



Town of Hamden
Planning and Zoning Department

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November 3, 2020, Revised December 1, 2020

MINUTES: THE PLANNING & ZONING COMMISSION, Town of Hamden, held a Public Hearing and Regular Meeting via Zoom teleconferencing technology on Tuesday, October 27, 2020 at 7:00 p.m. with the following results:

Commissioners in attendance:

Joe McDonagh, Vice-Chair
Robert Roscow
Michele Mastropetre
Joseph Banks
Paul Begemann
Robert Cocchiaro
Shanae Draughn, Sitting for Vacancy
Ted Stevens, Sitting for Brack Poitier

Staff in attendance:

Dan Kops, Town Planner
Matt Davis, Assistant Town Planner
Tim Lee, Assistant Town Attorney
Genevieve Bertolini, Stenographer
Natalie Barletta, Clerk

Mr. McDonagh opened the meeting at 7:04 p.m. The clerk read the Public Hearing items into the record. The Commission and staff introduced themselves. Mr. McDonagh then reviewed the meeting procedures.

A. Public Hearing

- 1. Special Permit and Site Plan #20-1511
82-92 Crestway, M Zone
Site Remediation and Stabilization
Eighty Two-Ninety Two Crestway, Applicant
Public Hearing Continued from September 22, 2020

Mr. McDonagh said that he read the memo sent from Mr. Kops, and it was one of the most negative ones that the Town Planner had send out in a long time. Mr. McDonagh then turned it over to the applicant.

Mr. Cocchiaro then said he wanted to state for the record, that despite the fact that he wasn't present at the previous meeting, he had reviewed the minutes and the memos, and felt comfortable to vote on the application. Mr. Cocchiaro added that he wanted to state for the record that his employer had previously conducted business with Paradise Landscaping, but added it wouldn't affect his vote.

Mr. Kops said that the applicant did submit a revised phased plan on late afternoon on Monday, October 26, 2020, and indicated it in an email to the Commission. Mr. Kops added that it's not a part of his formal review, but it addresses some concerns that the applicant will discuss in their presentation.

Joseph Porto, Attorney at Parrett, Porto and Parese, then addressed the Commission. Attorney Porto said that this application addresses the removal of 6,000 cubic yards of material, and properties adjacent to the property, which are 785 and 925 Sherman Avenue. Attorney Porto added the application was continued at the previous meeting, because the Commission has asked that the applicants return with additional information regarding how the soil and the wood material would be tested and how it would be disposed of. Attorney Porto added that he had hired Judy Schuler and Bob Carr of East-West Engineering to help refine the soil removal plan. Attorney Porto said Mr. Carr has created a very specific soil protocol, which was shared with staff on October 15, 2020. Attorney Porto said that Mr. Carr will explain how soil will be tested, and how the materials will be separated. Attorney Porto said that Mr. Carr had taken some representative samples without excavation to get an overview on the soils to be removed, and will discuss the results with the Commission. Attorney Porto then added that he believes that the results showed no pollutants.

Attorney Porto added that to answer the question of where the soil was to go, a company named Elite Excavation is prepared to take the materials, and those materials will be going to Windsor, Connecticut. Attorney Porto clarified that the wood wasn't going to be brought to Elite Excavation, but will be brought to Nature's Harvest, which is located in Bethany, Connecticut, which is a DEEP authorized recycling facility.

Attorney Porto said that this site will also been inspected for insects, mainly the Emerald Ash Borer and Asian Longhorn beetle. Attorney Porto said that Mr. Carr will explain to the Commission how all of the wood will be segregated, evaluated, and disposed of. Attorney Porto said that he believes that the soils are free from pollutants and represents clean fill. Attorney Porto added that should the testing protocol indicate differently, Mr. Carr will explain how the soils will be disposed of in that instance, although they both don't believe that to be the case. Attorney Porto added that the removal of clean fill won't adversely impact health, safety, and welfare of the surrounding properties, nor will it impact the natural resources of the Town and the State, including the air and water. Attorney Porto said that the removal of woody debris will also have no negative impact, and the removal plan will meet the town's request that it be removed, and will further comply with DEEP's recommendations made to staff dated October 21, 2020 by George Dews. Attorney Porto added that the experts will then explain prior to Mr. Kops' memo dated October 26, 2020, East West Engineering had reached out to DEEP to submit an application on the applicant's behalf and have already requested a pre-application meeting.

Attorney Porto said that in regard to the site itself, there presently exists stockpile of top soil and a pile of unprocessed wood, which was mentioned by Mr. Kops in his memo. Attorney Porto continued by saying that the topsoil from the site originated at the site, and will be taken to Little K's in Wallingford. Attorney Porto clarified that this is top soil material, and it won't be sold. Attorney Porto said this will be done to make room for the top soil on the neighbor's property. Attorney Porto added that the unprocessed wood presently piled on the site will also be removed to a facility licensed to process clean wood. Attorney Porto stated that it will not be processed, and it's just going to be removed, which is necessary for the phased soil remediation plan. Attorney Porto said that these actions are necessary for that to occur, and he would like to add that no additional materials will be brought to the site.

