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SALISBURY PLANNING & ZONING COMMISSION

SPECIAL MEETING

APRIL 14, 2021

5:31 P.M.

CHAIRMAN: Dr. Michael Klemens

MEMBERS PRESENT: Dr. Michael Klemens

Bob Riva

Cathy Shyer

Martin Whalen

MEMBER ABSENT: Allen Cockerline

ALTERNATES PRESENT: Dr. Danella Schiffer

Deborah Allee

John Higgins

STAFF PRESENT: Abby Conroy

Tai Kern

Chuck Andres, Esq.

1           CHAIRMAN KLEMENS: Okay. It's 5:31 and I'm  
2 going to begin the continuation of a public hearing that  
3 began on March 8th and has been continued to March 22nd  
4 and has been continued to this evening.

5           I believe we have all our Commission -- no, we  
6 don't have Allen; right? Okay. We have elected  
7 commissioners -- full commissioners, myself, Bob Riva,  
8 Cathy Shyer and Martin Whalen. We have our alternates  
9 Danella Schiffer and John Higgins. Excuse me. He's  
10 there. We don't have Debra yet?

11          MS. CONROY: I do not see Debra yet and I do  
12 not see Allen.

13          CHAIRMAN KLEMENS: Well, I'm going to appoint,  
14 for the moment, Jon Higgins. And when Allen arrives, he  
15 will stand down. Okay, Jon? Jon? Very good.

16          MR. HIGGINS: Yeah, that works.

17          CHAIRMAN KLEMENS: Unfortunately we have some  
18 housekeeping matters to discuss first. Could you please  
19 screen share, Ms. Conroy.

20          MS. CONROY: Just so you're aware, Debra just  
21 came in as well.

22          CHAIRMAN KLEMENS: Debra came in but we don't  
23 have Allen yet.

24          MS. CONROY: Yes.

25          CHAIRMAN KLEMENS: Hi Debra.

1 MS. ALLEE: Hi.

2 CHAIRMAN KLEMENS: Okay this is an e-mail we  
3 received this afternoon. I already prepared my remarks  
4 concerning the chat function. The chat function is  
5 disabled. It is not because the Chair, as is incorrectly  
6 stated in a letter to the editor of the "Lakeville  
7 Journal" flummoxed by the technology. Rather, we cannot  
8 have a second stream of unrecorded public comments. Many  
9 of those comments in chat, on top of being a second  
10 stream of comments, that we couldn't record, take note  
11 of, were anonymous, or with cryptically named  
12 participants. Certainly, the public is free to pick up a  
13 cell phone or text or talk to anybody they wish. But as  
14 far as the chat is concerned, we cannot use it in that  
15 way.

16 It's really a matter of fundamental fairness.  
17 We can't -- we have no way of making a record of the chat  
18 and that's not fair to the Applicant, to the Intervenor,  
19 and to the public. So, in response to Ms. Galluzzo's  
20 questions, you're not limited a right to speak between  
21 yourselves. You are being limited in your right to use  
22 the platform where the public hearing is being held to  
23 have side bar conversations.

24 The Q and A is open and visible to anyone.  
25 Check on your participant list and you can see who's

1     there.  Of course, again, many of the people who are  
2     attending are calling in from iPads or devices that are  
3     not properly identified.  That's their right.  However,  
4     when it comes time to No. 3, when people speak, like in  
5     any public hearing, they will be asked to identify  
6     themselves, who they are, particularly if their device  
7     does not have a proper label as to who they are.  And if  
8     the attendees -- talk to No. 4, Abby.  Please explain can  
9     they use the video function?

10           MS. CONROY:  Yes, No. 4, the video function is  
11     essentially in the Webinar Mode.  The video function is  
12     reserved for, quote/unquote, panelists, not attendees.  
13     And just for time sake and simplicity, when someone  
14     raises that her hand, what I have been doing is just  
15     essentially allowing them to speak so that unmute them  
16     and doesn't show their video.  But if someone was really  
17     adamant that they wanted their video to be shown, we  
18     could elevate them to panelist status momentarily when we  
19     call on them.  It's just a matter of it is quicker to  
20     just call on someone and let them answer verbally.

21           CHAIRMAN KLEMENS:  Okay.  So, I think that  
22     explains why the chat's disabled.  And your first  
23     amendment rights are protected.  Now, if you wish to be  
24     made visible, you can be -- you can request that.

25           All right.  So, has Allen showed up yet?  No.

1 I will introduce who is also here are our  
2 attorney, Charles Andres, our Land Use Administrator,  
3 Abby Conroy and our recording secretary, Tai Kern.

4 I will now ask the Land Use Administrator to  
5 read into the record materials that have been received  
6 since the last hearing.

7 MS. CONROY: Okay. The list of documents  
8 received since the last hearing include the following  
9 documents as titled on the website. These are  
10 submissions first by the Applicant; additional public  
11 hearing signs for 4/14/2021; supplemental C.V. William  
12 Walter; WPCA letter, dated February 1st, 2021; fire  
13 marshal's letter, dated March 30th, 2021; Salisbury  
14 Volunteer Ambulance letter, dated April 6, 2021; the  
15 Power Point for today; stormwater management report,  
16 dated April 7th, 2021; Applicant response, dated March  
17 16th, 2021; Virbickas report? No, sorry. Applicant  
18 response to 3/16/2021 Virbickas report, dated April 8th,  
19 2001; Belter donor letter from 1967; a letter from the  
20 Belter family, dated September 17th of 2020; SHC legal  
21 response dated 4/8/2021.

22 Then submissions by the Intervenor. Cramer &  
23 Anderson letter to Attorney Andres re: Prudent and  
24 feasible alternatives, dated 4/8/2021; Cramer & Anderson  
25 letter to Attorney Andres re: [Unintelligible], dated

1 4/13/2021; Intervenor Exhibit No. 10, letter from  
2 Galluzzo, dated 10/17/2020; Exhibit 11, Casagrande letter  
3 re: Legality of Intervenor's apartment use; Exhibit 12,  
4 Casagrande letter re: Use the private right of way;  
5 Exhibit 13, R. Carley letter, dated 4/4/2021; Exhibit 14,  
6 B. Miller letter, dated 4/6/2021; Exhibit 15, Virbickas  
7 letter, dated 4/8/2021; Exhibit 16, VIBAK (ph.) letter  
8 with renderings, dated 3/19/2021.

9 Exhibit 17, Applicant's application for  
10 funding, January 2017. I believe that was one of the  
11 documents that was revised. So, there was a letter in  
12 the record that the Intervenor asked me to update.

13 Other submissions. Pat Hacket letter to P&Z,  
14 dated 3/23/2021; Attorney Grickis letter, dated  
15 4/12/2021; S. Morrison letter, dated 3/23/2021;  
16 Republican Town Committee letter, dated 3/26/2021; Bruce  
17 Palmer letter, dated 4/7/2021; Fox and Stone e-mail,  
18 dated 4/5/2021; representative Maria Horn letter, dated  
19 4/6/2021; First Selectman Rand e-mail, dated 4/12/2021  
20 and Van Deusen, letter dated 4/12/2021.

21 I just want to make sure that I updated. Also,  
22 after I wrote this today, we also got Exhibit 18 and 19  
23 from the Intervenor. Those were both related to  
24 incentive housing zones and then there was also a  
25 response letter to that listed under other submissions

1 from Emily Egan and the First Selectman's office in  
2 response to questions related to incentive housing zones.  
3 And I think that was it.

4 CHAIRMAN KLEMENS: To that list also we'll add  
5 the e-mail from Susan Galluzzo, also. If you can add  
6 that to the list. Okay. Thank you.

7 Attorney Casagrande and Attorney Smith in their  
8 letters of April 8th, 2021, have both opined on whether  
9 development of affordable housing on a different  
10 town-owned property can be considered a feasible and  
11 prudent alternative. The Commission would only reach  
12 that issue of feasible and prudent alternatives if it  
13 first finds that the proposed development involves  
14 conduct which has or is reasonably likely to have the  
15 affect of unreasonably impairing or destroying the public  
16 trust in historic resources of the State.

17 If the Commission finds that the Intervenor has  
18 met that her burden, Attorney Casagrande argues that the  
19 Commission should consider alternative town-owned sites  
20 as feasible and prudent alternatives. Attorney Smith  
21 argues that the Commission should not consider  
22 alternative sites in a feasible and prudent alternatives  
23 analysis. None of us know whether the Commission will  
24 reach the feasible and prudent alternative issue as part  
25 of our deliberations. However, I wanted to make sure

1 that the Applicant had an opportunity to address Attorney  
2 Casagrande's points in the event that the Commission does  
3 make an affirmative finding concerning the intervention.

4 So, directed to Attorney Smith. Attorney  
5 Smith, referring to the Grimes case that both you and  
6 Attorney Casagrande have discussed. Is there any  
7 contiguous town-owned or contiguous property under the  
8 control of the Salisbury Housing Committee where this  
9 development could be re-located? I believe this to be a  
10 simple yes or no question.

11 MR. SMITH: It is my understanding, Mr.  
12 Chairman -- for the record, Chris Smith on behalf of the  
13 Salisbury Housing Committee, Inc. -- the answer is no.

14 CHAIRMAN KLEMENS: Attorney Smith, are there  
15 on-site measures or other measures not involving an  
16 off-site development that could be taken to address the  
17 alleged impairment of a historic resource should the  
18 Commission conclude that the Intervenor has met their  
19 burden? If they are, please be prepared to discuss them  
20 during your recitation following the Intervenor's  
21 continued presentation.

22 Now, to Attorney Casagrande. Attorney  
23 Casagrande, you have submitted a large amount of  
24 information concerning a broad range of topics ranging  
25 from [Unintelligible], parking, aquifer protection,



1 analysis of our zoning code, etc., from well-qualified  
2 experts in planning and engineering among others. These  
3 have been entered into the record because it has been my  
4 position that if these documents didn't come in under  
5 your presentation, they would have been submitted in the  
6 record by your clients or other parties.

7           Tonight, in order to assist my efforts in  
8 focusing attention of the Planning and Zoning Commission,  
9 the Applicant, and the public at large to the specifics  
10 of the allegations of your intervention, I would request  
11 in the hour allotted for you to continue your  
12 presentation that you and your team explain how each of  
13 your submissions directly support their specific  
14 allegations of reasonable impairment of historic  
15 resources. That's distinct from general planning  
16 matters.

17           I'm asking you to do this because, in large  
18 part -- sorry, I'm asking to you do this because in the  
19 large amount of material that you have submitted, I do  
20 not want the fundamental aspects of your intervention to  
21 be obscured. You have a case to make to the Planning and  
22 Zoning Commission. You need to make that on the merits  
23 of your intervention not buried within a large volume of  
24 Planning & Zoning materials. That, while all  
25 informative, and we have taken note of them and etc.,

1 they are not directly relevant to the specifics of your  
2 intervention. So, if you can bear that in mind this  
3 evening to try to couch everything with your experts in  
4 the intervention, it would help the Commission and the  
5 public get that focus.

6 So Attorney Casagrande, please continue with  
7 your presentation. Mindful that in order to allow the  
8 public and the Applicant sufficient time to be heard.  
9 You are limited to no more than an hour which is exactly  
10 the same time period I am going to allot to the  
11 Applicant.

12 Please proceed, sir.

13 MR. CASAGRANDE: Thank you, Mr. Chairman.

14 For the record, Dan Casagrande for the  
15 Intervenors. And with me tonight is my associate,  
16 Attorney Pio Yoon who is going to assist me with the  
17 Power Point presentation.

18 Just preliminarily, I understand your point,  
19 Mr. Chairman. I would respectfully disagree that points  
20 that we make that are not specifically related to the  
21 22A-19 petition are not properly before the Commission  
22 for this reason. My clients are not only Intervenors  
23 they are abutters and people who have statutory standing  
24 to appeal from the decision regardless of whether an  
25 Intervenor petition had been filed. And therefore, I

1 think they have every right to raise the issues that we  
2 do raise in our submission even though they may not  
3 technically be precisely related to the 22a-19 petition.  
4 I just want to make that clear --

5 CHAIRMAN KLEMENS: I thought I made that quite  
6 clear also. That I was not disputing your client's or  
7 the public's right to put them in. What I'm asking you  
8 tonight is to try to focus on the intervention; because  
9 that is the central part of the first thing that this  
10 Commission will have to deliberate on is the burden of  
11 the Intervenor.

12 And I think you have submitted a lot of  
13 information. It is valuable information. It is  
14 information, as I said in my opening remarks, I wanted to  
15 come in from you because I know if it didn't, it easily  
16 could have come in independently from your client and the  
17 public. But I am asking you to help me focus the  
18 Commission and the public on the intervention.

19 I see you have Ms. Carley here tonight. I look  
20 forward to hearing from her, as does the Commission.

21 So I'm not disputing the fact that you put  
22 these items in the record. I'm asking you tonight to try  
23 to help me develop the record specifically in support of  
24 your intervention.

25 MR. CASAGRANDE: Thank you, Mr. Chairman, I'll

1 do my best and thank you for that clarification. That's  
2 all I was concerned about, that --

3 CHAIRMAN KLEMENS: I thought I stated that at  
4 the beginning.

5 MR. CASAGRANDE: If I did -- if you did, I  
6 misunderstood. So, thank you for that. But I just want  
7 to make sure that you're not saying that the evidence  
8 that I'm submitting, that doesn't technically relate to  
9 22a-19 is somehow not relevant to your deliberation.

10 CHAIRMAN KLEMENS: It is absolutely relevant to  
11 deliberations.

12 MR. CASAGRANDE: Thank you, thank you.

13 CHAIRMAN KLEMENS: It's now 5:50 and I'm -- you  
14 have until 6:50 to do your presentation, please.

15 MR. CASAGRANDE: Thank you.

16 One housekeeping point at the beginning -- and  
17 this relates to Exhibits 18 and 19 which we submitted  
18 today -- and I apologize for getting them only in today,  
19 but I will say that I only learned today that there was a  
20 grant -- a state grant given to the town of \$39,860. I  
21 believe is, as Exhibit 18 indicates, the State table for  
22 that grant indicates that it was for the purpose of  
23 developing incentive housing zone regulations. Or at  
24 least that's how I read it. And I noted that that grant  
25 dovetailed with the RFP that was issued by the Commission

1 to a consulting group to develop what became the  
2 Pocketknife Square regulations.

3           So, the concern I have, Mr. Chairman, is that  
4 the incentive housing zone statute which is 8-13 n  
5 through x defines what an incentive housing development  
6 is and what an incentive housing zone is, a regulation  
7 is. In the statute 8-13 m, No. 3, the definition  
8 section, it defines developable land. In other words,  
9 the land that can be developed been an incentive housing  
10 zone under 8-13 n, as the areas within boundary of an  
11 approved incentive housing zone that can be developed  
12 into residential or mixed uses consistent with the  
13 provisions of this chapter; but not including land  
14 already committed to a public use or purpose and not  
15 including existing parks.

16           So, that raised a question in my mind as to  
17 whether this regulation, if it is in fact intended to be  
18 under the 8-13 rubric, in fact violates that definition  
19 and that section because, obviously, the Bicentennial  
20 Park is included within the zone. So, we raise that with  
21 Abby Conroy. Abby was gracious enough to try to get us a  
22 response and I will let her clarify that. And I  
23 appreciate her prompt response, but I do believe that  
24 creates an issue about whether the regulations--  
25 Pocketknife Square regulations, in fact, violate the

1 statute.

2 CHAIRMAN KLEMENS: We'll take that comment.  
3 Obviously, I'm not going to opine on that. I think this  
4 is a comment for our counsel to advise us on. Thank you.  
5 And maybe Mr. Smith will -- Attorney Smith might have a  
6 comment. But I'm not going to engage in a discussion  
7 about that. I'm not --

8 MR. CASAGRANDE: Thank you.

9 And just for the record, I want the Commission  
10 to note that I did contact Attorney Smith today because I  
11 didn't want him to be surprised at this and we talked  
12 about it and I'm sure he will have a response. But I  
13 wanted to preserve this point for potential appeal.

14 So, in our Power Point, which is page 2, I had  
15 the agenda for our presentation tonight. And with us  
16 tonight we have three experts: First, Rachel Carley, who  
17 as you see from her reports is one of the state's  
18 foremost architectural historians, specifically involving  
19 municipalities and towns in the north western hills. And  
20 she will speak on her report as our first presenter.  
21 Brian Miller is back with us tonight. He will respond to  
22 a few questions and comments that I think you,  
23 Mr. Chairman, and members of the Commission had for him  
24 at the last time, and lastly, Dainius Virbickas, our  
25 engineer who also will respond to questions and comments

1 from the last session.

2 And then after that, I will briefly address the  
3 legal issues that we raise in our presentation. I'll do  
4 my best to try -- if they are applicable to 22A-19, I  
5 will try to do my best to explain why. But I appreciate  
6 the Commission's statement that they are relevant to your  
7 deliberations regardless of whether they apply to 22A-19.

8 So with that, I would like to turn it over to  
9 Rachel Carley.

10 MS. CONROY: It's my understanding that Ms.  
11 Carley, you would be doing a screen share; correct?

12 MS. CARLEY: I'm going to try.

13 MS. CONROY: Just a minute, I'm going to make  
14 you co-host and you should be able to.

15 MS. CONROY: I guess we're able to have  
16 multiple co-hosts on Webinar. So, that's nice.

17 MS. CARLEY: Is it working?

18 MS. CONROY: No. It should be when you go to  
19 the bottom of your screen, in the center is the Share  
20 Screen icon. It should be green. And then a pop up  
21 comes up usually that asks to you select which window you  
22 want to share.

