees really help to mitigate the issues and that's why we're – besides the character and the beauty of them the oak trees help tremendously to stop some of that light – so that's all I got.

Ms. Levin said she's confused – when I went to go look at the property - if they are adding evergreens where the oak trees are will that not take care of the issue.

Mr. Blase said no the lights – it's the entire horizon.

Ms. Levin said but there's going to be more trees now than there is currently – when I came past the property today it's looking – first off there's a lot of deciduous trees and so the leaves are off.

Mr. Blase said that is true at this time of year it is brighter for sure but the other time of year it's not.

Mr. Levin said the evergreens would give you that screening.

Mr. Blase said the evergreens will give us the screening down here but not the night sky and remember we are way up here – Sylvan street is pretty high – those evergreen trees do very little – if we're in our backyard they're gonna help but if we're looking out our windows or in the front yard, no they're very limited.

In response to Ms. Levin, Mr. Blase said that additional plantings farther upland would absolutely help – the regulations should require trees, deciduous trees – no that's not the right word.

Ms. Levin said section 7 for the additional buffer.

Mr. Blase said yeah and the trees have to be capable of hitting 35 feet. The ROW has regulations that say no trees even on the outer boundary can be more than 25 feet in height. The Eversource ROW is going to be used again. I spoke to the Eversource ROW specialist and he says yes it will probably be used again as energy use goes up. It's just the way it is so any tree in there that is over 25 feet – besides the situation of it goes with the owner – it doesn't go with the property. As far as the other neighbors most of them have been good – the lights are a big issue and that's why we count on those large oak trees and that's why we want to keep them.

Mrs. Harrop said how many oak trees are you taking down in all.

Mr. Vearil said that the oak trees are sparse but said that he's guessing there's probably 20 or 30 there. The Colorado blue spruce does grow to 75 to 100 feet and that's a dense tree.

Mr. Blase said going back to 11 84 back then it was talked about you need three things – you need the earth berm that absorbs sound – I don't know if a concrete wall is going to do the same thing – I think it's gonna bounce the sound back but there will be a short berm 3 ½ feet. There's nothing better than earth to absorb sound and that was the whole intent at that meeting I attended way back then I'm old – they talked about

three things – the earth berm the lower evergreen trees and the tall oak trees – that combination is what was required or at least spoken about – I know the evergreen trees were definitely a requirement and the earth berm that's going to stay to keep us protected – keep us in harmony keep the two residential and industrial areas in harmony.

Ms. Levin said where could these oak trees -if there were replacement oak trees planted where could they be planted on the site – I'm having a hard time.

Mr. Blase said there's no room – Eversource does not allow you to go – they gave him permission for the outer edge only and beyond that it's their wall – so there's no room – so what I'm saying is go back another 25 or 30 feet and plant your trees – that's gonna make your project smaller but it's gonna be the best solution for all of us.

Mr. Vearil said that we could go back to Eversource and say we're going to put a row of deciduous trees on the other property line and also have the berm but this is what we had submitted this is what we work from. I'm not saying I wouldn't plant additional screening for certain residents – I'll plant them on their property if they like. Going back another 30 feet doesn't work with the property – this has been designed – I understand but this is unfortunately where we're at. Additional trees could be planted on the other side of the property but now that takes away from the two properties that I have given license to use – they've expanded their backyard right to the edge of the 50-foot ROW – they put fencing in – they put a playground in for their children/grandchildren. (He noted that Mr. Blase is not one of these properties). If I do those plantings and overplant that area that license that I've given them is gonna take away from the space they wanted and use. He said it's up to them but I'm easy to work with regards to plantings in certain areas. We can throw in more deciduous trees in lieu of one or two spruces every so many feet or whatever works for a planting plan. He said that there is one gentleman who has PTSD from noise and I have no problem planting a couple of bushes on his property if it helps with the screening – he's off to the side and not directly behind me. He said I get it – you can see through there so I'm willing to work with people.

Mr. Blase said that I would rather see you say you can plant 60-foot trees because that's what you're taking away from us.

Mr. Vearil said I wish I could but I can't – he said he gets it but said that the trees are on his property.

John Cavanaugh 79 Sylvan said that the only thing I can say property value wise – I think it will reduce the property values – I don't see anybody is going to come in and see this and say boy that's an improvement on a residential neighborhood. I think it will decrease the property values. I know they said it won't affect it or it may increase it – I don't see that happening.

Mr. Case said that the Eversource permit is not automatically assignable but it is assignable with the consent of Eversource so it's not something that terminates automatically. There was some talk about that it's not assignable but that's in fact not true – it just needs their permission just like any other kind of deal would. The trees on Jeremy's property could be removed now without any application – just in consideration - but we are providing here. There is nothing that prevents any landowner/homeowner from removing trees from their property.