Attorney Porto then addressed that comment that the site has changed conditions, and recognized that the staff would like an updated site plan, and that certainly can be complied with. Attorney Porto added it's important to understand that there will be no additional changes.

Judy Schuler, Manager of East West Engineering asked if Mr. Boyarsky was present. Mr. Boyarsky was. Ms. Schuler added that she was brought on board to bring fresh eyes to the application so the project can move forward. Ms. Schuler said that she is also helping the applicant through the permitting process.

Robert Carr, Licensed Engineer and Licensed Environmental Engineer and Vice President of East West Engineering, addressed the Commission. Mr. Carr said that he, along with Ms. Schuler, were brought on work on the application three weeks ago. He said that since there were environmental concerns, he looked into what permits and approvals might be needed from DEEP. Mr. Carr added they dug into the materials three weeks ago, and he sent out a sampling plan on October 14, 2020. Mr. Carr added that this process is employed when mixed waste soil is removed, because the materials need to be separated and segregated. Mr. Carr added that the plan does this, along with separating the material into different piles. Mr. Carr repeated that there is no question that these materials will be removed and disposed of offsite. He added that the materials will be sorted into six 1,000 cubic yard piles to get representative samples of the materials. Mr. Carr stated that while the wood will be tested, the focus is on the soil. Mr. Carr said the reason why it's a better approach is because the material will be leaving the site. Mr. Carr said that this is a more representative approach, and having an environmental representative there makes the most sense. Mr. Carr added that getting the testing done and sent to the lab is important, so that they know what is in the material prior to its leaving the site, and it helps the receiving facility feel more comfortable knowing what materials are being disposed of.

Mr. Carr said that he took samples to get a rough measure if there were any contaminants on the site. He added that these were submitted to Metal Laboratory in Stratford, and he received the results on October 26, 2020. The results were that there was Petrolane, hydro-carbons, but no mercury was detected, nor was there any volatile organic compounds. Mr. Carr added that there was a trace of phroisprophentatline, which is expected in vegetated materials. He stated that as far as the piles that are tested, he wants to make sure that there is enough room on the site as each pile is separated and shipped off as clean fill. Mr. Carr said that if there is any contaminated soil, that material will be marked off and shipped to a licensed location that accepts contaminated material, so that it's not mixed with the clean material. Mr. Carr explained that as far as the woody debris goes, it will be inspected, and the procedures will follow what's outlined in the DEEP permit for disposal of clean wood. Mr. Carr said that he will get the Connecticut Experimental Center involved to make sure there is no infestation before the material goes off site.

Mr. Roscow asked where the red rock came from since it wasn't tornado debris. Mr. Carr stated the red rock came from when the site was developed and cut from the back "west wall." Mr. Carr said that if you look at the site, there is a slope, which is where the material came from. James DiMeo, Juliano and Associates, added that some of the red rock came from onsite when the property was originally purchased. Mr. DiMeo said there were piles, and some of it came from the bank, the detention basin, and the building. Mr. Roscow said that he looked at the aerial on the GIS system on the Hamden website, and noted that the aerial was done prior to the building being built. Mr. Roscow then commented that there seems to be a mound that was not deposited, and added that the aerial tells a lot of the story of the building, as well what happened on the site over time. Mr. Roscow said that he questions the answers that the Commission just recieved. Mr. Roscow said that it doesn't look like to him there is as much material on the site, and it looks like it goes down quite a bit. Mr. DiMeo said this was before the client purchased the property, there was 3,200 cubic yards of material that were in piles, and the pile Mr. Roscow is referring to is strictly rock spread out throughout. Mr. DiMeo added that he believes that there were six piles on the site originally, and said that Mr. Roscow was correct in that statement.

Mr. Banks observed that at the last meeting, Attorney Porto said that the records of the materials did not exist, and asked if that was still the case. Ms. Schuler answered that yes that's consistent and has not changed. Ms. Schuler said that they've brought to the attention to the owner to keep records from now on, so he can show it to the town if there are any questions.

Mr. Banks asked if the plan is to take a bunch of different samples per pile, and combine them and test them. Mr. Carr said that yes, partially, and what we're doing is taking six discrete samples for most of the perimeters, and what we're doing with VOC (volatile organic compounds) is different because he doesn't want to mix them. Mr. Carr explained that those samples are going to be screened in the field using a Photo Ionisation Detector, which is a field instrument that detects volatile compounds, and the one with the highest screening based on what's detected will be submitted for analysis. Mr. Carr pointed out that VOCs can't be mixed, because they will evaporate.

Mr. Banks asked if this was to minimizing the amount of material that is there. Mr. Carr said that it's meant to be more representative of the material by taking six different samples, and 1,000 cubic yards is a good and common number that is used. Mr. Banks asked what the time frame for the tests would be if they are allowed to do them. Mr. Carr said that the lab's turnaround is typically a week. Mr. Banks then asked what about chain of custody. Mr. Carr stated that the lab's testing will be done through chain of custody protocols, and there is a sign-off procedure.