23 MS. CARLEY: Oh, okay. Share -- oh, desktop is  
24 that what I want to share?

25 MS. CONROY: Perhaps. I'm not sure what you

1 have open for sharing.

2 MS. CARLEY: My desktop. But it's not -- wait.  
3 Here -- let me try this. Okay. Does what show anything?

4 MS. CONROY: Yes.

5 CHAIRMAN KLEMENS: Yes.

6 MS. CARLEY: Okay?

7 CHAIRMAN KLEMENS: Power Point. Yes.

8 MS. CARLEY: You can hear me and see me?

9 CHAIRMAN KLEMENS: Yes, we can, Ms. Carley.

10 MS. CARLEY: I'm ready to roll.

11 Thank you everybody. Good evening. I just  
12 wanted to make a few quick comments, I know time is  
13 short, that amplify my report and the letter I sent last  
14 week after re-visiting the district just as an effort to  
15 go back as a citizen and really walk around and see what  
16 I could see in the historic district.

17 I thought it would be really important just to  
18 go pause and come back and re-visit why it's important to  
19 consider what a National Register Historic District is  
20 and why you have it in this particular place in Lakeville  
21 and I'll come around to that in the end as well.

22 So, this district, I realize you may all know  
23 this, but it was established -- it's been there a quarter  
24 of a century, since 1996. And it was set apart next to  
25 the local historic district, which pre-dates it,



1 established in 1970 as a distinctive and important part  
2 of the town in the care -- Essentially, it's a district  
3 really, it's an honorific, but it's set aside in the care  
4 and protection of the town in name. In other words, this  
5 is a place that Salisbury is saying is something special.  
6 We care about this. We're setting it aside and we're --  
7 we are making a statement about it.

8           These National Register Districts are overseen  
9 by the U.S. Department of Interior. This is not a  
10 Connecticut designation. They are the official list of  
11 our country's buildings, districts, structures, sites and  
12 objects considered worthy of preservation. The  
13 particular nominations for the Lakeville Historic  
14 District is very detailed. It, of course, cites  
15 Bicentennial Park as a contributing resource. There's  
16 obviously no question that Bicentennial Park is  
17 considered a contributing resource to the district.

18           The district was listed in consideration of the  
19 people and buildings associated with the development of  
20 Lakevilles early iron industry which is very very  
21 important to the history of Salisbury and in particular  
22 to Lakeville. The production of armaments during the  
23 American Revolution a huge part of your history which you  
24 should be and undoubtedly are very proud and the  
25 significance of this particular area is the town center

1 transportation in early days, including early highways,  
2 turnpikes and architecture and railroads. It talks about  
3 the Federal architecture, which is the key point of this  
4 whole discussion. And it's Victorian architecture.

5 Bicentennial Park, as I said, is cited as a  
6 contributing resource to that district. It could have  
7 been left out of the borders altogether as being on the  
8 edge of the National Register District, or it could have  
9 been listed as a non-contributing resource; but it was,  
10 in fact, listed as a contributing resource. So, it  
11 therefore is considered by the U.S. Department of  
12 Interior to be -- to have historic value.

13 As you all know, it incorporates the historic  
14 walls preserved from the Holley Block foundations, the  
15 building that stood there, and was razed before the  
16 district was created and then and the park, of course,  
17 was established before that. And it's very, very  
18 integral to the open space, the character of the  
19 neighborhood and community which is one of the issues at  
20 hand. It's very integral to that as a piece of open  
21 space. That is something that really, really noticed  
22 when I went back more recently to the area. You can see  
23 that here in the way it relates to the Holley-Williams  
24 house across the street. And I can show that to you  
25 later in an aerial view where it becomes clear. It's one

1 of three parks in this district that contributes to that  
2 context. Very important part of that as well as being  
3 historic.

4 One of my mandates as I took it upon myself to  
5 value -- to the context in which to evaluate the proposed  
6 building was part of this contingency of the requirement  
7 of the gift toward the purchase of the land back in the  
8 1960's when the town accepted the gift to do so, that  
9 it -- that a provision that stated that the exterior  
10 design of any new buildings on the property being keeping  
11 with the Federal or early 18th century image of Salisbury  
12 villages.

13 So, I went to look and educate myself about  
14 what that Federal or 18th century image in your town is.  
15 And it is quite extraordinary. You have a remarkably  
16 superb Federal architectural heritage in your town. And  
17 in have -- I really have not seen anything like it  
18 anywhere else in the northwest corner and I'm just  
19 showing some details here: The fan lights that represent  
20 that and the gables in the houses throughout town that  
21 really exhibit the dimension, the detail, the  
22 craftsmanship that are part of what Federal-period  
23 architecture is all about. And that is the period that  
24 that stipulation focuses on.

25 And of course, it is the period of the

1 Holley-Williams house right across the street from  
2 Bicentennial Park on the north side of Millerton Road.  
3 And you can see those details, that craftsmanship in the  
4 classical mobileian (ph.) cornices, around the gable  
5 [Unintelligible] this house's superb front door with its  
6 impeded entry, its original glass. This is the kind  
7 of detail and workmanship that defines the Federal and  
8 Colonial period in Salisbury. And that is part of what I  
9 use to evaluate this project.

10           Also, just in terms of context, scale,  
11 character in the area, I looked at, again, what the  
12 Federal and 18th century image was. Most of that in the  
13 immediate vicinity, the historic district is mostly  
14 Victorian and later. So the Federal and Colonial period,  
15 to which I was paying close attention, is really on the  
16 north side of Millerton. The Holley-Williams house and  
17 then Farm Tavern and the Hubbard house across the street  
18 and down to the east. These properties are set on -- are  
19 obviously single-family residential properties. They  
20 have green setbacks, trees, out buildings. So, that is  
21 really the historic context that gives this area its  
22 scale for that period.

23           But even the wonderful Holley manufacturing  
24 building, the later Victorian building down the hill is  
25 sunken into a plaza, has lots of green space around it as

1    opposed to the effect of the large infill building that's  
2    being proposed that would go end to end of the park and  
3    just fill it in completely.  It's a completely different  
4    effect.

5            I think that that does not compliment the  
6    existing character of the neighborhood.  That's another  
7    one of the stipulations that I looked up in terms of the  
8    height, bulk and design of complimenting the existing  
9    character.  That's one of the zoning requirements.  So,  
10   those are one of the areas I was trying to examine and  
11   evaluate.

12           Very specifically, you can see here this  
13   absolutely wonderful period fencing that's original to  
14   the Holley-Williams house directly across from  
15   Bicentennial Park, the setbacks of the store fronts that  
16   would be to the west, and then, of course, the stone --  
17   the texture of the stone walls of the Holley Block  
18   foundations that would be demolished in the process of  
19   losing this historic site.

20           One of the issues that concerns me and I raised  
21   is how much concrete -- new concrete that would be  
22   introduced that I think would again, not, as per the  
23   conditions, compliment this character.  And yes, of  
24   course, there is concrete, there's sidewalks that do  
25   exist, there's a retaining wall in the back; but there is

1 a lot of -- there's a lot of design being proposed that  
2 we don't get to see on elevations, like -- or perspective  
3 drawings, for instance, on the east side -- excuse me --  
4 on the west side of the proposed building here, there  
5 would be a walkway coming in and this would be a concrete  
6 ramp. There would be, I believe it's proposed to be a  
7 concrete corner wall that would incorporate the plaques  
8 from the wall, the historic wall that would be  
9 demolished, but that's more concrete that has absolutely  
10 nothing to do with the historic stone that would be lost.  
11 And in fact, it's sort of ironic because it's the stone  
12 that's more important, in my opinion, than the plaques.

13 We just don't get to really see what all --  
14 there's been no design that I know of that's been  
15 presented for this wall, which would be very, very  
16 important feature. So, I'm raising the question that  
17 we're not getting to see what a lot of this is going to  
18 look like and it would have a very, very -- it would have  
19 a very strong impact on the overall character. So, it  
20 needs to be looked at.

21 Again, I raise the question of these viper  
22 (ph.) stripe lights. I don't know if they've been -- to  
23 my knowledge, they have not been pulled from the project,  
24 but it's a distressing proposal that these would go into  
25 the rear parking lot. They have a commercial --

1 typically, commercial application. That's how the  
2 manufacturer shows them. And their proposed to be on 20  
3 foot poles. I know it said somewhere that lighting would  
4 meet residential uses. But these are what are shown on  
5 the plans. So, if they do meet residential code, I can  
6 say that this is what -- this is not what one would want  
7 in an historic neighborhood.

8           The massing, the bulk, the density of this  
9 building are overwhelming. It shows in this rendering  
10 here looking up over factory pond as, again, it's a huge  
11 infill building. The roof -- the roof plane is going to  
12 be massive as opposed to the roof of the Holley Block  
13 building, which is a monitor clerestory building that  
14 cuts in. It makes a completely different effect than  
15 this hipped roof, which gives you a roof plane on all  
16 four sides. Also, the height of this building from the  
17 south parking lot side all the way measured to the ridge  
18 of the front roof would be over 46 feet. It's 46-3  
19 feet -- 3 inches plus another seven feet for the chimney.

20           So, your eye -- one's eye travels that whole  
21 distance. And it -- and it is a huge amount of bulk that  
22 is being introduced into this neighborhood which, again,  
23 just simply is not at all in keeping with the Federal or  
24 18th century image that is a condition of accepting that  
25 gift back in the 1960s. And more is the typology of a

1 multifamily building. That is not part of the Federal  
2 heritage of the town. Came in later in the Victorian  
3 period.

4           You can see it here in these renders. I don't  
5 know if this is going -- it is not clear to me whether  
6 the four doors that are going to go across here have --  
7 will have doors on them. Or if they are going to be  
8 open. That has not been clarified on the drawings. But  
9 if they are open, they will be four big holes. And if  
10 they are closed, it would -- the bays have doors in them,  
11 it -- I would want to know what the materials are.  
12 Because it's a lot of material going across there, and to  
13 that point, I think a lot of information's been left out  
14 on what the specifics of the materials of this building  
15 are going to be. It seems like there are going to be a  
16 lot of synthetic substitutes for the real thing which  
17 would be another contradiction to that Federal-Colonial  
18 legacy.

19           So again, the bulk, the massive roof area which  
20 you really can see from the south and east elevations,  
21 which is where you get the perspective in the distance on  
22 this building. Much more so than you do from the north,  
23 Millerton Street side, is very worrisome, just in terms  
24 of that historic context in the Colonial period.

25           And back to the open space issue. You can see



1 it here from this aerial. This is Bicentennial Park the  
2 historic site that is being threatened. And it is one of  
3 three parks. The Furnace Park here and then the Mill  
4 Pond Park down below that give the historic district its  
5 open space context that's amplified by the plaza around  
6 the -- the brick Holley Block building. And even this  
7 lawn area in front of the Holley-Williams house. If you  
8 fill this in, you are obliterating part of that context  
9 in addition to wiping out an historic part of an historic  
10 district that you've taken a lot of effort to create to  
11 begin with; and then to establish this park after  
12 accepting that piece of land.

13 So, I would just conclude by coming back to the  
14 importance of the park, itself. Let's set aside what  
15 even might or might not go on it and consider the fact  
16 that that this whole project is -- any project at this  
17 point is jeopardizing the existence of this park. And  
18 really changing in a very serious way the character of  
19 this historic district.

20 There's more than one historic district in  
21 Salisbury, of course. This one is unique. It's the only  
22 such district that commemorates the industrial and  
23 immigrant history in this town as an historic  
24 neighborhood that really encapsulates the history of that  
25 iron industry that is the essential history of your town.

1 And I think it's on everyone's conscience to mess with  
2 it. So, thank you.

3 CHAIRMAN KLEMENS: Attorney Casagrande, is this  
4 power point going to be submitted into the record?

5 MR. CASAGRANDE: Yes, Mr. Chairman.

6 CHAIRMAN KLEMENS: Thank you.

7 MR. CASAGRANDE: May I ask one follow-up  
8 question very quickly to Ms. Carley?

9 Ms. Carley, there was some questions at the  
10 last session about whether your report that's in the  
11 record was submitted in regard to the old application or  
12 the new building as proposed in the most recent  
13 application. Could you just clarify that your report  
14 covered the new application? And new elevations?

15 MS. CARLEY: Yes. Of course. It was the new  
16 application.

17 MR. CASAGRANDE: Thank you.

18 Okay. Moving on, Mr. Chairman. I would like  
19 next to turn it over to Brian Miller. I know time is  
20 running short. I would ask for a little indulgence  
21 because this is the first time Ms. Carley was able to  
22 speak in regard to the one hour limit. But again, I will  
23 do my best. And Brian, I think his testimony starts on  
24 slide 17. So, I'll turn it over to Mr. Miller.

25 MR. MILLER: Thank you. And thank you to the

1 Commission for allowing me to present this. I'm here  
2 basically to answer a couple questions that were raised  
3 by the Commission as well as the attorneys -- as well as  
4 Mr. Smith. I would like to clarify some of my report.

5           It's in that letter that you have on the record  
6 here, that the discussion of the alternative sites was  
7 included because this proposed development would replace  
8 the existing uses as Ms. Carley just eloquently  
9 discussed. But also not only the historic park nature,  
10 but the parking that I've discussed with you at the last  
11 meeting. And that none of the other alternative sites  
12 that was recommended in the affordable housing report  
13 contain -- would have involved a displacement of any  
14 existing uses. It was solely to demonstrate there are  
15 options to the approval of this project on this site and  
16 other ways to implement the 2018 affordable housing plan.

17           Next, please.

18           We just showed on the map the locations of the  
19 alternative sites. I'm sure you're all very familiar  
20 with it. But just there for the record as it relates  
21 also to the Holley Block site.

22           Next.

23           The Chairman, I believe, also asked for the  
24 boundaries of the 414 Millerton Road as it related to  
25 wetlands and it's on this map, I think it's probably --

1 hopefully it's more legible in your report. But it's  
2 based on the information from the council of governments  
3 and their mapping. Obviously, it's not done through --  
4 on a surface mapping. So, I provide that for  
5 information. But it does indicate that there is  
6 significant amount of land on that site that could  
7 potentially be used. Again, I wanted to emphasize, my  
8 introduction of these two sites was just a for example.  
9 I do understand that much more research and planning  
10 needs to go into any of the sites that you use. And, in  
11 fact, on the other site --

12                   Next.

13                   On the Pope site has undergone quite a bit of  
14 that analysis through the committee's final report. I  
15 went through it and this was one map that was included.  
16 And there was a lot of useful information in there that  
17 the green areas didn't have any obstacles or impediments  
18 to residential construction with the use of basements.  
19 So, you can see that there is, as you -- I'm telling you  
20 a lot of what I think -- I know you already are aware of,  
21 but that there is significant development potential on  
22 the Pope property. [Unintelligible] and construction of  
23 units on a portion of the Pope property would assist them  
24 in meeting the goals of this Salisbury Affordable Housing  
25 Plan.

1           Next.

2           The issue also came up for a plan of  
3 conservation and development. And the bottom line is  
4 that no place in the plan that it specifically addresses  
5 this site. The goals for the village centers are  
6 presented here: Increase ease of pedestrian circulation,  
7 vehicular circulation and parking. So, that was one of  
8 the goals for the village center. I point out that this  
9 approval, this application would actually have an  
10 opposite effect. And make it more difficult for this  
11 ease of circulation and parking.

12           Incorporate more varied housing in the village  
13 centers. And I grant that this might meet that -- and  
14 approve overall aesthetics. Also, I say I leave that to  
15 you; but again, I think we just heard a very detailed and  
16 helpful discussion of how it meets the overall esthetics.  
17 And I would agree that it does detract from it.

18           Next, please.

19           We're also talking about providing for housing  
20 options. And as he said, none of the goals or  
21 recommendations in the plan was site specific. But this  
22 is the other part of another section of the Plan of  
23 Conservation and Development. And increase the number  
24 of -- and range of housing units in Salisbury, encourage  
25 the development of accessory apartments in existing

1 structures. That really has nothing do with it.  
2 Establish [Unintelligible] housing to preserve open  
3 space. Again, it's not relevant. Endorsing the practice  
4 of mix-use properties in the village center to provide  
5 for second story apartments over existing buildings. I  
6 thought that was an interesting recommendation as to an  
7 appropriate type of housing that would fit into village  
8 centers. And encourage conversions of existing buildings  
9 in the village centers to multi [Screen Froze]. Again,  
10 that really didn't have any relevance.

11 Now I just want one more point here is I want  
12 to stress that one of the things that I had a great deal  
13 of admiration for the affordable housing plan was its  
14 flexibility. And one of the points in flexibility, when  
15 it selected the final group of properties, including the  
16 two I just discussed and the Holley Block one, was it  
17 showed mix -- minimum and maximum number of uses --  
18 number of units that might be appropriate on the site. I  
19 think that's very important.