Ms. Levin said that it does seem like it would be in violation of the 1971 conditions that were put on this property that run with the land.

Mr. Case said those aren't in the Land Records though.

Ms. Levin said all we have are the minutes from the Zoning board of appeals. We're talking hypotheticals here.

Mr. Vearil said that he understands his opinion – the two homes that are mainly affected are directly behind my shop – those are the ones who have a clear view of my shop. The two properties are owned by Yuliya and Nancy Yu – currently you can see right through. When I've looked at homes and I come into a backyard and I can see into an industrial park and look down at all those trucks it's not very appealing to me – what is appealing is a berm in the back yard with plantings and a fence on it that's blocking that view. To me that is a beneficial increase to property values – that is my opinion.

Mr. Case said there is also a professional opinion in the record.

There were no further public comments.

Mr. Mahoney asked if we are ready to close the public hearing and vote.

Mesdames Baran and Levin said they are not ready to vote.

Ms. Levin said she would like to hear from other commissioners – what are the concerns – are their questions – we've had a lot brought up about historically on the property – whether or not this should require a special exception. I know Staff thinks that the only thing that's here that's before us which technically is before us is the earth removal. I think the part that I'm struggling with is the fact that there's a lot of other businesses in the area there and so when I hear about light and noise pollution I don't know what's attributable to what business but I know that it doesn't seem instinctively appropriate to take down a natural buffer and that certainly runs counter to the earth removal regulation which specifically says to preserve natural buffers – so the idea that we would be removing one to then have a partial berm put up that may help in terms of being able to look into the property but from what I'm understanding when you're in the home you're now going to have greater visibility into this industrial area. That is not – ok so please clarify for me.

Mr. Gentile said how tall are the spruces going to be.

Mr. Case said they grow up to 60 to 70 feet.

Mr. Gentile said how long would it take for an oak tree to grow to that kind of maturity. There are two sides to the coin – they are under – I don't believe that when this industrial parcel went in that there was a site plan – landscaping plan – so I don't think they are under any obligation to maintain the trees. I think they do have the right to take them down as opposed to some other commercial plazas. So there's a possibility that they're gonna lose buffering that they do have and he's under no obligation to put it back. So if it was me I would like the idea of having something there.

Ms. Baran said but it was in a condition though.

Mr. Gentile said was it a condition.

Ms. Baran said in one of our documents it said it was a condition and in fact the condition was not upheld because a whole bunch of the pine trees died and never got replaced so all these years these people have been living with a thinned out version of what was (inaudible word) – not the oak trees the pine trees – so even right now its not as lush and thick and sound reducing as its supposed to have been all these years.

That's a problem that I have – and I understand that people are talking and not listening to me which is really bothering me because I haven't talked once when other people were talking – is the fact that it seems to me like there hasn't been a lot of attention paid to the care taking and maintenance over the years which is why there is a turn out at this meeting which is why we are receiving three months' worth of letters of complaints and there is a general fear among the people whose – I'm just trying to put myself in both positions as the property owner and the right to run a business and a person who lives on a property that abuts this that looks into this – so I'm trying to put myself on both sides and say there's years here of neglect and not upholding – and employees urinating in view of homeowners and everything else these letters describe and if it's all true its like why are we going to reward that with more expansion and that's the problem I have and while I'm talking and then I'll be quiet – under earth removal under the zoning regulations the purpose is to prevent the occurrence of nuisances from earth removal operations which affect the value and enjoyment of neighboring properties. Back to special exception criteria – will be in harmony with the orderly development of the area and compatible with other existing uses – neighborhood compatibility – the proposed use will not alter the essential characteristics of the area or adversely affect property values in the neighborhood. I'm just trying to see if everything being proposed here meets that criteria and to me it doesn't so I'm looking for how can you prove me wrong.

Ms. Levin said that's what I thought too – questioning whether or not that the proposed removal was not going to be compatible – was going to interfere with the enjoyment and the compatibility of the homeowners and yet I also see a situation where the wall and some of the trees could actually provide more opportunity to absorb some of the sound although I'm concerned about the wall and the echoing of the sound. What I'm really getting a sense of here and I do think this is – I just have to say very exciting to have people who are willing to listen to one another to be respectful to have an applicant who wants to work with the homeowners. I feel like there's an opportunity maybe for further discussion between representatives of the neighborhood of Sylvan and the applicant – you've obviously already shown us that with respect to Old Farms Crossing even though we just got it today but you did work with them and I'm wondering if there's opportunity and Hiram tell me if I'm off base here or a chance to continue this matter so that we can give the parties an opportunity or the interested stake holders and the applicant a chance to talk further about other kinds of plantings. You know it's hard for me sometimes to envision it – I have walked the applicant's property – I tried to go up on Sylvan and see what all you folks can see but I feel like all of you in the room in the audience know it better than some of us up here – so I wanna just pause here and see given the timetable Hiram if there's an opportunity for that.