Mr. Banks asked how many preliminary samples were there and how were they collected. Mr. Carr said he collected two samples, and they were collected 60 feet apart. He said that he used a post-hole digger, took the sample he needed, and then once he collected the samples, put the material back down the hole. Mr. Banks then asked if the total square footage was 6,000 cubic yards. Mr. Carr said yes, it's 6,000 cubic yards. Mr. Banks asked if this was all of the material spilling into the other site. Mr. Carr said that this is the material that is buried and part of the removal of the site, but doesn't take into account the materials in piles, and 6,000 cubic yards is an accurate representation of the buried fill. Mr. Banks asked if he was not testing anything except the buried fill. Mr. Carr answered yes since that is the fill in question.

Mr. Roscow asked what the maximum depth of the material that was pushed onto the abutting property. Mr. Carr said that it does vary, as it can be up to 9-10 feet depending on where it is located on the property. Mr. Roscow added that since they are not performing test pits, it seems as though Mr. Carr will be doing bench-type excavating. Mr. Roscow said he doesn't understand why borings cannot be taken across this area to the maximum depth where you get to undisturbed materials, then tested for VOCs. Mr. Roscow stated that the reality of this is that it's going to get mixed together, and doesn't see how the Commission can get a handle on this.

Mr. DiMeo said to answer the first question, it goes from 0 to a maximum 18 feet deep on the deepest part. Mr. Roscow commented that 18 feet is a pretty big depth that there can be multiple layers. Mr. Carr commented that the quantities match from what was on site already. Mr. Carr noted that some of the trees were there prior to him working on the site, and there was no evidence that additional material was brought onto the site. He added that the samples he did collect were discrete samples, and they should have also seen visual signs, such as stained soil, and normally we don't see violates like that by themselves. Mr. Carr then continued by saying that those metals are less sensitive to that, and there was no evidence of illegal dumping. Mr. Carr said that the best way to see it is to take it in the manner as described, which is very timely and expensive. He added that it takes a lot of resources to do so, and they need to know if there has been a release. Mr. Carr continued that in this case, there is no evidence that there has been a release, but he is proceeding with an abundance of caution by sampling everything that is coming out of the ground, and is trying to do it in the most effective manner possible. Mr. Carr concluded that the team is making sure it identifies all of the material before it leaves the site, and by taking it out in pieces, will test it to see if there are red flags. Mr. DiMeo said that by doing these test pits gives the best representation of what's there.

Mr. Roscow brought up the issue of VOC. Mr. Roscow said that he is familiar with post hole diggers, which only go down three feet and it was said that there are some areas with depths of 18 feet or 19 feet. He

continued by saying he wasn't sure why there was an issue of VOC, and why there aren't borings of layers where they can't be. Mr. Roscow said that he thinks that you can take a sample, and he added that a post hole digger won't tell you much. Mr. Carr stated that he is not proposing to take the soil out with a post hole digger. Mr. Roscow added that he was skeptical about the reports he was given, because if samples were taken using a post hole digger, which can dig only 3 to 4 feet deep, but these piles were up to 18-19 feet. Mr. Roscow said that they need to go down until they hit suitable bearing soil.

Ms. Schuler said that she just wanted to point out that they are doing a characterization study, since she knew that she couldn't do a complete study, and will follow a standard protocol of what DEEP recommended. Ms. Schuler continued that this is only meant for the Commission's benefit, so results can be brought to them. Ms. Schuler stated that this was one way that they can get an idea of what's there. Mr. Carr added that he doesn't believe that there are VOCs or petroleum product, and they believe that this originated onsite. He continued that there is no evidence that this occurred there, and understands the Commission's concerns including VOC's out of an abundance of caution.

Mr. Roscow asked what was at the site before the present applicant bought it. Mr. DiMeo said that prior to the applicant purchasing the property, the previous owner flattened it, and had made a flat pad out of the site. Mr. DiMeo added that there are massive piles of material were left there from when he decided to sell it.

Ms. Mastropetre referenced the buried trees comment from the last meeting, and noted there is no soil or manifest of what's going on or off the site. She added that she thinks the borings suggested by Mr. Roscow need to be done, as she doesn't have a good feeling about the application, and that the Commission has no idea what was brought in, if anything, and why this stuff was pushed onto the adjoining properties. Ms. Mastropetre added that she thinks that more thorough testing needs to be done.

Mr. McDonagh then said that the Commission had testimony from the property owner that tornado debris was bought in on site, and referenced an article from the New Haven Independent that stated the property owner had said so. Mr. McDonagh said that they are mostly talking about fill, stone, and covered wood, of unknown origin. Mr. McDonagh said if the Commission were to believe what the owner said in the article, some of that stuff was wrongly brought there from the tornado.

Attorney Porto said in Mr. Kops' memo, there was a section that dealt with the Town's interaction with a representative from FEMA that confirmed that there was no reason to believe that any debris ended up on the site. Mr. McDonagh said that this doesn't mean that tornado debris wasn't brought onto the site, and the Commission doesn't know the origins of that nor what it is. Mr. McDonagh said that he doesn't believe Mr. Carr's comment about the debris being already onsite. Mr. Carr said that it was rock and soil only. Mr. McDonagh asked if the client misspoke when he spoke to the New Haven Independent when he said that it was tornado debris that he bought with his contract on the town. Attorney Porto said that he doesn't believe that it is in connection to his contract with the Town, and believes that the article suggested tornado debris from the Town of Hamden, not specifically tornado debris that Mr. Boyarsky was contracted to remove by the Town of Hamden.