20 The goal was to have a minimum reach at least  
21 the 75 level. But the maximum actually provided more  
22 flexibility if one site proves not viable for any  
23 particular reason, then other sites could be more  
24 flexible use. So, I took a look at the recommendations  
25 of the report. I took the Holley Block out of it and

1 with the Holley Block out, the maximum number of units  
2 that's available would be 104 units. I believe Mr. Smith  
3 asked me last time whether this would displace any units.  
4 In fact, it wouldn't. That there is plenty of room to  
5 put those 12 units within the 104 -- in the other  
6 properties that have the potential for 104 units and  
7 still proceed according to the plan.

8 And for that, I thank you and I'll turn it back  
9 over. Thank you.

10 MR. CASAGRANDE: Thank you, Mr. Miller.

11 May I proceed, Mr. Chairman?

12 CHAIRMAN KLEMENS: Yes. And this particular  
13 witness, please have a focus on the historical  
14 intersects, please, if you can.

15 MR. CASAGRANDE: Well, I will do my best,  
16 Mr. Chairman. I would like to turn over to Mr. Virbickas  
17 at this point. I know we are about a half hour into the  
18 presentation and I don't want to unduly crimp you,  
19 Mr. Virbickas, but if you could try to focus on the key  
20 points that you make in your presentation.

21 MR. Virbickas: Works better when I unmute.  
22 Thank you, for the record, Dainius Virbickas,  
23 Professional Engineer from Artel Engineering Group here  
24 on behalf of the Applicant [Verbatim].

25 Just to go quickly over comments that I was

1 able to put together after having received responses to  
2 and additional information supplemented by the Applicant  
3 including drainage calculations and clarifications and so  
4 on.

5 I just wanted to touch on several items that  
6 still jump out with respect to plan preparation. The  
7 section 800.3 of the Salisbury zoning regulations clearly  
8 states that the plan shall be prepared -- "shall" being  
9 the word -- by a Connecticut Registered Engineer. I  
10 recognize the fact that Connecticut statutes have  
11 provisions for landscape architects to do certain things  
12 as does the special permit application. However, the  
13 zoning regulations which were updated in 2019  
14 specifically state who should prepare these plans.

15 Item No. 2, with respect to cut and fill. We  
16 did just a quick analysis on the cut/fill. The Applicant  
17 figures on about 187 cubic yards or there about being  
18 removed and based on our calculations, I think the net  
19 removal would be closer to 380 cubic yards of which 135  
20 cubic yards alone needs to be removed just to get in the  
21 slab and the base material for the parking lot that's  
22 proposed underneath the building. And I think, in all  
23 fairness, perhaps a surveyor should calculate the cubic  
24 yardage and just to confirm perhaps the number that was  
25 issued is correct. But should firm that up and make sure



1 that the application was submitted correctly.

2 Next slide, please.

3 I'll go once again and quickly into the -- with  
4 respect to the Holley Street front yard setback. And  
5 although the Pocketknife Square District does allow for  
6 relaxation of those -- that front yard setback, it's  
7 meant to allow a street wall to be formed along the  
8 street frontage. And a street wall is defined in the  
9 regulations -- is a line of building facades that  
10 maintain a consistent front yard setback and minimum side  
11 yard setback, thus forming a wall.

12 If we look at -- if you go to slide 31, please.

13 So, slide 31 basically shows the proposed  
14 Holley Place building and, of course, the building to the  
15 south or on the lower portion of the screen; and one can  
16 clearly see that the majority of that building that is  
17 located to the south is located quite distant and in  
18 compliance with the setback requirements of the  
19 underlying CG-20 zone as well as the Pocketknife Square  
20 District. So again, I don't think that what is being  
21 proposed actually forms the street wall that the  
22 regulation intends to be formed.

23 If we can go back a couple slides now to my  
24 little summary. So -- next slide, please.

25 So, the proposed development basically is not

1 in the spirit or the word of the Pocketknife Square  
2 Overlay District in that the overlay district  
3 specifically states that the Pocketknife Square District  
4 was to promote the adaptive re-use of existing structures  
5 and contextual redevelopment. To me it sounds more like  
6 re-working existing buildings and perhaps putting in  
7 additional units within perhaps commercial or industrial  
8 buildings or perhaps putting apartments into the  
9 firehouse or something like that, not so much as filling  
10 in or constructing a new building where there's currently  
11 a park located.

12           And my last little bit and I'll harp on it just  
13 a little bit more, again, with respect to the building  
14 clearances in the back of the building, based on the  
15 ground elevations and the underside elevation of that  
16 building, I'm -- I'm nervous, although I shouldn't be,  
17 it's not my development, but I'm nervous that some of  
18 these vehicles that might be entering into the site,  
19 let's say, box trucks or even construction workers, some  
20 of the utility advance, they range anywhere from utility  
21 advance from 8 feet to 9-and-a-half feet in height. Not  
22 including any roof racks or ladder racks or anything they  
23 might place on these vehicles. And of course our typical  
24 box trucks, delivery trucks, UPS, Fed Ex and such, all  
25 10-foot-6 dimensionally in height.

1           And if we can go to perhaps sheets 27, 28 and  
2 29. These next few sheets just indicate how --

3           CHAIRMAN KLEMENS: Excuse me.

4           MR. Virbickas: -- how these box trucks would  
5 attempt --

6           CHAIRMAN KLEMENS: Excuse me. We went through  
7 this last time.

8           MR. Virbickas: Yeah, we went through the fire  
9 trucks which --

10          CHAIRMAN KLEMENS: We went through this. I  
11 mean, please you have limited time.

12          MR. Virbickas: You bet. Let's jump to sheets  
13 32 and 33, please.

14          CHAIRMAN KLEMENS: Thank you.

15          MR. Virbickas: Sheets 32 and 33 just  
16 superimpose a 10-foot-6 tall box truck along the Holley  
17 Street frontage of the building. It clearly shows that  
18 there would be definitely impact should the truck be able  
19 to turn in.

20          Next sheet, please.

21          And again, this sheet indicates on a west  
22 elevation what would happen if the truck continued to  
23 drive further to the west and how it could not do  
24 underneath the overhang of the building. And then the  
25 south elevation actually shows the actual grades that the

1 designer has placed in the rear and it shows how this  
2 truck would have impact or it's impassable to a truck  
3 coming in to the site off of Holley Street.

4 And that is the end of my presentation. Thank  
5 you.

6 MR. CASAGRANDE: Thank you, Mr. Virbickas. The  
7 remainder of the slides are addressed to the legal  
8 issues. I know in my experience with Commissions that  
9 they do not want to see attorneys getting into a legal  
10 wrestling match about which side is correct as a matter  
11 of law. I know you have Attorney Andres, who is highly  
12 competent and will give you his best advice. So, I just  
13 want to go through these things very quickly because they  
14 were raised at the last hearing and I think they need to  
15 be addressed.

16 Slide 34. The question I think you  
17 Mr. Chairman raised a question the last time about  
18 whether at least two of the Intervenors apartment uses  
19 might be illegal and not qualify as non-forming use. And  
20 we drilled down on -- I think you were focusing on 20  
21 Millerton, the RJS parcel which has two, 1-bedroom  
22 apartments. They are have been there since at least 1990  
23 and the Intervenors are here to testify to that if you  
24 need them to do that. But that's our understanding.

25 12 Millerton Road is Celeste Shannon's

1 property. She has one, 4-bedroom apartment that's been  
2 there at least since 1977.

3 Our position, as I said in my letter, is the  
4 Commission has no jurisdiction to determine whether a use  
5 is illegal or qualifies as non-conforming. I cite to the  
6 zoning regulations which designate the zoning -- the Land  
7 Use Administrator, i.e., the Zoning Enforcement Officer  
8 as the official responsible for enforcing the regs. And  
9 Section 8-12 of the General Statutes which say:  
10 Regulations shall be enforced by the officer or official  
11 board or authority designated therein. That's Abby  
12 Conroy. I think it's beyond dispute no enforcement  
13 action has ever been taken by any zoning enforcement  
14 officer against these uses for decades.

15 And turning it back to the intervention issue.  
16 It's our further position that the Intervenors don't have  
17 any burden in this proceeding to prove that their uses  
18 are legal or not. As parties and potential appellants  
19 aggrieved because of their statutory standing, they have  
20 the right to demonstrate the adverse affects on their  
21 businesses, of the destruction of this park. And to  
22 disregard -- I'm not suggesting that you will,  
23 Mr. Chairman, but to disregard those concerns would  
24 penalize them for exercising their first amendment rights  
25 to speak in opposition to the application. And again,

1 I'm not suggesting that. I just want to make the record.

2 And lastly, under the current CG-20 regulations  
3 even if they were relevant, I think it's important to  
4 note that single family dwellings are allowed as of right  
5 in the zone by issuance of a zoning permit and multiple  
6 family dwellings are allowed by law by special permit.  
7 These units together, these three apartments, they would  
8 require only three parking spaces. And under these  
9 circumstances, it's just inconceivable to me and to the  
10 intervenors that Abby Conroy or any Land Use  
11 Administrator will even consider issuing a cease and  
12 desist order against these uses which have been there for  
13 decades and are owned by tax paying businesses that help  
14 support this town. Or if they apply for the permits if  
15 that were necessary, that those permits would be denied.  
16 So, I think this issue is a red herring that the  
17 Commission should not focus on.

18 And lastly, even if the Commission legally  
19 could disregard the three spaces, because they think that  
20 they may be -- these uses may be non-conforming, what  
21 does that do to our analysis of the average daily use of  
22 the Bicentennial Park as testified to in the affidavits  
23 we submitted the last time, we showed that the average  
24 daily use of these businesses of the Bicentennial Park is  
25 12 to 16 spaces per day. If you disregard those three

1 spaces, you are down to 9 to 13 spaces. That is simply  
2 not a material change that undercuts the demonstrated  
3 need of these businesses for this spaces at Bicentennial  
4 Park.

5 Next slide, please.

6 The question has been raised about whether the  
7 approval of the special permit application will render  
8 the nearby business uses non-conforming or more  
9 non-conforming. I raised that in my initial submission.  
10 I know that Attorney Smith in his April 8th letter to the  
11 Commission disputes that. Again, I don't want to get  
12 into a legal wrestling match and waste the Commission's  
13 time. All I can say is that not only do I disagree with  
14 Attorney Smith's reasoning, but also Attorney Capecelatro  
15 and Attorney Grickis have both echoed our concern that  
16 this will render these uses non-conforming.

17 Very briefly, the suggestion -- this is  
18 regarding 24 Millerton Road. The suggestion has been  
19 made or the argument's been made that that owner cannot  
20 rely on the explicit terms of the special permit it got,  
21 I believe in 2007, requiring all employees to use  
22 satellite parking. That's the terms of the special  
23 permit. And those satellite parking spaces are shown on  
24 the site plan as being located on Bicentennial Park. And  
25 the argument is, well, you can't -- he can't rely on that

1 because there was no contract entered into between the  
2 town and the Applicant. That's curious at best. The  
3 Commission never insisted on such a contract. And I  
4 don't think it insisted on such a contract when it  
5 approved Mr. Churchill's application which showed  
6 satellite parking offsite.

7           So -- but again, let's assume for the moment  
8 that Attorney Smith's position is correct -- the legal  
9 position is correct. The uses will not be rendered more  
10 non-conforming. The facts remain that these nearby  
11 businesses will lose most of Bicentennial Park's spaces  
12 they have relied on for years. We testified and you've  
13 heard about the substantial negative affects that will  
14 result to these businesses. And we believe that's a  
15 clear basis for denial under the suitability and  
16 incompatibility of use regulation standards that you must  
17 consider in deciding the application.

18           Next slide.

19           The next issue that has come up is regarding  
20 this private right of way that exists to the west of the  
21 proposed building and to the east of the -- I believe  
22 it's 22 Millerton -- or 20 Millerton. We've introduced  
23 evidence, and this is it Exhibit 12, that shows that 22  
24 Millerton Road's deed includes a deeded easement over  
25 that right of way. A right of a passage back and forth



1 over that right of way.

2 I know that the Commission has -- several  
3 Commission members and several members of the public have  
4 said that they're very concerned about egress on to  
5 Millerton Road, especially trucks maybe backing up on to  
6 Millerton Road because of traffic safety issues that that  
7 would create. I don't disagree with Attorney Smith that  
8 you're not here to decide title or deeded rights to  
9 property. My only point is that if you know, and it's in  
10 the record that RJS Holding intends to assert its rights  
11 to unobstructed passage ingress and egress -- egress and  
12 ingress; and that is a serious factor that the Commission  
13 is weighing in determining the safety of the project. I  
14 submit that you should and must consider the prospect of  
15 having this thing tied up in litigation for years when,  
16 as we've shown, there are for more suitable sites in  
17 areas of town that would not create this issue.

18 Next slide.

19 The next question is the Commission's  
20 obligation to consider offsite alternatives, which I  
21 raised in my letter to Attorney Andres on April 8th and  
22 again by follow-up letter to him based on Chris Smith's  
23 letter of last week. Again, I agree with Attorney Smith  
24 that if the Commission determines that the project is  
25 reasonably likely to unreasonably impair the public trust

1 and the historic resources of the state, it must consider  
2 all available, feasible and prudent alternatives  
3 including offsite alternatives. That's the Grimes case.  
4 The Grimes case, yes, dealt with adjacent property, but  
5 as I'll demonstrate in a second, I don't think that's  
6 relevant.

7 We've demonstrated that the project will  
8 destroy Bicentennial Park. We've demonstrated that at  
9 least two other properties in town are feasible and  
10 prudent and we submit that the application must be denied  
11 on that ground alone.

12 Now, Attorney Smith in his letter suggests that  
13 if you deny the application because the town should  
14 consider these offsite alternatives, that would somehow  
15 deprive the town of the right to use its property in  
16 violation of the Takings Clause of the Fifth Amendment.  
17 Very quickly, as I state in my letter, that the Kuntz  
18 (ph.) case, which is the U.S. Supreme Court case which he  
19 relies on is simply inapposite. If nothing else, for the  
20 basic reason that the Takings Clause applies only to  
21 private property, not public property. The Takings  
22 Clause says that no government shall take private  
23 property without just compensation.

24 Second, the Town has no reasonable expectation  
25 to be able to destroy an historic park that itself put on

1 the National Register and which is being held in the  
2 public trust.

3 Third, the denial of the application would not  
4 force the town to give up its right to use Bicentennial  
5 Park or other town property -- or to pay money as was the  
6 case in the Kuntz case. All we're staying is continue  
7 the use of Bicentennial Park as it has been used for  
8 decades, for open space, historic preservation and public  
9 parking.

10 And third, last, there's no authority that  
11 Attorney Smith cites which essentially forbids a  
12 Commission from considering any offsite alternatives that  
13 are not adjacent to the property. Again, the statute  
14 says you must consider all relevant facts and  
15 circumstances. Is there a feasible and prudent  
16 alternative. We have introduced evidence that shows that  
17 these available offsite alternatives are highly relevant  
18 to that determination.

19 Next slide.

20 Lastly, I wanted to spend a minute on the  
21 status of SHPO review. It was brought up in the last  
22 hearing. I believe it was the Applicant's architect --  
23 historical architect who said that they had had an onsite  
24 meeting with SHPO staff and that they were awaiting its  
25 decision. Here are the facts. No application has been

1 filed with SHPO. We confirmed that with Marina Wiznowski  
2 (ph.) who is the SHPO staff member that Attorney Yoon and  
3 I have been in contact with. And SHPO is not issuing any  
4 decision. So, here we have a suggestion by the Applicant  
5 that we're simply waiting for a SHPO sign off and that's  
6 simply belied by the fact that it hasn't submitted  
7 anything to SHPO. And it raises substantial questions  
8 about the voracity of, not only its application to this  
9 Commission, but its application for funding to CHFA for  
10 the predevelopment funding, which it now says that it  
11 shows that there's no alternative because we've already  
12 spent the money.

13 Next slide.

14 Very quickly, the Applicant's application to  
15 CHFA for predevelopment funding, which is Exhibit 17, it  
16 states all projects proposed to be assisted through DOH  
17 or CHFA, which is what this is, shall consult with SHPO  
18 prior to the initiation of activities to be funded  
19 through either agency.

20 SHPO's responsibility, as stated in the  
21 application form, is to identify significant historical  
22 resources and issue advisory assistance to promote  
23 compatibility between the new development and  
24 preservation of the State's cultural heritage. Its  
25 review is in two stages: First, it assesses the proposed

1 development structures and properties to determine  
2 whether or not they are listed in the National Register  
3 of Historic Places. If so -- and we know that's the  
4 case here -- it is deemed historic and worthy of  
5 protection. SHPO then goes on to evaluate the impact of  
6 the project and the property's significant materials and  
7 character. Where adverse affects are identified, SHPO  
8 will assist developers in identifying alternatives.

9           It goes on to state: All Applicants must  
10 submit a SHPO project notification at least 60 days prior  
11 to the funding application's sufficient deadline so that  
12 a determination of these issues can be made early in the  
13 process. And the failure of the Applicant to properly  
14 comply with the submission requirements will result in  
15 the removal of the application from consideration for  
16 funding in the applicable funding round.

17           Those are the requirements. These are the  
18 facts: The CHFA application fails to include any SHPO  
19 project notification form. Because we know no such form  
20 has ever been submitted. If it fails to identify the  
21 property as a contributing site on the National Register.  
22 It affirmatively misrepresenting the existing use to the  
23 property as a currently vacant site and currently vacant  
24 lot. That's the project narrative page 1. And it never  
25 even refers to the property as Bicentennial Park.