Mr. Peck said that the potential is there for the applicant to increase or improve the buffer. He suggested that Staff can work with the applicant to increase the effectiveness of the buffer; there are a couple of ways to do that. He noted his agreement with a lot of the comments that oak trees are lovely; however, when they don't have their leaves they are not very effective in providing a significant buffer so I think there are ways that the buffer can be increased in terms of its effectiveness significantly. The Commission is not going to hear anything new from the applicant right now or in the future; you've heard what all the issues are. He indicated his recommendation is to close the public hearing to have discussions continue between the applicant and the homeowners if the applicant so chooses. Staff is willing to listen to those things and provide a series of recommendations for the Commission before the next meeting where you could deliberate and decide those items.

Mr. Mahoney said that our charge is to look at this application and decide whether to approve or not approve. If there are ongoing problems in this industrial zone those need to be addressed through changes to the zoning or through zoning enforcement actions. I think we really need to keep that stuff separate from this and we need to consider this application on its merits and move on.

Ms. Levin said I agree but what I was suggesting is that there's an opportunity for the stakeholders the homeowners to talk further.

Mr. Mahoney said yes they can talk all they want but I'm just saying that we look at what's before us as this is what we are here to decide.

In response to Mr. Mahoney, Mr. Peck said you need a vote to close the hearing.

Mr. Gentile said he would like to make a comment.

Ms. Levin said wait hold on one second – so we are deliberating – but are there any other comments – otherwise we should make a vote to close the hearing and then we will not vote on this matter – we will continue to deliberate and there will be an opportunity for the homeowners to meet with the applicant and then you can make further recommendations to us before we would vote.

Mr. Peck said that once the hearing is closed any future recommendations to the Commission would have to come from Staff and not from the homeowners.

Mr. Mahoney said that once we close the hearing all we do is vote.

Ms. Levin said then why don't we keep it open and let the homeowners.....

Mrs. Harrop said can we keep it open.

Mr. Peck said I just would just like to say again – I don't want to be rude -but I don't think you're going to hear anything new other than what you've heard this evening. I think everyone has been very eloquent in terms of their position and if there are things that come up that the homeowner and the applicant are willing to do I'm certainly happy to present that to the Commission before you take a vote. You can certainly deliberate at your next meeting and in fact you don't even have to make a decision at the January meeting – you have 65 days after the close of the public hearing to make a decision.

Mr. Mahoney said do we have to vote to the close the public hearing – I thought we could just close the public hearing.

Mr. Peck said as long as nobody objects, Peter.

Ms. Levin said that the only concern I have is that as there are ongoing – I appreciate Staff wanting to bring forward the recommendations but it's been very helpful to hear from the homeowners tonight and the applicant.

Mr. Mahoney said ok let's take a vote. Mr. Mahoney motioned to close the public hearing for App #5019 and asked if there is a second. The motion to close the hearing was seconded by Mr. Gentile. Voting in favor of closing the hearing were Messrs. Mahoney, Gentile, and Hamilton. Voting in opposition to close the hearing were Mesdames Levin, Harrop, and Baran. Mr. Bukowski was not present for the vote.

Mr. Mahoney said we have a tie vote.

Mr. Peck explained that if the applicant does not consent to an extension the public hearing has to close. The public hearing has been going on for over 35 days now.

Mr. Mahoney said if we don't act now it's approved by default, right.

Mr. Peck confirmed that the public hearing needs to close first. The applicant needs to grant an extension if the Commission wants to continue the hearing. If the applicant does not grant an extension then that's a bigger problem and I will have to talk to the Town Attorney but I really recommend the hearing be closed.

Ms. Levin said is the applicant interested in giving us an extension to keep the hearing open.

Mr. Case said we would like to see the hearing closed and work with Staff and neighbors, through the Staff, to bring more information for deliberations – I think that would be the most efficient way. Closing the public hearing is the best option right now.

Mr. Mahoney said that if we don't close the public hearing now it closes by default.

Mr. Peck said that is correct.

Mr. Mahoney said so we either make the decision or let it happen.

Mr. Mahoney motioned again to close the public hearing for App #5019. The motion was seconded again by Mr. Gentile. Voting in favor of closing the hearing were Messrs. Mahoney, Gentile, and Hamilton. Voting in opposition of closing the hearing were Mesdames Levin, Harrop, and Baran.

Mr. Mahoney said the hearing will then close by default.

Ms. Levin said Hiram is there any issue with it closing by default.