Mr. Carr said to get to the question about the wind debris and the only way to inspect the wood is to pull it out of the ground and examine it.

Mr. Cocchiaro asked what the approximate cubic yard loads are and what the number of truckloads for the restoration of the project would be. Mr. DiMeo answered that there are 6,000 cubic yards of material, and the site had 3,200 yards in regard to the application, as well as 1,800 yards from retention basin and the building, and 1,000 yards of wood debris that is potentially on that slope. Mr. DiMeo continued that there would be

roughly 400-450 truckloads. Mr. Cocchiaro asked what the plan is to keep the roadways clean, and clear since there are other businesses that will access the road, and if the proper anti-tracking pad will take the dirt off of the dump trucks and other equipment. Mr. DiMeo answered that the site will be swept daily, and once a week someone will be street sweeping all of Crestway from the intersection to the property. Mr. Cocchiaro said that either way, it's coming out. Mr. Carr answered yes. Mr. Cocchiaro commented that it's important because the material is coming out. Mr. Cocchiaro continued that it's going to go to a staging area and that's where the tests are going to be performed. Mr. Cocchiaro asked what will happen when you reach a point when you're getting close to the original grade, and tests come back negative. Would that mean additional soil tests would have to be performed? Mr. Cocchiaro then asked about the process. Mr. Carr said that when we get to the end point, and if there are any indications of contamination, it would mean that it would have to be addressed. Mr. Carr continued by saying at that point, it becomes a release in the State's eyes, and there are state regulations that the client would have to comply with. Mr. Cocchiaro continued by saying that this is something that would have to be taken care of.

Mr. McDonagh then asked if the intervenor, Ms. Garrett, had any questions. Ms. Garrett said that Paradise has benefitted from a family connection and received a no-bid contract from the Town of Hamden in the amount of \$250,000, which was a work order for the tornado debris. Ms. Garrett said that this was signed by Mr. Boyarsky's father in law, the Deputy Director of Public Works. Ms. Garrett continued by saying Paradise has created the Town's largest bulky waste land fill that the Town zoning officials have ever seen, and has failed to follow a cease and desist order for the last year. She then stated that they are in the process of disposing of 6,000 cubic yards of tree debris, asphalt millings, and soil.

Ms. Garrett continued by saying that they also have processed and sold firewood in violation of the Cease and Desist order, and have brought 64 truckloads of material to the Hamden Transfer Station from April 22, 2020 through October 26, 2020. Ms. Garrett added that some of the truckloads were described to her as "buried tree material," and are "covered in caked on dirt." Ms. Garrett continued by saying the Town of Hamden Transfer Station needs to halt and deny any truckloads from Paradise Landscaping, given that they have buried tree debris and piles of trees, and have violated the cease and desist order, which proves that they can't be trusted to adhere to their plans. Ms. Garrett then asked the Commission to ask the Administration to deny any further access to the Transfer Station, and that the entirety of the Zoning Enforcement file must be shared on the website for the public to view, since Hamden Government Center is closed due to COVID-19. Ms. Garrett also asked if Paradise has a legal place of business, because at the last meeting, it was said that the sale of the Fitch Street in New Haven was going to occur last month.

Attorney Porto stated that this application is for a special permit, and asked if Ms. Garrett has a question for Mr. Carr, who is more than happy to answer any questions. Attorney Porto added that this was a misrepresentation that has nothing to do with the application. Ms. Garrett said that in order to do business, the Applicant has to have a place of business, and so she is wondering if he has a place where he can do business legally. Ms. Garrett then continued that Mr. Boyarsky cannot legally do business at the Hamden site, and if he has sold his business in New Haven, she is wondering why he is going to the Town transfer station, and where all of the tree debris is coming from. Attorney Porto said that his response remains the same, and that he is here to answer questions about the special permit.

Mr. McDonagh said that it is concerning to the Commission if the client is removing some of the materials under discussion and bringing them to the Transfer Station. Mr. McDonagh asked how that is possible if the client has no legal right to have a business and no Zoning Permit was issued. Mr. McDonagh added there is evidence from Mr. Kops that indicates that business is probably being conducted on the site. Mr. McDonagh then asked Attorney Porto if the client is removing material and bringing it to the Transfer Station. Attorney Porto answered that there is no part of the material that in this application that has been brought in the

transfer station. Mr. McDonagh said he's concerned that there with there being no other activity, with the exception of the material that is supposed to be taken off of the site. Attorney Porto said that in order to create room to remove the soil offsite, the Client needs to get rid of some of the stuff that's there, which was the unprocessed wood and the topsoil pile. Mr. McDonagh said that's not part of the remediation. Attorney Porto said that it would be, but would require an activity to do that. Mr. McDonagh reiterated that there should be no activity on that site, with the exception of what's required, and all other activity on the site needs to cease, since the client has no permits to be operating. Attorney Porto said he understands that.