1           And what I would like to have Attorney Yoon do  
2 is, if he can pull up the page in Exhibit 17, which is  
3 the CEPA intake form. Are you able to do that? This is  
4 where they ask the Applicant in the funding application  
5 to say it is -- is the property eligible or is it on a  
6 the National Register.

7           The question: Is the existing site listed or  
8 eligible to be listed on the national or state registers  
9 of historic places as determined by SHPO?

10           Applicant's answer. No. No. Signed by the  
11 president of Housing Enterprises, Inc. The agent for the  
12 Applicant.

13           I don't know any other way to characterize  
14 that, Mr. Chairman, as a blatant misrepresentation of  
15 facts.

16           The failure of the Applicant -- if you can go  
17 to 47.

18           CHAIRMAN KLEMENS: You have two minutes left,  
19 Mr. Casagrande.

20           MR. CASAGRANDE: I have one page left,  
21 Mr. Chairman, and then I would like to reserve time for  
22 summation. I'm not sure when you want to do that, but --

23           The Applicant's failure to identify the  
24 property as historic resource on the National Register  
25 and its misidentification of it as a vacant lot are

1 material false statements. And the application should be  
2 pointed out those statements and the forms were signed  
3 under penalty of perjury, see application page 11. These  
4 false and misleading statements to a state agency  
5 warrants CHFA's rescission of the funding approval. The  
6 Applicant -- these facts demonstrate that the Applicant  
7 received these funds under false pretenses and prevented  
8 use of the monies -- public monies for better project.

9 I'm not here to question the motives. I'm not  
10 saying that this was intentional, reckless, negligent.  
11 I'm saying it's a fact. They misstated the entire  
12 purpose of this property on their funding application  
13 form. That not only undermines their ability to rely on  
14 those funds, and we'll be asking CHFA to take action on  
15 that, but we submit it directly undermines it's  
16 credibility before this Commission and are grounds for  
17 denial of the special permit application. We ask that  
18 the Commission deny the application and tell the  
19 Applicant to come back after it re-submits it's CHFA  
20 funding application, including proof of the proper notice  
21 and not -- if and when such new application is approved.

22 For those reasons, Mr. Chairman, we  
23 respectfully request the Commission to deny the special  
24 permit application and I just would like to reserve two  
25 minutes for quick summation. Thank you.

1           CHAIRMAN KLEMENS: Thank you.

2           Okay. Questions from the Commission.

3           I'll start with Commissioner Riva. You have to  
4 unmute, Bob.

5           MR. RIVA: Michael, not ready yet. If you can  
6 go on to someone else if you will, please, for me and  
7 then --

8           CHAIRMAN KLEMENS: I'll get back to you, Bob.

9           MR. RIVA: -- put all my thoughts together.

10          CHAIRMAN KLEMENS: Let's ask which  
11 commissioners are ready to ask questions. Okay.  
12 Ms. Shyer?

13          MS. SHYER: Yes, thank you, Chairman.

14          I have a question for Ms. Carley, please. You  
15 referenced the chimneys on this proposed -- second  
16 proposal. Would you think this building would be better  
17 without the chimneys or with the chimneys, please?

18          CHAIRMAN KLEMENS: Ms. Carley, you were asked a  
19 question.

20          MS. CARLEY: I'm sorry, I didn't hear that it  
21 was being asked to me.

22          CHAIRMAN KLEMENS: Yes, directed to you about  
23 whether the building was better with or without chimneys?

24          MS. CARLEY: I can't answer -- I can't answer  
25 that. I'm not prepared to say whether it's going to be



1 better with or without something. It's not my role.  
2 What I'm saying is, as proposed, it does not meet the  
3 requirements that were set out in the two provisions with  
4 or without the chimneys. I'm not prepared to take it  
5 apart in that way.

6 CHAIRMAN KLEMENS: I understand what your  
7 saying.

8 MS. CARLEY: The chimneys are tall.

9 CHAIRMAN KLEMENS: Any additional questions,  
10 Ms. Shyer?

11 MS. SHYER: No, not at the moment. Thank you.

12 CHAIRMAN KLEMENS: Which commissioner has --  
13 is --

14 MR. HIGGINS: I have a couple, Michael. I  
15 don't know if Allen is back or not.

16 CHAIRMAN KLEMENS: I don't believe Allen is  
17 here tonight.

18 MR. HIGGINS: Just a couple questions also of  
19 Ms. Carley. You talked about the south view in your  
20 comments. Your report was very interesting, by the way,  
21 and very informative. But when you talked about the  
22 south view, you talked about the bulk of that. I was  
23 just curious whether it's just the overall size when you  
24 refer to the bulk or whether if it was a little bit  
25 differently designed or had a different architectural

1 feel to it whether it would be more appropriate with your  
2 National Historic District review. Is [Unintelligible].

3 And the other one was on the lighting. You  
4 talked about the lighting for the parking lot on the side  
5 of the building that was commercial or perhaps maybe even  
6 residential, but was not appropriate for the historic  
7 district nature. I'm just wondering if, in your  
8 experience, if you had lighting fixtures that would be  
9 appropriate that couldn't be replaced with these  
10 fixtures?

11 MS. CARLEY: Well, yes. The first question I  
12 am -- when I say bulk, I mean, really massing. And the  
13 massing of that building, the impression of it, it's very  
14 dense. So, you --

15 MR. HIGGINS: Regardless of design, you're  
16 saying it would have an adverse affect?

17 MS. CARLEY: Yeah, it's the density of it. I'm  
18 looking at the height, bulk and design are the three  
19 qualifications that your building code -- your P&Z  
20 requirements, it says, shall be of height, bulk and  
21 design that compliments existing character of the  
22 neighborhood and the community. So, I would say that  
23 even though it's maybe as high as a building next to it  
24 or a little higher or a little lower, its overall bulk, I  
25 would argue, is way bigger. That impression you would

1 have. It's not just the measurements. You can add  
2 everything up.

3           It's what you see as an individual, as citizen  
4 A who -- when I went back to just try to walk around as a  
5 person the other day, there were two or three tourists  
6 actually walking around coming down the hill and walking  
7 around the Holley Manufacture building. And he was  
8 thinking what would they see if they stood and looked up  
9 there. They would see bulk and they would see what you  
10 see in that drawing.

11           So, what were you asking. Would it change. I  
12 just think that --

13           MR. HIGGINS: I was wondering if it was  
14 designed differently or just the mere fact of the height.  
15 Because when we view the height restriction in the zoning  
16 regulations we're talking about the entire perimeter of  
17 the property, not just --

18           MS. CARLEY: It's not just the height. It's  
19 the overall impression and the fact that it goes -- which  
20 is the way I tried to show the way other buildings are  
21 sighted and the way the Federal buildings are sighted.  
22 It is an infill building. It will fill up pretty much  
23 east to west that park. So...

24           MR. HIGGINS: Which is what the original  
25 building was.

1 MS. CARLEY: However, that is not --

2 MR. HIGGINS: The other question is on the  
3 lighting. Would you have any recommendations for the  
4 light fixtures.

5 MS. CARLEY: You know, there are plenty of  
6 alternatives, there is.

7 MR. HIGGINS: Okay.

8 MS. CARLEY: Yeah.

9 MR. HIGGINS: So, if there was an alternative,  
10 that would be acceptable to you?

11 MS. CARLEY: I'm not accepting or reject. That  
12 is not my role.

13 MR. HIGGINS: I see.

14 MS. CARLEY: Can I make a point.

15 MR. HIGGINS: It sounded that way, that's why  
16 I --

17 CHAIRMAN KLEMENS: Can I --

18 MS. CARLEY: May I --

19 CHAIRMAN KLEMENS: Can I guide this  
20 conversation? As I understand, Ms. Carley, is we're  
21 asking questions about design of a building that she has  
22 testified that should not be there in any way, shape or  
23 form.

24 Is that correct; Ms. Carley?

25 MS. CARLEY: I would say a multi -- yes, I

1 would say a park -- first of all, you want to protect  
2 that park; and another problem within the condition  
3 required by the gift of the Federal Colonial -- of being  
4 in keeping with the Federal Colonial image of the town is  
5 typology, which is that a multi-family building is not  
6 going to do that because you just don't have that as a  
7 precedent in your Federal Colonial heritage.

8 CHAIRMAN KLEMENS: But you testified actually  
9 that the park, the green park, the wall, the parking lot  
10 are unit and they can't be built on. Wasn't that your  
11 position.

12 MS. CARLEY: My position is that you -- that  
13 you would want to, first and foremost, protect that  
14 resource.

15 However, I was also asked one does not exclude  
16 the other. I was asked to evaluate that existing  
17 building and I'm trying to draw -- to do that. So, I  
18 don't think one excludes the other.

19 CHAIRMAN KLEMENS: Interesting. Point well  
20 taken. I'm sorry then I misunderstood part of your  
21 testimony.

22 Jon, do you want to continue?

23 MR. CASAGRANDE: Mr. Chairman, can I interrupt  
24 for a second.

25 CHAIRMAN KLEMENS: No, you cannot.

1           MR. CASAGRANDE: Well, she was trying to follow  
2 up on a question and she was cut off. I think she's  
3 entitled to clarify.

4           CHAIRMAN KLEMENS: I think she --

5           MR. CASAGRANDE: No, she was asked a question  
6 about whether her position was that the sheer bulk of the  
7 building was a problem and I believe Mr. Higgins said  
8 yes, just like the original building and Ms. Carley  
9 started to answer and then he cut her off. I think she  
10 should have an opportunity to clarify that.

11          CHAIRMAN KLEMENS: Sure, go right ahead.

12          MS. CARLEY: Yeah, I would like to say  
13 something about that; because the original building was a  
14 Vic -- first of all, has been gone for over half a  
15 century. It's not really part of -- it's in my part not  
16 part of this discussion. It's a Victorian -- it was a  
17 Victorian building. It would never -- it was built  
18 before zoning regulations were ever instituted. So, if  
19 you tried to build that building today, it wouldn't make  
20 it. It --

21          MR. HIGGINS: I'm not disagreeing with that. I  
22 was just pointing out that there was a building there  
23 that encompassed the entire foundation.

24          MS. CARLEY: Right, right.

25          MR. HIGGINS: I wasn't commenting for or

1 against or anything like that. Just the fact that the  
2 whole area was --

3 MS. CARLEY: You did, but --

4 MR. HIGGINS: Whether it was approved or --

5 MS. CARLEY: It doesn't any more.

6 MR. HIGGINS: -- aesthetically pleasing or  
7 not.

8 MS. CARLEY: What's being proposed now is an  
9 infill building which is an entirely different thing.

10 MR. HIGGINS: Understood. Thank you.

11 CHAIRMAN KLEMENS: Anything more, Jon? Jon,  
12 anything more? No, I guess not.

13 MR. HIGGINS: Not at this point, Michael.  
14 Thank you.

15 CHAIRMAN KLEMENS: Who's ready next? No other  
16 Commissioner has questions at this point?

17 DR. SCHIFFER: Michael, I have one question. A  
18 very minor question: What does CHFA stand for?

19 CHAIRMAN KLEMENS: CHFA? CHFA?

20 DR. SCHIFFER: Yes.

21 MR. CASAGRANDE: Connecticut Housing Finance  
22 Authority, Mr. Chairman.

23 CHAIRMAN KLEMENS: Any other Commissioner have  
24 questions?

25 I guess I'm going to get to ask my questions.

1           Attorney Casagrande, you brought up that  
2 application to CHFA, I believe it was to CHFA where the  
3 Applicant said it wasn't an historical area. [Audio Cut  
4 Out] Then you said we don't know if it was intentionally  
5 left out or not. I don't understand that. If you have  
6 an application and you affirmatively sign that it's not  
7 in an historic district, how -- what was all that about  
8 unintentional? I don't see how it can be. I'm --

9           MR. CASAGRANDE: Well, Mr. Chairman, I couldn't  
10 agree with you more. I was basically trying to be  
11 gracious. I was not trying to attribute a nefarious  
12 motive, but as you point out, it's a gross  
13 misrepresentation of fact and one reasonably could  
14 conclude, as I believe you are, that it was intentional.

15           CHAIRMAN KLEMENS: I'm just asking for  
16 clarification. I'm just puzzled by, I guess you were  
17 trying to be gracious. We'll leave it at that.

18           Okay, Ms. Carley, we are pleased that you came  
19 today because you really have very great knowledge of  
20 many things here. As I understand your testimony, the  
21 three pieces of Bicentennial Park, there is the wall,  
22 there is the green and there is the parking lot. Are any  
23 of those pieces more or less important to you or is the  
24 whole thing important as a unit?

25           MS. CARLEY: It's all of a piece. I didn't



1 discuss it as pieces. It's defined in the Historic  
2 District in the nomination with a specific boundary that  
3 includes the entire park. The park is called -- it was  
4 called when it was designed a parking park, which is kind  
5 of a neat, unusual idea of the time that included  
6 greenery and parking specifically. So, the parking and  
7 the lawn and the planting and the walls were all part of  
8 an integral design.

9 CHAIRMAN KLEMENS: As I understand your  
10 testimony, nothing should be built on that site.

11 MS. CARLEY: No, I would say -- my testimony is  
12 that it is a historic resource that the -- that is  
13 preserved as part of the National Register District and  
14 that -- I would actually -- I think the park is very  
15 important to preserve; but as an historian, I would look  
16 at each case, case by case, if another proposal were to  
17 come before me. Obviously, when those -- when the donors  
18 who made it possible for the town to provide that  
19 property envisioned that possibly something would be  
20 built; but --

21 CHAIRMAN KLEMENS: Ms. Carley, I'm not asking  
22 you to interpret.

23 MS. CARLEY: May I answer?

24 CHAIRMAN KLEMENS: I'm asking you as an  
25 historian, as a specialist, not -- I don't need the deed

1 interpreted. I want your opinion as the noted and  
2 respected historian. Not -- don't venture into the deed.

3 MS. CARLEY: I am trying to answer your  
4 question. So, I can only answer it in the context of  
5 what the situation is. So, I'm not sure how else I can  
6 answer it.

7 CHAIRMAN KLEMENS: I don't either. I'm totally  
8 puzzled by your testimony.

9 MS. CARLEY: So, let me try to do that if I  
10 may.

11 CHAIRMAN KLEMENS: Sure.

12 MS. CARLEY: Okay. I'll continue. There is a  
13 possibility something could be built there. That is --  
14 that was part of the gift, I think. But -- so the reason  
15 I brought that up is I think that one could then look at  
16 each -- any proposal one at a time. That would be my  
17 responsible approach as an historian. If somebody came  
18 to me and said look, another idea has come forward, then  
19 I would evaluate that. But right now, I'm saying the  
20 park is a valuable resource. It is the town's  
21 responsibility to seriously consider its preservation.  
22 It is not a vacant lot. It is not a building site. It  
23 is part and parcel of this historic district which has  
24 value. And that is an important part of the town that  
25 has been set aside. And it is not an empty lot within

1 that district.

2 CHAIRMAN KLEMENS: So, you do feel that  
3 something could be built there, just not this particular  
4 design?

5 MS. CARLEY: I am saying that each -- any  
6 project should be evaluated one at a time and I've done  
7 my best to evaluate this one within the -- looking  
8 carefully at the two provisions under which I evaluated  
9 it. Which are the building -- the zoning regulations and  
10 the stipulation of keeping with the Colonial and Federal  
11 heritage of the town. So -- I'm not saying that  
12 something else might not be work. But I can only look at  
13 the one project that I'm looking at right now.

14 CHAIRMAN KLEMENS: Point well taken. I'm not  
15 going to pursue this any further. I mean, could you --  
16 well I am. If I asked you what are the five most  
17 egregious things on this building that have pushed it  
18 into a non-starter for you, what would you say they are?

19 MS. CARLEY: Well, I wouldn't go at it that  
20 way. That's unfair to the proposers. What I would  
21 say -- and I thought about it very carefully. It's not  
22 complimentary to the Federal and Colonial heritage of the  
23 town, mainly for these reasons. Its size, bulk and type,  
24 its massing and density in relationship to the size -- to  
25 the site, itself, the park and its surroundings. And

1 that's taking into consideration this Colonial context,  
2 not the greater Victorian one. And the south and east  
3 elevations are a real concern. That the where you pull  
4 back and get the distance.

5           And its materials. I am concerned about the  
6 materials. I will admit I'm not fully aware what the  
7 materials are going to be. I just don't feel like they  
8 have been fully specified. "Typical" does not tell me  
9 what they are going to be. So, if you have a large,  
10 large building with a massive roof area and it's got a  
11 lot of synthetic materials like composites, vinyl windows  
12 or vinyl window dividers and vinyl or composite doors, I  
13 don't -- and it has been specified that it will have  
14 brick facing rather than real brick and that kind of  
15 thing, you have [Audio Froze] so much surface area with  
16 those kinds of materials, if that's what they're going to  
17 be, it will make a real impact in terms of being in  
18 keeping with those historic Federal buildings in the  
19 area.

20           If I can be contradicted and say no, no those  
21 aren't -- we are using authentic historic materials, then  
22 that would be great.

23           CHAIRMAN KLEMENS: Understood. Thank you.  
24 You've been extremely helpful, helping me understand. I  
25 apologize if I cut you off. I'm just trying to get to

1 facts and you did actually illuminate them for me and I  
2 thank you very much.