Mr. Peck said that the Commission is only allowed to continue the hearing for 35 days unless it is granted an extension by the applicant – that's the way the law works.

Mr. Mahoney said then if you don't it's closed by default.

Mrs. Harrop said so the way it's.....

Ms. Levin said I would just encourage the applicant to reconsider because you see how fruitful tonight's discussion has been – I think it's also from a relationship standpoint with your surrounding neighbors it's important - you can accomplish the same thing but I think it is important to give a forum that as we – cuz I think there's gonna be more collaboration that goes on that may create – lead to more solutions here that could be beneficial – so for that reason I would encourage you to reconsider and agree to an extension.

Mrs. Harrop said and they would also be working with the Staff, is that correct.

Ms. Levin said right – either way you're gonna work with the Staff.

Mr. Vearil privately talked with Mr. Case.

Mr. Case said that we have some limitations as to what we can do on the site – there won't be a change to the wall or the planting - we have permission from Eversource – we have permission from the owners of Old Farms Crossing to do what we presented. So there's not a lot of reason to keep the public hearing open – we do believe we can work effectively with the Staff and the public as a conduit so that the deliberations can be

meaningful - it won't eliminate information getting to the Commission – the information would just come through Staff to the Commission in a more effect way. He said there are some limitations to what we can do - extending the public hearing is not going to necessarily get 100% of the results the neighbors want or 100% of the results the applicant wants. Our preference is that you reconsider the vote to close the hearing and let us work these issues with the Staff which we've managed to do very effectively to date and will continue to do– this also gives the neighborhood the opportunity to do that. We are willing to meet collectively with the Staff and representatives of the neighbors – as Jeremy has expressed he's willing to provide screening on private property to help in this situation but we'd rather in the forum with Staff.

Ms. Levin said but I have a question – is there a possibility that you would need to go back or you could go back to Eversource – when I keep thinking about planting upland – in other words closer to the land/homeowners.

Mr. Case said it would have to be on the other side – they're not going to allow any planting in the....

Mr. Vearil said that instead of it being here – it would be over here.

Ms. Levin said right and that's what I'm saying – you don't need Eversource's.....

Mr. Vearil said well we would submit another plan to Eversource to flop it over – to switch it to that side. I think what the point here was - the whole thing was designed on the location of the wall – and the wall in my opinion isn't really open for negotiation moving it 30 feet because of the expense of the wall I need to maximize the land. What is open for discussion and negotiation with neighbors is the type of landscape plantings, the size of the berm, and potentially planting on neighbors' property and that stuff can all be worked between residents and Staff. The actual footprint of the wall I can't really change because it's the only real way this project works.

Ms. Levin said well I think you can still accomplish – I'm not comfortable closing the public hearing – I understand that and I can't speak for other commissioners so I mean if your position is you still want to – you don't want to grant the extension then the hearing will close by default.

Mr. Vearil privately talked with Mr. Case.

Mr. Vearil said on a personal point I'm very easy to work with and I want to work with the Board but on a business standpoint here I think we've submitted a good plan and some things could be changed but I think the continuation of a public meeting is going to bring up more stuff because every meeting is another thing we have to combat and what not. We have the plan and the plan really can't change – what can change is the plantings and what we can do to appease the neighborhood. I think that's easily worked – I have had a relationship for many years with Mr. Blase and I'm happy to keep him in the loop on things if he wants to represent the neighborhood or if he has somebody. From a business standpoint I'd like to close the hearing.

Mr. Mahoney asked if anyone is going to change their vote. There was no change. He said the hearing is closed by default – this is a first.

Ms. Levin said some Commissioners are just committed to principles.

Mr. Mahoney said that is an opinion.

Ms. Levin said it is an opinion- you are absolutely right.



Ms. Levin motioned to table App #5019 to the January 9, 2024, meeting. The motion was seconded by Mrs. Harrop and received approval from Mesdames Levin, Harrop, Baran and Messrs. Mahoney, Gentile, and Hamilton.

#### **OTHER BUSINESS**

##### Housing Task Force

Mr. Peck reported that he has prepared the required resolution and forwarded it to the Town Manager's office for review and approval. This resolution will go to the Town Council at their January meeting and then the Task Force will be officially formed. He confirmed that he will keep the Commission informed about the resolution before it goes to the Council meeting. A meeting of the Task Force will take place once the resolution is approved by the Council. The charge for the resolution was taken directly from the 2022 Affordable Housing Plan.

#### **STAFF UPDATES**

Mr. Peck reported that there are really no updates at this time but noted that there are a lot of enforcement activities/actions going on relative to signage and home businesses. In response to Ms. Levin, Mr. Peck said that a report on the minute process will be available for the next meeting. There being no further business the meeting adjourned at 9:15pm.

Linda Sadlon  
Avon Planning and Community Development