Ms. Garrett stated that's why she wanted to know if Mr. Boyarsky was able to operate at the Fitch Street site, because if he is not able to operate in Hamden, how is he able to operate his business and continuing to bring truckloads to the Hamden transfer station. Mr. McDonagh stated that if it's not connected to any of the material on this application, then it's not pertinent to this application. Ms. Garrett asked how she can be certain that it's not. Mr. McDonagh said that the Commission will have to trust Attorney Porto. Ms. Garrett said that she hears a lot of inconsistencies.

Ms. Garrett asked if Mr. Carr and Ms. Schuler read the Zoning Enforcement file. Ms. Schuler answered that she has not, and her review is meant to be an objective plan. Ms. Schuler said that she defers to Attorney Porto in terms of enforcement. Mr. Carr answered that both he along with Ms. Schuler hasn't looked at the whole zoning enforcement file. Ms. Garrett recommended that they do so, because there are a lot of complaints and it's inconsistent and added she thinks that reading through the zoning enforcement file is important to anyone here.

Mr. Kops said that the first request was from Mr. Porto under FOIA, and said he will post the file on the website. Mr. McDonagh asked if he can let Commissioners know when it's up on the website. Mr. Kops said yes, and offered to mail it if it's not too large, unless the Commission prefers to look at it on the website.

Ms. Garrett said that she noticed that in the communication with the Town Planner, Ms. Smith has denied any payment of transportation of tornado debris on the Crestway site and she agrees with that and the FEMA documents confirm that they weren't paid for disposal of tree debris. Ms. Garrett continued that the procurement policy in the Town Charter requires bids for nonemergency and emergency work in excess of \$150,000. Ms. Garrett added that the procurement policy also requires a non-conflict disclosure, and seeing that Mr. Boyarsky's father in law, the deputy director of Public Works, signed off on that. Ms. Garrett pointed out that this was not pointed out in the documents that she received.

Mr. McDonagh said that as interesting as this information is, it's not relevant to the Special Permit. Ms. Garrett said yes, because if there was tornado debris brought onto that site, then it is tied together. Mr. McDonagh said that they have no information to the contrary. Mr. McDonagh said that he would like to leave it at that, and let the Commission know that the Commission is going to have to continue the Public Hearing once again, because information came in late on the day prior to the meeting.

Ms. Garrett then said the Zoning Enforcement confirms that debris from the 2018 tornado was brought to the site, which was never an approved site as required in the FEMA grant, and she thinks the Commission needs to know who bought the material to the site, and at whose direction. Ms. Garrett then asked how Ms. Smith can then claim that there are no irregularities without providing a document from the Connecticut Department of Emergency Management. Ms. Garrett then stated that the Commission should request that audit and that she would like an update on where DEEP stands with all of this as well.

Attorney Porto said he agreed with Mr. McDonagh's position, that while it is interesting, it has nothing to do with the application, and then asked Mr. Carr if he had anything further to add in regard to DEEP. Mr. Carr

said that he reviewed 82/92 Crestway's operations, and they would need a permit for clean wood processing for commercial facilities that store or process as they are doing at the site. Mr. Carr said that he requested a meeting with DEEP through their pre-application portal, and got a response to try to schedule a meeting with DEEP as well in regard to permits. Attorney Porto then asked with regard to the wood, is the best way to do so is to pull it up and look at it specifically, and what his plan to deal with potential infestation such as the Ash Borer beetle and the Asian Longhorn variety. Mr. Carr answered that there is a process in the plan outlined in the DEEP letter. It includes visually identifying infestations once the wood is set aside, and having the Agricultural Station inspect it. Mr. Carr explained that you can send pictures to the Agricultural Experimental Station of Connecticut, and they will inspect it if there is a suspect pile. Attorney Porto asked if that would be kept segregated under Mr. Carr's plan. Mr. Carr said absolutely. Attorney Porto asked if Mr. Carr had anything further to add. Mr. Carr said no.

Mr. Banks said that he is having trouble understanding the volume of the piles of stuff on the site, and what is planned to be done with it. Mr. Banks added that it sounded like there is a lot looser material and said he would like to have a clear sense of the material and where it's going. Ms. Schuler said that she wanted to state that the phasing plan that goes into great detail for the removal of fill from the adjacent properties and it's very similar to what's in the previous plan. Mr. Banks said that he is having trouble with what material is going where and how it's going to be treated. Mr. DiMeo then demonstrated the piles along the plan, and what made up 3,200 cubic yards of material that was there prior to when the applicant purchased the property. Mr. DiMeo said that it doesn't show here, and the pile of wood goes to this point. Mr. DiMeo added that the area needs to be opened up to do the proposed activities. Mr. DiMeo stated that what's being proposed is that the topsoil is going to be removed, and will be going to Little K's landscaping. Mr. DiMeo reiterated that the applicant is not selling it. Mr. DiMeo added that the unprocessed wood debris will be brought to either the Hamden transfer station or Nature's Harvest in Bethany, both of which are DEEP approved facilities to accept this type of material. Mr. DiMeo said that the material will not be processed, but needs to leave the site.