3 I have only one other question.

4 MS. ALLEE: I have another question.

5 CHAIRMAN KLEMENS: Can I finish mine and  
6 then -- Go ahead, Debra.

7 MS. ALLEE: I have a question of Ms. Carley.  
8 Taking everything, I'm thinking of the drawing of the  
9 back of the building that you showed us and all the other  
10 things that were around it. What I would like to know is  
11 if this building were built as proposed, would it have  
12 such a significant impact on the historic district as to  
13 undermine its historicness or would it still be an  
14 historic district?

15 MS. CARLEY: I worry that it would. Again, I  
16 think you need -- you definitely need to know what all  
17 the materials are going to be. But I think that that  
18 roof line and that height of over 40 feet from that south  
19 side and the infill, the way it fills that whole park,  
20 would. That, again, is -- then you have on top of  
21 that -- and introducing more concrete around it and, yes,  
22 I do. I do think you will.

23 MS. ALLEE: But I would still have the  
24 buildings that made the cannon balls in the revolution.  
25 You would still have all those other buildings that make

1 up the historic district. That's why I'm asking the  
2 question.

3 MS. CARLEY: You would impact the character of  
4 the district. You would be losing a piece of it's -- a  
5 part that's considered a contributing resource to it if  
6 the with the walls of that building. You can argue  
7 either way, but that is my opinion.

8 MS. ALLEE: Okay. Thank you.

9 CHAIRMAN KLEMENS: So, in fact, we're talking  
10 about two types of impairment really. We started this  
11 discussion, at least I thought with the height of the --

12 MS. CARLEY: I might have lost the -- Can you  
13 hear me?

14 CHAIRMAN KLEMENS: Yes, I hear you.

15 MS. CARLEY: Okay. So, it's going in and out a  
16 little bit.

17 Yeah, open space, size and then, you know,  
18 there's that Yin and Yang, you're also losing the park.  
19 So -- And the walls.

20 CHAIRMAN KLEMENS: I'm afraid that question I  
21 was asking was not that. My question here is the  
22 intervention for the unreasonable harm. Is the  
23 intervention focused solely on the loss of the park or is  
24 it now focused or is it focused, and maybe we'll let the  
25 lawyers fight this one out, is it focused on the

1 irreparable harm to the historic district as a whole?

2 MS. CARLEY: Well, both things would happen. I  
3 mean, the park would be part of that. The former would  
4 be part of the latter.

5 CHAIRMAN KLEMENS: Okay. That's a very helpful  
6 perspective. Thank you.

7 Any other members of the Commission on that one  
8 question about the RJS easement? Any other commissioners  
9 with questions?

10 MR. HIGGINS: Michael, I just want to go back  
11 to Ms. Carley again, to your point and Debra's. Because  
12 when you first started your presentation, you were  
13 talking about the open space context of the district and  
14 the importance of that as it was designated that National  
15 Register historical district. So, I'm further confused  
16 by Michael's question and your answer as to whether you  
17 thought it was more important to keep it as open space  
18 or -- and keep -- preserve the National Historic District  
19 or if you build something on it that met the Federal  
20 design or architectural design criteria, the open space  
21 context would be lost or would be not as concerning?

22 MS. CARLEY: Well, first of all, there's no  
23 Federal criteria. But it's all part of -- I'm not -- in  
24 my mind one is not extracted from the other. They're --  
25 you have a park, you want to consider all of these

1 things. You want to -- you have an historic resource  
2 that's been designated as such. So, first of all, you  
3 potentially are going to lose that. If you do, you are  
4 making an impact on an historic resource that is also a  
5 contributing piece of open space. Normally, that isn't  
6 always the case. But in this case it is. Because often  
7 you're talking about a structure.

8 MR. HIGGINS: Okay. Thank you. I appreciate  
9 the clarification. That was it, Mr. Chairman.

10 CHAIRMAN KLEMENS: Thank you, Mr. Higgins.  
11 Anybody else.

12 May I ask, Attorney Casagrande, you were quite  
13 clear that RJS is ready to tie up this project for years  
14 in the courts over their easement. Can you tell me  
15 having made that bold assertion, can you tell me how this  
16 project is going to affect their easement? Because I  
17 don't quite see it?

18 MR. CASAGRANDE: To the extent that the  
19 Commission decides to condition an approval on limiting  
20 the rights of egress and ingress through that right of  
21 way to only ingress, which is, as I understand, the  
22 concern that several commissioners and members of the  
23 public had, that, in and of itself, interferes with the  
24 easement. So, that -- the easement is for passage and  
25 repassage. If the Commission decides to impose a



1 condition and says no, you can only come in but you can't  
2 go out on Millerton, that's what Mr. Schaefer, RJS  
3 Holdings is concerned about. And I don't want to -- he's  
4 not said to me I'm ready to tie this thing up in  
5 litigation for years.

6 CHAIRMAN KLEMENS: Right. That's what you  
7 said --

8 MR. CASAGRANDE: I said there's --

9 CHAIRMAN KLEMENS: As a matter of fact, no more  
10 than three times in your discussion have you raised the  
11 specter of litigation.

12 MR. CASAGRANDE: That's true. It is a specter.  
13 All I'm saying is he intends to avail himself of all  
14 available remedies in law and equity to protect his  
15 rights.

16 CHAIRMAN KLEMENS: And --

17 MR. CASAGRANDE: Depends on what the  
18 Commission's final decision is as to whether those rights  
19 are going to be interfered with.

20 CHAIRMAN KLEMENS: And does the easement -- who  
21 owns the property that this easement goes over?

22 MR. CASAGRANDE: I don't know the answer to  
23 that. That's not clear to me. All I know is that he's  
24 got the deeded access over that right of way as part of  
25 his title to the adjoining parcel.

1           CHAIRMAN KLEMENS:  And does that deed, which  
2  I'm sure you've looked at, specify that it's for passage  
3  both ways?

4           MR. CASAGRANDE:  It just says right of way.  
5  But under case law that I'm familiar with, right of way  
6  includes the right to pass and repass.

7           CHAIRMAN KLEMENS:  Okay.  Thank you.  I'm  
8  sure -- we have two attorneys here that -- one will talk  
9  to us afterwards.  I'm sure Mr. Smith will have his  
10 opinion on that.

11                   Any other Commission questions?

12                   I'm now going to turn it over to Attorney Smith  
13 to ask questions on an hour, for his experts ask  
14 questions of the witnesses.

15           MR. SMITH:  Mr. Chairman, for the record, Chris  
16 Smith.  I have no questions at this time.  Thank you.

17           CHAIRMAN KLEMENS:  Very good.  Thank you.

18                   Now we move to the Applicant.  Presentation of  
19 new materials and rebuttal of anything so far that has  
20 been discussed.  It is now 7:21.  You have until 8:21.

21           MR. SMITH:  Mr. Chairman, first and foremost, I  
22 would ask for a little reprieve and have a break.  
23 Hopefully that won't go into our time.

24           CHAIRMAN KLEMENS:  Fine.

25           MR. SMITH:  I'm sorry, Mr. Chairman.  It's my

1 understanding I thought that the -- you were going to  
2 hear from the rest of the public and then we would just  
3 do our rebuttal at the end. I think I heard Attorney  
4 Casagrande say he would like to make some closing  
5 comments.

6 CHAIRMAN KLEMENS: I understand that.

7 MR. SMITH: I just as soon do that now.

8 CHAIRMAN KLEMENS: Do you have anything to  
9 present.

10 MR. SMITH: We have our rebuttal, Mr. Chairman,  
11 yes.

12 CHAIRMAN KLEMENS: Before we break for a break,  
13 which I think is fine and a good idea --

14 MR. SMITH: Thank you.

15 CHAIRMAN KLEMENS: Is your response strictly  
16 like summation and rebuttal or are you going to discuss  
17 new information?

18 MR. SMITH: It's the -- we will be  
19 discussing -- well, we're going to be rebutting the  
20 comments that we have heard from the experts, the  
21 consultants from the Intervenors. And just, if you would  
22 like, we can -- and we plan on just presenting those  
23 items that we were asked to come forward with. For  
24 example, the stormwater report. Everything else will be  
25 in rebuttal to what we just heard.

1           CHAIRMAN KLEMENS: What I suggest, Attorney  
2 Smith, is that you limit your presentation to those new  
3 items you would like to discuss, then we will go to the  
4 public and then we will get to summations both you and  
5 Attorney Casagrande.

6           MR. SMITH: So, Mr. Chairman, I'm little  
7 confused. When do we do our rebuttal? Like, we just  
8 heard testimony --

9           CHAIRMAN KLEMENS: You can do it at your  
10 summation, you can do it -- you can do it -- you could--  
11 You get the last word.

12           MR. SMITH: Well, I just would like to ensure  
13 that we have a coherent rebuttal for the Commission. And  
14 if everybody has said what they are going to say, then we  
15 can respond and that's the purpose of rebuttal. If we do  
16 a rebuttal now and then there's additional information  
17 from the public or Attorney Casagrande, then we have to  
18 do another rebuttal and we just could be here for a  
19 while. I have just -- typically, I mean, you -- you're  
20 familiar with this, typically, I just -- I would like to  
21 do it one concise rebuttal. This is what we were told to  
22 do, these are the comments that were brought up and  
23 here's our responses, questions from --

24           CHAIRMAN KLEMENS: Attorney Smith, let me  
25 suggest this: You will quickly present your new

1 information, introduce it, we will go to the public and  
2 you can do your rebuttal after Attorney Casagrande does  
3 his summation.

4 MR. SMITH: That makes sense. Thank you,  
5 Mr. Chairman.

6 CHAIRMAN KLEMENS: And now we are going to  
7 adjourn until 7:30. You have six minutes. Is that  
8 enough everyone?

9 MR. SMITH: Thank you, Mr. Chairman.

10 CHAIRMAN KLEMENS: You're welcome, Attorney.

11 (Whereby there was a brief recess.)

12 CHAIRMAN KLEMENS: Okay. We're back.  
13 Everybody here? Attorney Smith is not yet. Yes,  
14 Attorney Smith is here.

15 MR. SMITH: Thank you.

16 CHAIRMAN KLEMENS: So why don't you begin by  
17 just going through your new materials.

18 MR. SMITH: Yes, Mr. Chairman.

19 I do believe we did submit a Power Point  
20 presentation yesterday we did provide a copy of that to  
21 Attorney Casagrande. And I think what we would like to  
22 do, Mr. Chairman, for you and the Commission, is to go  
23 through the first portion of that addressing the new  
24 submissions. I will address my legal in my rebuttal.  
25 But I don't know if we can do -- Jocelyn, I believe

1 Jocelyn is here. I don't know if we can do a screen  
2 share or Abby if the Power Point is available?

3 MS. CONROY: Yes. Jocelyn should be able to do  
4 a screen share. But I can pull it up through the website  
5 if that would help.

6 MR. SMITH: She might not be back from break  
7 either.

8 MS. CONROY: That's fine. Let me pull it up  
9 here.

10 MR. SMITH: Perhaps, Mr. Chairman, if we can  
11 just wait a minute.

12 CHAIRMAN KLEMENS: Sure.

13 Attorney Smith, why do we not waste time. Is  
14 there something else you can --

15 I think Ms. Conroy indicated she can pull up  
16 our Power Point. Oh, I see Jocelyn is here right now.

17 MS. AYER: Shall we get started?

18 CHAIRMAN KLEMENS: Please.

19 MS. AYER: Thank you. I think we just wanted  
20 to quickly summarize some of the other materials that we  
21 did submit last Thursday in reference to this  
22 application, including the stormwater management report,  
23 additional site plan submissions, a point by point  
24 response to Mr. Virbickas, as well as a detailed legal  
25 response to the issues that Chairman Klemens had asked

1 our attorney to address. And then a couple other letters  
2 including the Water Pollution Control Authority letter.

3 So, I think with that, Jon, you were going to  
4 summarize the stormwater management report briefly.

5 MR. TUNSKY: Yes. Jon Tunsky, todesign,  
6 landscape architect, 114 West Main Street New Britain,  
7 Connecticut.

8 So, as submitted, we submitted the stormwater  
9 management report prepared by Benesch Engineers. The  
10 project was designed with the guides and direction from  
11 the Connecticut DEEP 2014 Connecticut Storm Quality  
12 Manual. The treatment onsite includes parking lot  
13 sweeping, catch basins with sumps as well as the added  
14 hydrodynamic separator and that is going to replace the  
15 existing catch basin on the southeast corner on the site.  
16 I will show that to you relatively soon.

17 Next slide, please.

18 Also, part of the stormwater management report,  
19 all stormwater is collected, directed to the catch basins  
20 with sumps, treated with the hydrodynamic separator and  
21 discharged into the municipal stormwater system, which is  
22 the same as what is happening now. However, currently  
23 there is no treatment being provided.

24 As seen in the stormwater report, minimal  
25 increases in peak flows, whether with 86 percent or 68.9

1 percent impervious coverage. We did have the civil  
2 engineer run peak flows for the 69 percent impervious  
3 coverage; and peak flows do increase, but it's only 0.03  
4 to 0.05 cubic feet per second. In his words, this is a  
5 minimal effect. And the reason for the -- the reason  
6 that the imperviousness doesn't matter or doesn't make  
7 such a difference is that the soils on site are class D.  
8 These are existing -- this is an existing site. It's  
9 compacted and the soils on site have low infiltration.

10 The design is consistent with the Connecticut  
11 DEEP stormwater quality manual and also no infiltration  
12 is provided on site; therefore, there would be no adverse  
13 impact to the aquifer. The aquifer protection area or  
14 underground water resources.

15 Next slide, please.

16 So the next slides are the plans that were  
17 submitted by me earlier. The blue arrows represent the  
18 additional roof leader piping connections that were  
19 requested. The red arrows are pointing to the minor  
20 grade changes that were made to meet the town zoning  
21 requirements. The red arrow on the right that is  
22 pointing to the new hydrodynamic separator, which is in  
23 the existing catch basin location. Highlighted in yellow  
24 is the new fire service and standpipe location.

25 Next slide, please.



1           The layout plan. This plan incorporates some  
2 of the changes we previously submitted including the fire  
3 lanes. We have removed the two signs that were at the  
4 parking lot designated those as tenant only. So, those  
5 have been removed. This slide addresses also some of the  
6 previous images in the Intervenor's presentation about  
7 the front yard along Holley Street.

8           So, on the layout plan you can see our survey  
9 is locating that yellow arrow points to the corner of the  
10 building. So over to the right in the aerial, that  
11 yellow arrow is representing that same point. However,  
12 the Lakeville Interiors building juts out further towards  
13 Holley Street creating that street wall. So, I  
14 demonstrated that street wall with this red line  
15 following the Lakeville Interiors building moving into  
16 our site. You can tell our proposal is in line with --  
17 it matches the straight line of the Lakeville Interiors  
18 building.

19           We will -- any concrete walls on site, we are  
20 willing to add stone as yet existing on site to face  
21 those walls, so there will be no exposed concrete.

22           Next slide, please.

23           And then also brought up by the Commission a  
24 suggestion of adding some plantings here along the  
25 southern property line. So, we added the 37 upright

1 Junipers, which is really the most we could fit in there  
2 based on the parking layout. So, those will add a nice  
3 buffer between our property and the Lakeville Interiors  
4 property.

5 One other comment that came up I would like to  
6 address regarding the lighting selection. So, the two  
7 lights that are on our -- the lighting of our property,  
8 those are full cut off fixtures, which is what the zoning  
9 requirements require for this site. I'm not sure what  
10 could be more historic, but those are what meet the  
11 zoning requirements. There's a lot of historic fixtures  
12 out there that have up lighting, which will be against  
13 your zoning regulations. These are very small fixtures  
14 in size. They measure about 24 inches by 14 inches and  
15 it's on a 14 inch -- 4 inch diameter pole. So the  
16 intention that these are going to disappear in the  
17 landscape. They are not going to be visible.

18 Also, one of your requirements is to limit  
19 lighting passing the property line. So, with these  
20 lights, it allows you to direct the lighting better to  
21 direct it in towards our parcel and not on to the  
22 neighbor's property.

23 Next slide, please.

24 And we provided our responses to the Virbickas  
25 report. We provided the stormwater management report.

1 The special permit for excavation is not required. I  
2 prepared a cut and fill analysis and determined 187 cubic  
3 yards of material will be removed from the premises. Our  
4 proposed site design complies with Section 405-6(a)2 of  
5 the zoning regulations, including the Holley Street  
6 setback and the application of materials submitted comply  
7 with town of Salisbury's Pocketknife Square Overlay  
8 District regulations.

9 Next slide.

10 And with that, I'll turn it over to Rocco.

11 Thank you.

12 MR. PETITTO: This slide starts the rebuttal so  
13 we'll wait for that.

14 MR. SMITH: I think Rocco, do you want to --  
15 I'm sorry, do you want to address this now or wait?

16 MR. PETITTO: I can do either way. I just  
17 thought that was part of where the rebuttal started.

18 MR. SMITH: Okay. If we could wait,  
19 Mr. Chairman, that really addresses our new information  
20 that was submitted. Except my legal letter but I was  
21 going to address that in rebuttal.