Mr. DiMeo said what will need to end up happening after that is that the slope is going to be brought down, and the excavator will create plateaus to walk on so it can be brought up, and the purpose of this is that they need to be able to get down to the existing grade and work their way out. Mr. DiMeo explained that this is why this project is going into phases. Mr. DiMeo said that phase one is to prepare the 82 Crestway site back into conformance with the approved site plan and move materials around to make sure the site is ready to accept this debris from the other properties. Mr. DiMeo said that the excavator will start working on the slope and begin pulling up the material, and the machine operator will sort out the wood debris from any soil and rocks. Mr. DiMeo stated that the materials will then be loaded accordingly, and will be put in a designated pile. Mr. DiMeo then continued, stating that once there is enough wood to put into the dump truck, it will be moved and stored in the embankment on the western side. Mr. DiMeo said that in phase three, the plateau will be shifted, and there are a lot more grade changes down below. Mr. DiMeo explained that the intention is from that first plateau the machine is going to shape it by going from the bottom going back up. Mr. DiMeo stated that once a pile reaches 1,000 cubic yards, no other material will added, it will be tested and won't be touched until the results are in. Mr. DiMeo said that at that point, the operators can then start dumping in the secondary location. Mr. DiMeo said that the final grades are going to match existing grade, and as soon as they get down, it will change from red rock with sand to a top soil with a material. Mr. DiMeo added that it will be seeded and hayed, and if there are concerns for contamination, the plans will change if that was the case. Mr. DiMeo said that the slope will be stabilized and trees will be planted. Mr. DiMeo concluded that the neighbors are in agreement with the plans as well.

Mr. Banks asked if there were 3,200 cubic yards when the client brought the site. Mr. DiMeo said yes. Mr. Banks asked where the rest of the materials are, as only 6,000 cubic yards that is getting cleaned out. Mr.

DiMeo said that one big chunk is the detention basin that was installed in the original approved plans, where the town engineer has inspected, and it is 90 percent of the way to how it was approved, and required only minor grading to finalize it, and the material for the building itself. Mr. Banks said that it was used to level off the detention basin. Ms. Schuler asked if Mr. Banks was asking where the remaining materials on the site were or where the material came from. Mr. Banks said that his understanding from what has been presented is that there is 3,200 square feet of material on the site previously, which has not been characterized, and some of that has been used in the detention basin and some of that has been used for the building. Mr. DiMeo said the 3,200 cubic yards that went over the property line, then there was an additional 1,800 yards between the detention basin. Mr. DiMeo said that the applicant had to pull out some rock in order to be at the correct elevation. Mr. DiMeo said 1,200 cubic yards came from the detention basin, and another 600 from the building, in addition to the 3,200 cubic yards that was already there, and what Mr. DiMeo is characterizing as the 4,839 cubic yard that was deposited over the property lines.

Mr. Banks said that the plan was to characterize only 6,000 cubic yards. Mr. DiMeo said that is based on the historical grades in 2015 compared to what it is currently, and there is a difference of 6,000 cubic yards when going from surface and surface. Ms. Schuler said that so the 6,000 cubic yards was not the soil bought on the adjacent property, but was the top soil pile that will be removed by Little K's. Ms. Schuler then added there's that material that is not a part of that, and is a separate quantity. Ms. Schuler said that nothing on the property, and neither has the 6,000 cubic yards, but the proposal is for the 6,000 cubic yards to be characterized before removal.

Mr. Roscow then described the aerial picture, where there is a very large pile there was a huge pile of filings. Mr. Roscow asked if it was still there, since it was not mentioned. Mr. DiMeo said that there is a pile of millings in the northwest corner of the property, and the millings are intended to be spread at the end of the construction as a final surface treatment. Mr. McDonagh stated that the Commission received a photograph from Mr. Kops, and asked if it was the upper right hand corner of the photograph. Mr. DiMeo said that this would be the left-hand corner and displayed the image for the Commission to see.

Mr. Kops said that his concern it does show a pile of millings, but no dirt. Mr. Kops added that when the Department visited the site, they were told that the dirt pile was 3,000 cubic yards. Mr. DiMeo explained that the survey was done in February 2020, and hasn't been updated. Ms. Schuler said that she does understand that there is question about the condition, and the existing plan doesn't show how it is today. Ms. Schuler continued that she recognized it, but due to time constraints, they weren't able to do so. Ms. Schuler said that what she tried to do is include it in the phasing plan submitted by Mr. DiMeo on October 26, 2020 to show that the team was aware of the issue, and in lieu of having the plan, they tried to capture it in a narrative to be transparent.

Ms. Mastropetre asked why the Applicant would need to update the Conditions of Approval if no work has been done on the site. Attorney Porto answered that the site conditions have changed. Ms. Schuler said the reasons why she and Mr. Carr were brought into the application were to look at the plan to get it approved, as well to identify what permits were required. Ms. Schuler added that they needed to start at ground zero. Ms. Schuler said that she does realize that it's not what it looks like and her objective is to prepare the site for removal, and to get the proper permit from the Town and the State. Ms. Schuler added that the effort is the operations being put in place, and the wooded debris are being moved off site at no benefit to the owner of the property. Ms. Schuler said that during the last month there has been no processing, and no activities. Ms. Schuler said that this intention application is to move forward in a transparent manner so Mr. Boyarsky can operate his business.