22 CHAIRMAN KLEMENS: Yes. Please wait for the  
23 rebuttal.

24 MR. SMITH: Thank you.

25 CHAIRMAN KLEMENS: I do have just a couple

1 questions. I don't know if other Commissioners have  
2 questions of the Applicant. My first question is  
3 Mr. Virbickas put a pretty compelling graphic of a truck  
4 in blue hitting things that -- are we creating a hazard  
5 with the over hang and the edge as and the corners?

6 MR. PETITTO: I'll take that. This is Rocco  
7 Petitto, I'm the project architect for QA+M Architecture,  
8 Farmington, Connecticut.

9 The intent of the building and the way it's  
10 supposed to function is that the public access is through  
11 the front. So, any delivery vehicles, any moving  
12 vehicles will access the building from Millerton Road.  
13 The entrance and the parking area building access is only  
14 for residents. So, the clearance of 9 feet until you hit  
15 the middle drive is substantial enough for most ambulance  
16 and emergency vehicles to access the building from the  
17 back. And it's higher than most drive-throughs you have  
18 at McDonald's or other places. So, we do not feel we're  
19 endangering vehicular access as proposed in this building  
20 for residents. And the public access for the building,  
21 as I said, is on Millerton. So, there should not be big  
22 box trucks and things in the parking lot under the  
23 building.

24 CHAIRMAN KLEMENS: So, you're saying now that  
25 when people move in, there's going to be a moving truck

1 parked on Millerton Road?

2 MR. PETITTO: That or they can make  
3 arrangements to be taking up part of the parking area  
4 while they're moving in.

5 CHAIRMAN KLEMENS: Okay. And you did see the  
6 letter from the ambulance -- I can't think of her name  
7 now. I should. That's terrible. Rice, I think. Did  
8 you -- are you going to make that elevator sized  
9 appropriately to bring a stretcher in and people that  
10 could attend to someone being taken out of the building?

11 MR. PETITTO: Yes. These buildings, elevators  
12 are always designed to accommodate a gurney and emergency  
13 personnel.

14 CHAIRMAN KLEMENS: Thank you.

15 Now a question for Mr. McCoy: How can you  
16 designate something on the register as a park when, in  
17 fact, IT'S gifted on the record as a building lot?

18 MR. McCOY: Well, the National Register  
19 description when the application was made to have the  
20 area put on the National Register, the parking lot wasn't  
21 as big then as it is now. The parking lot was expanded  
22 shortly thereafter. But really, the contributing feature  
23 that is most prevalent on the National Register  
24 nomination is THE -- the one they mention specifically is  
25 the wall, the old retaining wall of the Holley Block

1 foundation.

2 CHAIRMAN KLEMENS: What I'm saying is more  
3 fundamental. You have a deed, you have a building that's  
4 demolished. There is a deed of gift which contemplates  
5 another building being built there. How does it get  
6 on -- how can you put something on the National Register  
7 which is a designated building lot.

8 MR. McCOY: There's no problem with  
9 construction in a National Register District. You just  
10 to have review it with SHPO. So, in fact, the Secretary  
11 of the Interior has very specific guidelines about new  
12 construction, even additions to buildings that are on the  
13 National Register. So, yes, that's not a conflict  
14 between being in the Register and also a building lot.

15 CHAIRMAN KLEMENS: So, in your experience, you  
16 see other areas that are designated to be built on being  
17 included in a register district?

18 MR. McCOY: Yes. Yeah. Or additions to  
19 buildings that exist in historic districts, yes.

20 CHAIRMAN KLEMENS: That's informative.

21 So --

22 MR. McCOY: If I can give an example.  
23 Collinsville, Connecticut, where I was the chairman of  
24 the Historic District Commission is presently reviewing  
25 several applications for new construction within the

1 historic district. Generally, it's lots that were  
2 subdivided from an existing lot. But it's not uncommon.

3 CHAIRMAN KLEMENS: Basically, infill  
4 development?

5 MR. McCOY: Correct.

6 CHAIRMAN KLEMENS: So, there was someone, I  
7 don't know attorney -- sorry. I scared my dog. I don't  
8 know if this is something that Attorney Smith is going to  
9 deal with or something, but there was some pretty serious  
10 allegations raised by the Intervenor concerning the SHPO  
11 consultation.

12 MR. McCOY: Yeah, I could address that one.  
13 Yeah, Marina Wiznowski and I had a collegial relationship  
14 for many years and collaborated on buildings within  
15 historic districts and renovations to existing historic  
16 structures. I had asked her for her opinion about the --  
17 about the wall on the site. To my knowledge, there was  
18 no Intervenor involved at that point. I could be wrong  
19 about that. But it was strictly a hello, Marina, we've  
20 been asked to look at designing a building out in  
21 Lakeville, it's in the National Register and there's a  
22 wall that is sighted in the National Register  
23 application. She said for me to really evaluate how  
24 important this issue is, I would need to see it. Can you  
25 meet me at the site. And I said yes. Well, that got

1 delayed by about six weeks because of snow fall,  
2 repeating snow storms; and so by the time we finally did  
3 meet out at the site, the Intervenor petition had been  
4 filed.

5           So, our attorney, Chris Smith, recommended that  
6 we not have a meeting. That it was strictly just to  
7 point this is the wall that I referred to and then zip my  
8 lip. Which is what I did. So, it wasn't really a  
9 meeting.

10           Also, related to SHPO the notion of the project  
11 notification form, unfortunately SHPO can't accept that  
12 form until the funding source has been completely  
13 identified. She told me it can't just say CHFA, it has  
14 to be the specific source because it kicks in different  
15 levels of review. So, she was not willing to accept the  
16 official notification form, but she did accept a draft of  
17 it with just the funding source being left blank and said  
18 she would, as SHPO often does, provide sort of guidance  
19 for architects and designers, you know, along the way to  
20 get, -- you know, so you don't go too far afield.

21           However, once she sensed that there was a great  
22 deal of controversy about the site and that she was being  
23 sort of peppered with calls and requests for opinions,  
24 she decided that she would wait until the official  
25 project notification form could be filed with the



1 official funding source designated before she would do  
2 any further review.

3 MR. SMITH: Mr. Chairman, to answer your  
4 question with Attorney Casagrande's claim that there was  
5 some sort of false representation made with a filing with  
6 CHFA, then I think that's an issue between CHFA and the  
7 Applicant. And that's something that we certainly will  
8 look into with our consultant who might have filed that;  
9 but that has nothing to do with this application any more  
10 than a SHPO review, which is not applicable. It's almost  
11 like having to do an Army Corps permitting process after  
12 you go through the local approvals. So, I would  
13 respectfully submit, like many of these other issues that  
14 have been brought up under the threat of private  
15 litigation with either my client or the town on easements  
16 or whatever it might be, that's just inappropriate for  
17 the special permit application that's pending before the  
18 Commission.

19 CHAIRMAN KLEMENS: Correct.

20 Attorney Smith, we are looking at the  
21 historical resources which are the subject of the  
22 intervention, and I think these things don't look -- I  
23 realize you think they are not within our jurisdiction,  
24 but actually to me it speaks to how this process has been  
25 handled.

1           Now, Mr. McCoy just basically explained at  
2    least part of it that there was, I understand, the minute  
3    there's controversy regulators like SHPO or DEEP tend to  
4    pull back and wait and see. That clarified that for me.  
5    I still have questions and I realize you may not think  
6    it's my right to ask, but it does speak to credibility  
7    when there's a form that is filled out and obviously  
8    since that says it's not a historic district but it is.  
9    So that --

10           MR. SMITH: I'll let Mr. McCoy respond to that.

11           MR. McCOY: The thing I would add about that  
12    and that is just this week I was in contact with Jenny  
13    Schofield at SHPO. She's -- well Jenny is the National  
14    Register coordinator for the State at SHPO. And I said,  
15    you know, when I read the designation of the historic --  
16    the National Register historic application, it defines  
17    the National Register as being bounded by Holley, Allen,  
18    Sharon and Millerton. Just that one block. And I said  
19    but then specific buildings are cited in the application  
20    that are outside of that area. I said, like the wall and  
21    the Holley-Williams house. And she said that's -- she  
22    replied, she said that's quite common actually that  
23    they'll identify specific buildings in addition to the  
24    area. So, I could see where someone, particularly a  
25    non-professional who hasn't had a lot of time working

1 with historic districts and SHPO might say oh, the  
2 application says it's this block, and this block only.  
3 We're on that block, we are not in the district. I can  
4 see that as being an honest mistake.

5 MR. SMITH: Mr. Chairman, Chris Smith for the  
6 record, I would just like to clarify that the property is  
7 not in a historic district under 4-147a under the  
8 Historic District Statutes. It was not located in that.  
9 We are talking about a National Register.

10 CHAIRMAN KLEMENS: I just have to apologize,  
11 you may think I'm not looking at you, but I have my  
12 laptop with just the camera and a big screen in front of  
13 me. So, it always looks like I'm obliquely avoiding  
14 looking at -- I'm not looking at the camera.

15 MR. McCOY: Understood.

16 CHAIRMAN KLEMENS: Okay. Any other members of  
17 the Commission have questions?

18 MS. SHYER: Yes, I do. I'm sorry I never came  
19 across a hydrodynamic separator before. It sounds noisy  
20 but I assume it's not.

21 MR. TUNSKY: Jon Tunsky here. No, it is not  
22 noisy. It is below grade and it just uses the natural  
23 flow of the water to circulate out sediments that  
24 wouldn't normally be caught by a catch basin.

25 MS. SHYER: Thank you.

1           And a second question for you, Mr. Tunsky, you  
2 just mentioned on the street or on the Holley side in  
3 reference to the volume of concrete that there could be  
4 an opportunity to use stones there. Now that, to me, is  
5 a very exciting suggestion because of some of the  
6 marvelous stones that are on the wall at the moment that  
7 face in towards the car park including that kind of half  
8 sun dial. I mean, is it possible there's an opportunity  
9 there, cost effectively, to use some of that historic  
10 material that's facing out to Holley Street and achieve  
11 two objectives?

12           MR. TUNSKY: Yeah, no, I think there is -- I  
13 think we can revise our wall to more of a dry laid or  
14 mortared in place wall using as much of that stone as we  
15 possibly can.

16           MR. SMITH: Commissioner Shyer, I think if the  
17 Commission were to see fit to approve the special permit  
18 application, we would have no objection to that being  
19 added as a condition of approval. That the face -- the  
20 concrete face have that stone applied to it.

21           MS. SHYER: Wow. Okay. Thank you.

22           MR. SMITH: If possible; correct, Jon?

23           MR. TUNSKY: Yes.

24           MR. SMITH: Thank you.

25           CHAIRMAN KLEMENS: Any other members of the

1 Commission?

2 DR. SCHIFFER: I have a question. So we've  
3 seen pictures of the Bicentennial stone wall, picture of  
4 the project. Is there some view that will illustrate  
5 what part of the project necessitates the removal of the  
6 stone wall? Can you just put up an image of the outline  
7 of the project and show me where that wall would have  
8 been?

9 MS. AYER: Do you want me to bring up the site  
10 plan, Jon?

11 DR. SCHIFFER: If you can bring that up and  
12 just show me where the wall is now and it's going to be  
13 removed to accommodate the building.

14 MS. AYER: I believe the wall is somewhere  
15 around here; is that right, Jon?

16 MR. TUNSKY: Correct. Yes, it follows the  
17 shape of our new wall, the street -- the street wall, the  
18 proposed building, and then it follows down the right of  
19 way and then also follows down Holley Street along the  
20 side of the street where we're showing some plants or  
21 where the foundation is right now. The new wall or I  
22 guess the new stone -- or sorry, the existing stone will  
23 be used at this wall, which is currently proposed as a  
24 concrete wall. And we could also face the other wall  
25 along the right of way with the stone as well is what

1 we're proposing to do.

2 DR. SCHIFFER: Can you estimate how many feet  
3 of all of the original Bicentennial wall will have to be  
4 removed?

5 MR. TUNSKY: Well, it all has to be removed for  
6 the construction of this building. We're talking about  
7 re-using the stone on site for the proposed walls.

8 DR. SCHIFFER: Okay.

9 Now, I have one other question. With regard to  
10 delivery trucks, is it possible on Millerton Road to have  
11 a designated loading zone to avoid the trucks having to  
12 double park and impair traffic flow on Millerton Road?

13 MR. TUNSKY: That's something we can look into.  
14 Although it is a DOT road. I'm not sure they're going to  
15 allow to use a loading area there.

16 Chris, do you have any feelings on that?

17 MR. SMITH: Well, I think if it would be the  
18 subject of DOT, that's something we can certainly -- I  
19 mean, it wouldn't be able to be a condition of approval,  
20 obviously, but it could be something to recommend we  
21 inquire with DOT when we do that next step with DOT, if  
22 we were, again, to receive approval here. One thing --  
23 I'm sorry, Commissioner -- Doctor -- Go ahead.

24 DR. SCHIFFER: Call me Danella. That would be  
25 good enough. I think what you are envisioning then is

1 trucks would double park if you couldn't get the loading  
2 zone?

3 MR. SMITH: I think a lot of the deliveries  
4 as -- Chris Smith, for the record. As our architect  
5 indicated, the public entrance is going to be in the  
6 front of the building off of 44; and there is the public  
7 parking space there if we were -- there's a nice aerial  
8 that's just before the slide that Jocelyn had up on the  
9 screen. But there is parking out front. Presumably  
10 that's where the trucks would go. Or as our architect  
11 indicated, they could pull into the back parking lot just  
12 like you would in any smaller apartment building like  
13 this.

14 And I would like to just point out with the  
15 stone wall, it's our understanding that approximately 50  
16 percent of the existing wall that's there today has been  
17 replaced over the past number of years. And I think Kent  
18 can comment on that. Kent was going to comment on that  
19 when he was doing his presentation during our rebuttal.

20 MR. McCOY: Yes, you're right about that.  
21 There are newspaper articles from the Lakeville Journal  
22 that indicated that about 50 percent of the wall had been  
23 rebuilt.

24 MR. SMITH: I think the First Selectman had  
25 confirmed that with the SHPO representative.

1 MR. McCOY: Yes, that's correct.

2 DR. SCHIFFER: Thank you. I think that fact is  
3 important to know.

4 CHAIRMAN KLEMENS: Dealing with this wall. Is  
5 it possible to actually use the entire linear extent of  
6 that wall along Holley Street? Could that work? I don't  
7 know how many linear feet we're talking about.

8 MR. McCOY: You know, I would think it could  
9 work. Because even though -- you know, even though --  
10 the wall is quite long and, of course, U-shaped. The  
11 original stones, the ones that have the cut stone, the  
12 field stone is just rubble that's been filled in and  
13 rebuilt. I think we could clad, not only the retaining  
14 walls that Jon Tunsky mentioned in the front, but the  
15 return wall along Holley Place, you know, that screens  
16 the parking lot, if that were also clad in the original  
17 stones, it might also help, you know, in the concerns  
18 that Rachel Carley mentioned about the materials and how  
19 it can feel cheap and inauthentic and to re-use some  
20 historic material, I think, would help that a lot.  
21 Particularly, down at grade level where you see it at eye  
22 level.

23 CHAIRMAN KLEMENS: Mr. McCoy, when I worked  
24 many years ago at the Roosevelt National Historic Site  
25 there was always a discussion about the site, the



1 contextuality of the landscape. But I -- in your  
2 experience, is moving, essentially, that wall, which is  
3 part of the historic nature, basically to another  
4 location on the site, is there precedent for moving  
5 things around and still maintaining that historical  
6 nature.

7 MR. McCOY: That's a good question. I'm trying  
8 to think of an example, you know, where -- you know  
9 where -- either because of SHPO preference or whatever,  
10 you use existing, either, building material or site  
11 material in the building. It did come up with that  
12 conversation I had with SHPO on site. She asked me if  
13 that's a possibility and I said I don't see why not.

14 So -- but I honestly can't answer your question  
15 the way you asked -- like, do I know of a specific  
16 example. I can't say that I do.

17 CHAIRMAN KLEMENS: Okay. Any other member of  
18 the Commission have a question?

19 MR. RIVA: Michael, Bob Riva.

20 MR. SMITH: Yes. Hi, Bob.

21 MR. RIVA: What I would like to see is,  
22 Jocelyn, if you can go back to that drawing that you  
23 showed Danella for the wall; and I've got a question for  
24 Rocco. On the sidewalk that comes down, is it Holley  
25 Street, yeah. Rocco, there is -- there's the angled

1 lines right there by the cursor. Is that where the  
2 sidewalk ends, Rocco?

3 MR. TUNSKY: Yes. This is Jon. I can answer  
4 that. Yes, that's the -- the double gray line is where  
5 the sidewalk, yes, ends.

6 MR. RIVA: Okay, Jon. Then what's the  
7 projection on that overhang? Can you tell me what that  
8 is? Do you guys know that off the top of your head? I  
9 mean is it a foot, two feet, three feet?

10 MR. TUNSKY: Which overhang are you talking  
11 about?

12 MR. RIVA: The back projection that everyone's  
13 worried about a truck going under or something or  
14 hitting.

15 MR. TUNSKY: Rocco, do you know the exact  
16 number?

17 MR. PETITTO: Five feet.

18 MR. RIVA: So, it is pretty substantial. Can  
19 that sidewalk be brought out a little further to keep  
20 vehicles from clipping that corner or a buffer, a bollard  
21 or something put there to direct them away from that?