Ms. Draughn commented that this is the first she is hearing of 3,200 square feet from when the owner had purchased the site. Ms. Draughn said that did not come up at all, and then asked why that was. Ms. Draughn then referenced photos from different time periods that differ. Ms. Draughn said this shows continuous activity at the site, and she is trying to reconcile where the materials originated as there was activity on the site and that the materials are unique to the site. Ms. Draughn asked how we can get to that and how can they get to those conclusions.

Mr. DiMeo said that the reason why is that there was a specific question from the Commission regarding an estimate of wood debris in the pile and he went back to look at the previous application to see how much material was meant to leave the site, as well as the material from the detention basin as well as the volume from the material itself. Ms. Draughn asked where the supporting documentation was as to what is existing onto the site, since the Commission has seen activity on the site of material coming and going. Mr. DiMeo said the previously approved plans had stockpiles to be removed. Ms. Draughn asked when that was dated. Mr. DiMeo said that this was dated on October 23, 2017. Ms. Draughn asked if you looked at the historic data and submission, that the town was notified of work that wasn't approved, and she was looking at data. Mr. DiMeo said that his existing survey for this property was completed on May 1, 2015 and that's where the topographic information came from, and the reason why the date was 2017 was because while the plan was approved in March 2017, there were conditions of approval and he was working with Town Staff to revise the plans accordingly.

Ms. Schuler pointed out some lines, which were to distinguish the existing conditions in 2015, which is consistent with what Mr. DiMeo was saying. Ms. Schuler said that by looking at the different types of contours, one can see how the piles were pushed to level out the site, and the excess material that accounts for materials that were pushed on the property, and the top soil.

Ms. Draughn asked what the dimensions of the pile are. Ms. Schuler said that shows the elevation change, which is 14 feet high at its maximum, and the base is that bottom area. Ms. Schuler explained that the pile near the roadway was 180 and the top of the pile is 190. Ms. Draughn said there is a point of time where Ms. Schuler did the topography, and based on what was presented before the Commission, there has been no transparency of work about what was being done at the site. Ms. Draughn then added that is why she is asking from the time the property is purchased to the time that it was surveyed if work was being conducted on the site. Ms. Draughn stated she is trying to be convinced that the piles were pre-existing.

Mr. Kops said that this invalidates what was claimed. Mr. Kops said that you can see the pale contours of what was there previously, which were much more level. Mr. Kops then added if you go down now, there is 3,000 cubic yards of dirt, and a pile of cut wood, and it was all brought there after November 7, 2019. Mr. DiMeo said that was true at the time of the survey, but it was not there at that time. Mr. DiMeo then continued by saying that the original survey was done in 2015, and the property was purchased in 2015. Mr. DiMeo then explained that survey was contracted from the other entity and he was brought on board, because he already had completed the work.

Mr. Cocchiaro said that it appears that the existing piles look to equal the estimate of 6,000 cubic yards of material that was put on the other property line, and the current piles that he saw on Google Earth, could not be placed there. Mr. Cocchiaro asked if all of the unprocessed wood will be taken off site.

Attorney Porto said that if you're talking about the picture that was present, that is not an accurate representation of the current conditions. Attorney Porto explained that there is now less unprocessed wood than when the picture was being taken. Mr. Cocchiaro stated that these woodpiles would not be able to exist if the stockpile of fill wasn't in those locations, which is where the excavator is. Mr. Cocchiaro then said that

he would like a clarification of where the wood would be going to, since it was mentioned by Mr. Carr that it would be going to Nature's Harvest, but he thought he heard that it was mentioned by Mr. DiMeo that it would be a combination of Nature's Harvest and the Town's transfer station. Mr. Cocchiario asked if that was correct. Mr. DiMeo answered yes. Mr. Cocchiario said that wasn't consistent with Mr. Carr's report.

Mr. DiMeo said that he knows that Mr. Boyarsky has a pass to use the transfer station, and the intention is to spilt it between the two to avoid overloading one site with too much wood. Mr. Carr said that the buried wood offsite was going to be disposed at Nature's Harvest, and his understanding that the above ground wood would be divided between the Town transfer station and Nature's Harvest.

Mr. McDonagh asked about the photo. Mr. McDonagh asked if the wood has been removed and was brought to the transfer station. Attorney Porto said that it's been removed, and it's not certain where it was taken. Mr. Cocchiario commented that it was clear that the materials were brought to the transfer station. Attorney Porto said no wood will be excavated, and the materials are caked with dirt. Attorney Porto pointed out that there has been no excavation, and there has been no material. Mr. McDonagh asked if the client has been taking the wood above ground, and if Mr. Boyarsky has been selling wood. Attorney Porto said that the best that we can do at this point is move forward. Attorney Porto said that there was no sale of firewood nor was the wood brought to the transfer station to the best of his knowledge. Attorney Lee asked if he has in the past processed wood on the site. Attorney Porto said that he understands the Commission's interest with this, but he would like the Commission to focus on the application presented. Attorney Lee said that it's a simple yes or no question. Attorney Porto stated that with all due respect, but the Town wouldn't issue a Cease and Desist order if there wasn't. Attorney Porto then reminded the Commission that this application is just for the removal of soil on the other properties. Attorney Lee then asked Attorney Porto to ask his client and report back at the next meeting. Attorney Porto said he will.