22 MR. TUNSKY: So, with your parking regulations,  
23 we to have maintain the 24 foot aisle. So, that is  
24 constraining us. So, we can't have any obstructions in  
25 that aisle space.

1 MR. RIVA: All right.

2 CHAIRMAN KLEMENS: Are our parking regulations  
3 superceded? Those standards under the Pocketknife Square  
4 zone Overlay District, do we have the flexibility to vary  
5 that? That's a rhetorical question.

6 MR. RIVA: Jon, you're limited by the other  
7 side, that bumpout on the other side being that distance  
8 or the depth that it is because of the cars parking  
9 there, where you guys put that hedge in, is that where  
10 that 24 foot is measured from? Can you adjust that side  
11 any?

12 MR. TUNSKY: Right, so -- really to get the  
13 maximize the parking in there, I -- that point is  
14 allowing me on the wall and then working back towards the  
15 building, I kind of maximized what we can do there. I  
16 used the compact spaces out there so that actually helps  
17 get some more space there. But I can't do much more. I  
18 really can't do anything more.

19 MR. RIVA: You can't do anything more?

20 MR. TUNSKY: No.

21 CHAIRMAN KLEMENS: Anything more, Jon?

22 MR. HIGGINS: No, that's it. Thanks guys.

23 CHAIRMAN KLEMENS: If no other Commissioner has  
24 questions. I think is time to let the public have its  
25 say. I would like to start public comment with Attorney

1 Grickis.

2 MR. CASAGRANDE: Mr. Chairman, may I just  
3 interject briefly. I do have a couple of  
4 cross-examination questions for the testimony of the  
5 witnesses.

6 MR. SMITH: I would have no objection to that,  
7 Mr. Chairman. Chris Smith, for the record.

8 CHAIRMAN KLEMENS: Quickly, please, because the  
9 public is waiting.

10 MR. CASAGRANDE: I'm sorry, Mr. Chair-- Oh,  
11 thank you.

12 CHAIRMAN KLEMENS: Quickly, please.

13 MR. CASAGRANDE: Yes, sir. Through the Chair  
14 to Mr. McCoy, you don't dispute Rachel Carley's testimony  
15 that Bicentennial Park is included in this Historic  
16 District, which is on the National Register; do you?

17 MR. SMITH: Mr. Chairman, if I may and Attorney  
18 Casagrande, Dan, Kent will be doing a formal rebuttal to  
19 the report and then that probably will be an appropriate  
20 time for to you cross-examine him on all the questions  
21 you have.

22 MR. CASAGRANDE: I appreciate that Attorney  
23 Smith, but as I understand the protocol that the Chair  
24 has set, after I do my summation, I don't any more  
25 chance -- I don't have new other chance. So, that's why

1 I'm bringing it up now.

2 CHAIRMAN KLEMENS: That's correct, Attorney  
3 Casagrande.

4 MR. SMITH: Oh, then so be it, sir. Go ahead.  
5 Sorry.

6 MR. McCOY: To answer your question, no, I do  
7 not dispute that.

8 MR. CASAGRANDE: And through the Chair, you  
9 also do not dispute her testimony, Ms. Carley's testimony  
10 that the park has been deemed a contributing resource to  
11 the district; correct?

12 MR. McCOY: Correct.

13 MR. CASAGRANDE: Thank you. And I just have a  
14 couple questions for Mr. Tunsky. And if we could go to  
15 the slide in the presentation where you show the proposed  
16 setbacks on Holley Street. And through the chair,  
17 Mr. Tunsky, I believe you testified that the red line  
18 represents the street line of the proposed building as it  
19 fronts on Holley Street; correct.

20 MR. TUNSKY: Correct.

21 MR. CASAGRANDE: And then the building to the  
22 immediate south of that, as Mr. Virbickas testified, is  
23 set back almost 30 feet from the front line; correct.

24 MR. TUNSKY: Are you referring to what's  
25 located by the yellow arrow?

1 MR. CASAGRANDE: Yes.

2 MR. TUNSKY: Could you repeat your question?

3 Sorry.

4 MR. CASAGRANDE: That building is set back  
5 almost 30 feet from Holley Street; correct.

6 MR. TUNSKY: That appears correct, yes.

7 MR. CASAGRANDE: And then you testified,  
8 though, that the Lakeville Interiors building is close to  
9 Holley Street; correct.

10 MR. TUNSKY: Correct.

11 MR. CASAGRANDE: So therefore, what we have on  
12 Holley Street with this proposed building are  
13 inconsistent setbacks; correct?

14 MR. TUNSKY: I suppose, but you could also say  
15 this is one building. So, the setback would be measured  
16 from the street line to the building that is closest to  
17 the street.

18 MR. CASAGRANDE: That's not my question. My  
19 question is, based on your testimony, what we have here  
20 and is proposed is an inconsistent front yard setback  
21 among the buildings -- along that street; correct.

22 MR. SMITH: I would just object, Mr. Chairman.  
23 I think Mr. Tunsky did answer the question and said the  
24 building, major part of it is where the red line is.

25 CHAIRMAN KLEMENS: Is the --

1 (People spoke at the same time.)

2 CHAIRMAN KLEMENS: The assumption now we're  
3 dealing with a front yard?

4 MR. CASAGRANDE: Yes.

5 CHAIRMAN KLEMENS: That's your position that  
6 Holley Street is the front of the property?

7 MR. CASAGRANDE: That's right. Because, as  
8 Mr. Virbickas has testified, it's a corner lot and  
9 therefore the front yard setback applies to Holley Street  
10 as well as Millerton. So, my question is: Isn't it true  
11 that the setbacks of those three buildings, the two  
12 existing and the proposed are inconsistent? Yes or no?

13 MR. TUNSKY: I don't agree with that. So, no.

14 MR. CASAGRANDE: Why not? Why not?

15 MR. TUNSKY: Because when you measure the  
16 setback for a front yard, you measure the point of the  
17 structure that is closest to the street line; and that is  
18 what that red line represents.

19 MR. CASAGRANDE: Right. But you agree that the  
20 building to the immediate south, setback is 30 feet back  
21 from the street line; do you not?

22 MR. SMITH: I think he answered the question,  
23 Attorney Casagrande. There's --

24 MR. CASAGRANDE: It calls for a yes or no  
25 answer, Mr. Chair.

1 MR. SMITH: No, it doesn't. There's large  
2 building and there's different components of the same  
3 building, it looks like to me.

4 MR. CASAGRANDE: And I --

5 CHAIRMAN KLEMENS: I'm just going to turn  
6 this --

7 MR. CASAGRANDE: Attorney Smith is testifying.  
8 It's a question directed to the witness.

9 CHAIRMAN KLEMENS: We don't want either lawyer  
10 testifying. Mr. Tunsky, answer the question yes or no  
11 and let's get on with it.

12 MR. TUNSKY: I would say, no.

13 CHAIRMAN KLEMENS: Thank you, Mr. Tunsky.

14 MR. CASAGRANDE: No meaning what?

15 MR. TUNSKY: No, meaning 30 feet is not the  
16 setback. Setback is represented by that red line.

17 MR. CASAGRANDE: I have nothing further,  
18 Mr. Chairman.

19 CHAIRMAN KLEMENS: Thank you, Attorney  
20 Casagrande. Now, we're going to go to public comment.  
21 We'll start with Attorney Grickis. I know he's -- I  
22 think he would like to be heard. Maybe I'm wrong.  
23 Attorney Grickis, you have to unmute.

24 MR. GRICKIS: Can you hear me?

25 MS. CONROY: Would you like your video on or



1 are you okay with just audio?

2 MR. GRICKIS: Can you hear me, Abby? I think  
3 enough bald guys have been on video. So, I'll try to be  
4 brief with my comments and thank you, Mr. Chairman, for  
5 recognizing me.

6 My most recent letter was submitted on April  
7 12th and [Audio broke up]. I don't want to wear the  
8 Commission out. But certainly it's been a long hearing.  
9 You've been extremely patient. I would simply like the  
10 Commission to note for the record that it's concluded  
11 that no one on the Commission is in a position of  
12 impartiality or lacking impartiality or bias and that all  
13 Commissioners are capable of acting on this application  
14 without any impairment by any form of bias whatsoever and  
15 I'm talking about the possible bias of Mr. Cockerline as  
16 well as possibly Mr. Riva.

17 Secondly, --

18 CHAIRMAN KLEMENS: Attorney Grickis. We've  
19 having real trouble hearing you. Can you come closer to  
20 your mic and maybe some of us can turn off our -- I don't  
21 know if it's --

22 MR. GRICKIS: I'm sorry, can you hear me now?

23 CHAIRMAN KLEMENS: That's much better. Thank  
24 you.

25 MR. GRICKIS: I apologize. I just would like

1 the Commission in my most recent letter of April 12th, I  
2 would like the Commission to note in its minutes that it  
3 has concluded that none of it's members are compromised  
4 by any factor of bias or lack of objectivity in terms of  
5 passing upon this application. I've noted before that  
6 I'm concerned about the possible conflict of interest of  
7 Mr. Cockerline and possibly Commissioner Riva. And I  
8 would like the Commission to set for the record that it  
9 has concluded that there is no concern of bias among the  
10 Commission and that all Commission members, including the  
11 alternates, are fully capable of voting objectively on  
12 this application. That's point number one.

13 CHAIRMAN KLEMENS: Attorney Grickis, let me  
14 answer your question there. You were at the first  
15 meeting.

16 MR. GRICKIS: Correct.

17 CHAIRMAN KLEMENS: I went through and asked  
18 each of the members a series of questions. I mean, it's  
19 under oath, so-to-speak. They were not -- they answered  
20 the questions.

21 MR. GRICKIS: Correct.

22 CHAIRMAN KLEMENS: And I think that's what they  
23 answered.

24 MR. GRICKIS: Okay.

25 So, it's the conclusion of the Commission that

1 there is no issue of bias possibly influencing a decision  
2 on this application; is that correct, Mr. Chairman?

3 CHAIRMAN KLEMENS: What I'm saying is that the  
4 Commissioners all attested, answered the questions that  
5 they were not pre-judging the application, that they were  
6 willing to listen with an open mind to testimony. In the  
7 case of Mr. Cockerline, we discussed that the Falls  
8 Village Housing Trust, that did not -- he said that would  
9 not influence him. In the case of Mr. Riva, he had a  
10 personal connection or interest through his daughter,  
11 Tiffany, he said that would not preclude hem. So, I, as  
12 chairman, have to believe my Commissioners.

13 MR. GRICKIS: Okay. Okay. That's --

14 CHAIRMAN KLEMENS: I can't sit here and say  
15 they are liars.

16 MR. GRICKIS: I may not agree with that  
17 conclusion, but I accept that you went through a  
18 deliberative process and I appreciate that.

19 CHAIRMAN KLEMENS: Thank you.

20 MR. GRICKIS: The second issue, the parking has  
21 been debated long and hard. In my estimation, no one,  
22 certainly not the Applicant, has responded intelligently  
23 or authoritatively to the concerns expressed in Attorney  
24 Capecelatro's letter. That which the Commission gave or  
25 the Zoning Commission gave previously cannot be -- with

1 one hand cannot now be taken away with the other. And  
2 that relates to Attorney Casagrande's presentation and  
3 his arguments concerning the non-conforming uses of the  
4 three properties 20, 22 and 24 Millerton Road.

5 The Commission needs to address squarely and  
6 reach conclusions about what Attorney Capecelatro alleged  
7 in his letter and convincingly refute the logic that's  
8 expressed in those letters and the express language of  
9 the special permit that was issued to Deano's Pizza for  
10 satellite parking.

11 As a corollary issue to that, you may remember,  
12 Mr. Chairman, you requested that my client,  
13 Mr. Churchill, re-submit his zoning permit application  
14 for the Lakeville gym, which he did. And at another  
15 prior meeting one of the Commissioners, I believe it was  
16 Mr. Higgins, disputed the fact that the Holley Block park  
17 area was ever considered as satellite park. There was a  
18 slide submitted in that original presentation that drew  
19 an arrow to that parking area as satellite parking.

20 So, No. one, I would like the Commission to  
21 thank Mr. Churchill of going through the trouble of  
22 re-submitting the materials he previously submitted. I  
23 would also like the Commission to acknowledge that, in  
24 fact, satellite parking in Holley Block wasn't included  
25 in that presentation, which was approved.

1           CHAIRMAN KLEMENS: Attorney Grickis, you are  
2 asking a lot of questions which are going to be part of  
3 the deliberations of the Commission. If we were to give  
4 you an answer to some of these now, we would, in fact, be  
5 pre-judging. We will look at parking, all these issues  
6 very closely when we do our deliberations.

7           MR. GRICKIS: Thank you, Mr. Chairman, but I  
8 would appreciate if the Commission would now at least  
9 thank Mr. Churchill for going through the trouble of  
10 re-submitting documents that were previously submitted  
11 and were part of town records which were apparently  
12 lost.

13           CHAIRMAN KLEMENS: I'm very grateful that  
14 Mr. Churchill graciously re-submitted to make our records  
15 complete.

16           MR. GRICKIS: Thank you very much.

17           CHAIRMAN KLEMENS: Thank you.

18           MR. GRICKIS: My next issue is concerning the  
19 [Unintelligible] area; and just referring to my previous  
20 correspondence, I believe that state law requires that  
21 the Applicant submit an application in the form required  
22 by the Commissioner of the Department of Public Health  
23 seeking approval of an activity that will impact an  
24 aquifer area. And, to my knowledge, that has not been  
25 done by the Applicant. I know a letter was sent, but it

1 was not on the form prescribed by the Commission of the  
2 Department of Public Health. It's a simple question. If  
3 it they've done it, great. Produce it. If not, they've  
4 missed the deadline in which the statute says they have  
5 to provide that notification. And to me, that's a  
6 defect.

7 CHAIRMAN KLEMENS: Attorney Smith will address  
8 that later on.

9 MR. GRICKIS: Okay.

10 The National Register of Historic Places. I  
11 have to confess that Mr. McCoy's testimony baffles me. I  
12 was confused by it the first time. I think there's a  
13 great deal of obfuscation in what he said. My simple  
14 question is who has jurisdiction over the site which is  
15 admittedly, by all, on the National Register of Historic  
16 Places. Who can undo what was done previously. Who has  
17 the jurisdiction to do that. And the representations  
18 about what I believe the acronym is SHOPA (ph.). SHPO  
19 has not done it and confusing and disingenuous and  
20 misleading as best.

21 I think Mr. McCoy owes everybody a better  
22 explanation and a more candid explanation of what he's  
23 been up to and what is fact and what is fiction.

24 CHAIRMAN KLEMENS: I guess that would be better  
25 done in the rebuttal, Attorney Smith or would you like

1 that --

2 MR. SMITH: Yes, Mr. Chairman. Yes. Mr. McCoy  
3 can address that.

4 MR. GRICKIS: I don't want to wear you out,  
5 folks. So --

6 CHAIRMAN KLEMENS: Wait a second, Attorney  
7 Grickis.

8 Attorney Smith, do you want to do that on the  
9 rebuttal or do you want me to ask through the Chair to  
10 Mr. McCoy that question?

11 MR. SMITH: Whatever the Chair's pleasure.

12 CHAIRMAN KLEMENS: Through the Chair,  
13 Mr. McCoy, would you answer Attorney Grickis' question.

14 MR. McCOY: There was a lot to it including  
15 "disingenuous," etc. So, could you repeat the question.

16 MR. GRICKIS: Mr. McCoy, I heard you at the  
17 last public hearing, there was a great deal of  
18 subjective -- of testimony about what interaction  
19 occurred with SHPO and what did not occur. My question  
20 is has been fundamentally, who is it, is it the federal  
21 government, the state government, the local government?  
22 Who has jurisdiction over this site? Who has the power  
23 to say it can be removed from the Register of Historic  
24 Places or it can't be? Who has the final say? And what  
25 was represented to us previously is that there were

1 informal discussions with SHPO and there were no issues,  
2 that they questioned about the wall. And in speaking of  
3 walls, when you --

4 CHAIRMAN KLEMENS: Wait a second. Wait a  
5 second. Let him answer the first question. I'm losing  
6 the thread here.

7 MR. McCOY: Yeah, I was, too. But in terms of  
8 jurisdiction, I guess you're saying what can be removed  
9 from the National Register. I think you're  
10 misunderstanding that that property's in the National  
11 Register cannot be built on. In fact, if a private owner  
12 owned that piece of property, they could do whatever they  
13 want on it with no review by SHPO. What kicks in in the  
14 SHPO review is the federal and/or state funding. That's  
15 when SHPO has to get involved.

16 MR. GRICKIS: Well, I'm not sure I accept that  
17 answer because this is on the --

18 CHAIRMAN KLEMENS: That's his answer, Attorney  
19 Grickis. That is his answer. Whether you accept it or  
20 not.

21 MR. GRICKIS: I'm not convinced that's the  
22 correct answer, Mr. Chairman.

23 CHAIRMAN KLEMENS: Okay. That's your -- We  
24 take note of that.

25 MR. GRICKIS: Okay, I just think the Commission



1 needs to know who has jurisdiction, who gets to make the  
2 decisions. Is it national, is it state, is it local, a  
3 combination of both. And make sure that all the boxes  
4 have been checked and the answers have been received  
5 before the Commission makes a comprehensive decision.