Mr. Roscow asked if this was surveyed from the previous owner in 2015, and the new owner went ahead and regraded everything and pushed 450 truckloads of materials on the property. Mr. Roscow said he doesn't know if the contours are accurate, because the new owner didn't really have any approvals until he was caught. Mr. Roscow commented that 450 truckloads is a lot of material, and I don't know if the grading and the millings are going to be spread out. Mr. Roscow continued that he doesn't know if the drainage is going to work properly since Google Earth shows multiple rows of very large logs, which were not mentioned. Mr. Roscow said that this looks like a logging operation, and he will not agree to anything unless it's monitored by a drone. Mr. McDonagh commented that he understands that the Hamden Police Department has a drone.

Mr. Roscow then asked what kind of excavator will be used since there is a lot of material being excavated. Mr. DiMeo answered that the minimum size of the machine that is going to be used is a 200 series, and this machine will have a large bucket and a thumb. Mr. DiMeo then commented that the hydraulic thumb will allow them to dig for the soil, and if there is something large that needs to be picked up, it can do so. Mr. DiMeo said that there shouldn't be anything bigger than what a 200 series can pick up. Mr. DiMeo said that the photo was an older photograph, and demonstrated that the tree pile was something larger than the image.

Ms. Schuler commented that as part of the Conditions of Approval, there will be someone present on the site during the removal process, whether that person may be a Town representative or a consultant. Ms. Schuler added that is the owner's intention. Mr. Roscow then stated that he's glad that there will be someone present, but would rather have the drone in addition to the inspector.

Mr. McDonagh asked if there were any further questions. Chairman Poitier said that he is concerned about the accuracy of the survey and wants to see it. Attorney Porto asked about the Commission is going to determine the validity of the intervenor's petition. Mr. Banks said that he disagrees, because Ms. Garrett has

evidence of the logs from the Hamden Transfer station. Attorney Porto said he thinks that the evidence has to be that there has to be an impact on the air and water.

Attorney Lee advised the Commission to wait to make the determination, and before the Commission closes on this hearing, the Commission will have to vote on whether or not the intervener met her Burden of Proof. Attorney Lee said that the Commission can then deny the Application at that point in time, and vote in the standard in the Special Permit threshold, and asked the Commission to hold off on making a decision until then.

Mr. McDonagh said that he's comfortable with that. Attorney Porto agreed. Mr. McDonagh asked if that will be on the November 10, 2020 meeting. Mr. Kops said yes.

Mr. Roscow stated that for them to address the stabilization of the embankment, and believes that there needs to be a better solution than that, which needs to be addressed at the next meeting. Attorney Porto asked if there was a second meeting in November due to it falling on Thanksgiving week. Attorney Porto then added that he would like to discuss this with the engineers to create the site plan to make sure that it will be ready on November 10, 2020.

Attorney Lee asked if the applicant would agree to an extension to keep the Public Hearing open past the 35 days.

Attorney Porto agreed and said he will send staff a letter.

Ms. Mastropetre made a motion to continue the public hearing until the November 10 meeting unless the applicant confers on October 28, 2020. It was seconded by Mr. Banks, and the vote was unanimous in favor.

Ms. Schuler commented because it will take a bit of time to get the survey together and because there is a requirement to get documents in before a certain date to get it on the website prior to the hearing, she is concerned that it might not be done in time. Mr. Kops then said it would be wise to continue it to the November 24, 2020 meeting.

Ms. Mastropetre then withdrew the motion, and Mr. Banks then withdrew his second.

Ms. Mastropetre then made a motion to continue the Public Hearing over to the November 24, 2020 meeting. It was seconded by Mr. Roscow and unanimous in favor. The public hearing will be continued to the November 24, 2020 meeting.

B. Regular meeting

1. Special Permit and Site Plan #20-1511
82-92 Crestway, M Zone
Site Remediation and Stabilization
Eighty Two-Ninety Two Crestway, Applicant
Public Hearing Continued from September 22, 2020

Continued to the November 24th, 2020 public hearing.

C. Old Business/ New Business

1. Review minutes of the September 22, 2020 Meeting

Ms. Mastropetre requested that the clerk revisit the minutes to add more detail about the trees towards the end of the previous month's meeting minutes.

Ms. Mastropetre than tabled approval of the September 22, 2020 meeting to the next meeting. It was seconded by Mr. Roscow and unanimous in favor.

D. Adjournment

Mr. Banks made a motion to adjourn. It was seconded by Ms. Mastropetre, and the vote was unanimous in favor. The meeting was adjourned at 9:29 p.m.

Submitted by: _____
Natalie Barletta, Clerk of the Commission