6           Okay, my next issue is safety. You may  
7 remember, Mr. Chairman, and I thank you for your  
8 thoughtful comment on the prior application because you,  
9 yourself, were quite concerned about safety issues and  
10 traffic and the multiplicity of trucks traveling rapidly  
11 down Route 44 and the possibility -- and we talked about  
12 the crosswalk next to the post office and the danger,  
13 including myself that I personally experienced, getting  
14 across that crosswalk safely. And in this go round of  
15 the application, safety hasn't appeared to anybody. No  
16 one's talked about safety. It seems to have been an  
17 evanescent issue that is now no longer of concern to  
18 anyone. Well, it's still a concern to me. It's still a  
19 concern to my client. The pabulum offered by the traffic  
20 consultant, I've challenged it previously. I invited the  
21 Commission many times to seek it's own consultant, an  
22 independent consultant to conduct a traffic study. To  
23 date, the Commission has not taken up my suggestion. I  
24 think it needs to before it makes a decision. Safety, to  
25 me, is an issue that's been overlooked in this whole

1 second round of this application. And to me, your job  
2 is, in part, to protect public safety. And that  
3 attention needs -- that issue needs more attention before  
4 this permit could be issued.

5 CHAIRMAN KLEMENS: All the information from the  
6 previous application was carried forward to this  
7 concerning the traffic. And the safety report. I think  
8 we -- again, I think you're pre-judging what this  
9 Commission is going to look at when we deliberate. We  
10 have a laundry list which includes that. All of that is  
11 going to be in our deliberations.

12 MR. GRICKIS: Okay, Mr. Chairman. I thank you  
13 and I believe you are certainly a man of your word and  
14 you will do what you say.

15 CHAIRMAN KLEMENS: Thank you, Attorney Grickis.

16 MR. GRICKIS: My next issue is the fire lane  
17 issue. I know there's a letter from the fire marshal.  
18 My point is that the fire marshal isn't going to fight  
19 the fire. The fire chief is with his people. As long as  
20 the fire chief has looked at the proposed fire lanes that  
21 the applicant has presented and the fire chief concurs  
22 with the fire marshal, that there are no issues about  
23 truck turn-arounds or accessibility or unique equipment  
24 for the firemen, then certainly I will not object to  
25 their conclusions if they agree the design is appropriate

1 as to the --

2 CHAIRMAN KLEMENS: I believe we had the deputy  
3 chief testify; but not about that.

4 MR. GRICKIS: One further issue that the  
5 Commission can explore.

6 CHAIRMAN KLEMENS: Okay.

7 MR. GRICKIS: One final point in terms of the  
8 record, and perhaps you have an answer that I don't know  
9 about. I was surprised that while this recording of  
10 this -- video recording is being maintained of these  
11 public hearings, nevertheless what constitutes the record  
12 is a set of minutes that the Commission reviews and edits  
13 as it deems appropriate which, in my case, you could be  
14 editing what I'm saying right now and it might -- I might  
15 not necessarily agree with how it's edited. So if you  
16 could just tell me why a transcript isn't maintained of  
17 this hearing instead of in favor of minutes?

18 CHAIRMAN KLEMENS: Minutes we do are quite a  
19 summary. All this detail is on the recording. If you  
20 don't feel that's an adequate record?

21 MR. GRICKIS: There's no transcript. That's  
22 what surprises me. It seems like for an issue of this  
23 importance there ought to be a transcript. Perhaps  
24 Attorney Andres could answer that question.

25 MR. ANDRES: Certainly. Yes. The Commission

1 does not do transcripts of public hearings unless there's  
2 an appeal. It's very expensive and it's costly. I don't  
3 know of any Commission that does.

4 MR. GRICKIS: When you say --

5 MR. ANDRES: -- don't keep transcripts as a  
6 matter of form --

7 (People spoke at the same time.)

8 MR. GRICKIS: When you say unless there's an  
9 appeal. Well, there's never an appeal until after a  
10 decision's been reached.

11 MR. ANDRES: That's correct. That's --

12 MR. GRICKIS: There's never a transcript.

13 MR. ANDRES: That's correct. I don't know of  
14 any Commission that spends the money for court reporters  
15 to do transcriptions of meetings or hearings unless there  
16 is an appeal. That said, there is a video recording  
17 which is great. So, I mean, that -- and that's required  
18 by the Executive Order and that's -- you know, you can  
19 play it back and I think that is certainly a competent  
20 record of what was actually said.

21 MR. GRICKIS: Okay, thank you, Attorney Andres.

22 My final comment, Mr. Chairman, as you know,  
23 there's a tremendous political up-- groundswell support  
24 for affordable housing. It's notorious. We all know  
25 that. And certainly my client and I agree that

1 affordable housing is critical. We all need it for all  
2 the reasons that have been mentioned.

3           But what -- the support for affordable housing  
4 in connection with this particular site as legitimate and  
5 good faith as the intentions have been expressed, it's  
6 simply the wrong site to put this amount of emphasis on  
7 affordable housing project which does put into play the  
8 legitimate concerns of area businesses. Issues that have  
9 been raised are not specious, they are sincere. They are  
10 truly felt intentions. It's not someone who's just  
11 pushing a [Unintelligible] item. It's genuine. And I  
12 did think that there are better sites. Let the political  
13 pressure sit on one side. You still are charged with  
14 making intelligent, comprehensive, thought-out decisions,  
15 to take into play all of the issues that have been put on  
16 the table; and after that, you deliberate and you reach  
17 the best decision you are able to do.

18           And I just think that there's so much political  
19 pressure on moving forward with this particular site  
20 because it's just an ineluctable conclusion that it has  
21 to happen now on this particular site. And I think  
22 that's misguided.

23           With that, I conclude my comments and thank you  
24 very much for your consideration and your thoughtfulness.

25           CHAIRMAN KLEMENS: Thank you, Attorney Grickis.

1           Who do we have next wishing to be heard? I see  
2 one hand raised. Abby? Mr. Stucke. I think that's --

3           MR. STUCKE: Yes, it is. Thank you. And I  
4 have a question that I would like to ask Mr. McCoy  
5 through the Chair and it's this: Is the Salisbury  
6 Housing Committee had already sought funding from the  
7 Connecticut Department of Housing to explore the  
8 viability of affordable housing in Bicentennial Park. In  
9 the application for the pre-development loan from the  
10 State, the housing committee was specifically asked to  
11 describe the existing condition of the proposed building  
12 site, including its, quote, existing site use, unquote.

13           So, the committee did not disclose that Holley  
14 Block is one of two parks in the historic district and is  
15 currently being used for dedicated political (sic)  
16 parking instead the housing committee misrepresenting the  
17 land as currently as a vacant site and a vacant lot. So,  
18 that goes beyond -- so, Mr. McCoy, in your  
19 representation, you didn't explain why it was described  
20 as a vacant site when it clearly wasn't. I can  
21 understand maybe why not putting it in as a. --

22           CHAIRMAN KLEMENS: Mr. Stucke, are you making a  
23 statement or are you asking a question?

24           MR. STUCKE: I'm asking a question.

25           CHAIRMAN KLEMENS: Please, let's get to it.

1           MR. STUCKE: Yes. The question is why was it  
2 represented as a vacant site when it clearly wasn't a  
3 vacant site? Thank you.

4           CHAIRMAN KLEMENS: Through the Chair, Mr.  
5 McCoy, do your best to answer that. I think you already  
6 did.

7           MR. McCOY: Yeah. I can't answer that because  
8 I didn't have involvement in filing that application.

9           CHAIRMAN KLEMENS: Excuse me?

10          MR. McCOY: I can't answer that because I had  
11 no involvement in filing that application.

12          CHAIRMAN KLEMENS: Okay. Thank you Mr. McCoy.  
13 Let's move to the next public comment. George  
14 Massey is next.

15          MR. MASSEY: Thanks. I'm here. So --

16          CHAIRMAN KLEMENS: Please get closer to your  
17 microphone.

18          MR. MASSEY: Okay. Is this better?

19          CHAIRMAN KLEMENS: Yep.

20          Mr. MASSEY: Okay. Just a couple comments. On  
21 the wall, I think that has already been fallen down, put  
22 back together, put back together, put back together  
23 again. So, I think the extreme sensitivity about moving  
24 those stones is a bit overblown. It's particularly a  
25 matter of curiosity that the Holley building so reviled,

1     apparently, by the champions of Federal architecture and  
2     the demolition of the Holley building seems to have been  
3     cheered; and now a wall built from the rubble is somehow  
4     sacred and must be preserved at all costs. That's  
5     curious to me.

6             Then I would like to make a comment on parking.  
7     I think the rules are clear that Planning & Zoning may  
8     allow a -- approve a permit when people can't provide  
9     onsite parking in one of the older buildings. And P&Z  
10    can do this if they rule that there's sufficient public  
11    or joint parking in the area and they can forgive the  
12    Applicant being made to demonstrate it.

13            It's in -- What is it -- it's in 703-8 and it's  
14    said the Commission may approve fewer than the number of  
15    required parking spaces as provided in 703-9 when it  
16    determines the park needs of the proposed use can, in  
17    part, be served by proximate parking and parking spaces  
18    that are jointly used. When Attorney Capecelatro put his  
19    little post-it with a car in the parking lot, that's a  
20    demonstration that there is adjacent public parking, by  
21    no means is claiming any particular space. In fact, the  
22    zoning rules are clear that you don't get to claim any  
23    kind of space unless it's on the deed.

24            So, I think the fact that there will continue  
25    to be adjacent public parking means that none of these



1 uses will become any less conforming. Thank you.

2 CHAIRMAN KLEMENS: Thank you, Mr. Massey.

3 Next is this Barbara Douglas?

4 MS. DOUGLAS: Abby, can you hear me?

5 MS. CONROY: Yes, we can hear you.

6 MS. DOUGLAS: Thank you. Thank you

7 Mr. Chairman. Forgive me it's past my bed time so I will  
8 do my best. Some new things came on that I want to talk  
9 about hearing what was said tonight.

10 I would like to address the parking issue and  
11 perhaps a little bit differently than has been done  
12 before. I did try to research it by looking at the  
13 Institution of Transportation Engineer's public  
14 indications of trip generator and parking generator; and  
15 from that I see that it's not just a matter of counting  
16 spaces in the area. If someone could bring up, please,  
17 that picture of the site with the -- that we had just a  
18 minute ago.

19 CHAIRMAN KLEMENS: I assume this is Barbara  
20 Douglas who is talking.

21 MS. DOUGLAS: This is Barbara Douglas, yes.

22 CHAIRMAN KLEMENS: For the record.

23 MS. DOUGLAS: One thing you have to remember is  
24 that there is a slope on Holley Street as well as a slope  
25 on Main Street with the road curving with -- I'm sorry,

1 it's Millerton Road going to Main Street curving to the  
2 left. And that is very important.

3 We talk about the commercial retail and  
4 professional office activity in Lakeville is down, in a  
5 hope that this will be regenerated. So, I would like to  
6 see P&Z requesting from someone a study of what our space  
7 needs are with regard to parking in a recovered economy.  
8 And then in light of the Institute of Engineers that you  
9 recognize that not all parking spaces are equal. There  
10 is a hierarchy of spaces.

11 That people will not -- either people servicing  
12 the area or patrons will not go to a site, a space  
13 because of distance, safety such as incline and ice and  
14 convenience; and also the propensity to be more  
15 convenient and up in air. So, one would say that the  
16 Holley residence would prefer to be above ground than  
17 below ground. And so, I think that a study of parking  
18 spaces on a -- just to recap on a recovery basis and also  
19 a hierarchy of spaces is important to be considered.

20 With regard to safety, I have probably -- my  
21 husband and I have probably written over 100 letters to  
22 the Selectman, the State Troopers and to the State  
23 combined regarding our concerns for safety on Main  
24 Street. We're here at the corner of Bissell and 315 Main  
25 when we lived earlier at the [Unintelligible] it never

1 occurred to us that there was a problem. There's high  
2 speed. We have had, in addition to all the cars that  
3 have hit the fence of our neighbor down the block, we  
4 have had about 6 light poles come down since we've been  
5 back. And we have had cars that have traversed over the  
6 sidewalk. So, the sidewalks are not safe.

7 We have written about our concern that you're  
8 probably more dangerous in a crosswalk than you are  
9 crossing like a dog just by eyeing the street. That  
10 there seems to be a game of chicken. And lack of giving  
11 the pedestrian the right of way on the crosswalk. We  
12 were particularly concerned about the crosswalk up by  
13 Holley Block because of the speed of the traffic coming  
14 out of Millerton, the speed of the traffic coming around  
15 the bend, the lack of line of sight and the general  
16 disregard of people in the crosswalk.

17 Also, with regard to safety, I provided the  
18 Planning & Zoning with a picture that I took from the  
19 corner of Holley and Main Street with a very tiny -- what  
20 was it, one and a half foot high sign for Lakeville  
21 Interiors were actually blocked a car -- a truck coming  
22 from Millerton into Salisbury. And so, when you talk  
23 about using the front of the building for public access  
24 and add to that that the residents will park there as  
25 well, that you are increasing the danger of for

1 pedestrians and for vehicular traffic. So, that safety  
2 remains a huge concern.

3           We talk about -- you talked about bias and the  
4 fact that the Commission will be voting without bias.  
5 And I believe that. But there are two things that pull  
6 at your heart strings: Number 1 is the need for housing  
7 for our young people annual the people servicing our  
8 community. We want people to be firemen, we want nurses,  
9 we want teachers, etc. But one thing I think we need to  
10 understand and this comes from my eight years on the  
11 Salisbury Housing Committee, is that there are very few  
12 funding arrangements that will allow us to get priority  
13 to our own residents, to those related to the community  
14 either by relations or by working. And so, this question  
15 could be to Salisbury housing as to whether or not they  
16 will be allowed to give any preference whatsoever to  
17 those in their community that we may think of as our  
18 family and friends.

19           Also, there was a question on whether or not  
20 earlier in one of the letters would be as a results  
21 housing committee be viable. And it is right to say that  
22 when I put in my housing application for the north end of  
23 Salisbury, nobody said Barbara can you afford this. Only  
24 my mother said that. And I think that it fair that we  
25 don't ask that question. However, my own home at 315

1 Main tells you that no matter how loving a not for profit  
2 and how useful it is in the community, it runs into  
3 financial difficulties. And I have purchased my home  
4 from such entities. And therefore, one needs to believe  
5 that the fact that if the housing committee were to  
6 reduce the size of the project, it would probably not be  
7 attractive for State funding who has a much more -- who  
8 has a very competitive approach towards giving their  
9 grants.

10 And therefore, there is the legitimate concern  
11 that by voting against this project, one could be  
12 endangering the project, obviously, and also perhaps in  
13 some way endangering the committee. And one needs to  
14 believe that the Planning and Zoning Commission will not  
15 factor those worries into their decision. Thank you.

16 CHAIRMAN KLEMENS: Thank you, Barbara.

17 The next one is David Valcin.

18 MR. VALCIN: Yes, hello, Mike, how are you?  
19 It's David Valcin. I am currently chair of the Board of  
20 Education for Salisbury Central School. And I first want  
21 to just thank all the Commissioners for their time, their  
22 thoughtfulness and their thoroughness in this process.  
23 And I think that everyone has faith in your judgment,  
24 ultimately.

25 I kind of want to beat a drum that's been

1 beaten a little bit before, but -- and is well worn. We  
2 employ a number of teachers at our K through 8 elementary  
3 and middle school. Many of them live a little further  
4 afield. Some of them are local residents. Many of them  
5 are parents of children within the school, itself, and  
6 part of the community as it is.

7           What we are finding is that as older teachers  
8 retire and younger teachers come in and we are sort of in  
9 the process of that, it's very, very difficult to have  
10 those newer teachers actually be part of our community.  
11 And that goes with other paraprofessionals, that goes  
12 with our custodial staff, etc., etc. We actually go out  
13 of our way to allow employees of any stripe to have their  
14 her children attend our elementary and middle school so  
15 that they can be part of the community, so that it's  
16 easier on the parents to be employed and to still  
17 maintain a relationship with their kids.

18           I think that having affordable housing in this  
19 town is essential. I would echo what the management of  
20 LaBonne's, Bob, had to say. I would echo what he had to  
21 say that in order to create a vital pool of employees, it  
22 helps to have them reside locally. And to be invested in  
23 the community.

24           The second thing I just wanted to talk about is  
25 as a parent. I'm the parent of three young boys ranging

1 right now from 11 to 17. We have been fortunate to be  
2 residents up here for the last, almost decade. We have  
3 made fine use of the town growth every summer, without  
4 fail. With exception, of course, of last year. So we do  
5 spend a significant amount of time trekking back and  
6 forth between Petco to On The Run to The Grove, up the  
7 hill to Deano's and back and forth and back and forth.  
8 We have crossed that street I don't know how many times;  
9 and, of course, you know, there was a certain point where  
10 the kids crossed it themselves.

11 I wouldn't say that it is without peril, but  
12 having been born and raised in New York City, I would  
13 also say that it's not a death trap by any stretch as it  
14 exists now. And I don't imagine that having some extra  
15 residents in the area would blow that out of proportion.

16 I just don't -- I know that we need a lot of  
17 affordable housing to get us up to snuff. To get us up  
18 to the standard that we would like to maintain. I know  
19 that this doesn't take care of all of that in one fell  
20 swoop and I know there are other possibilities that we  
21 have both explored and contemplated. But this is the one  
22 that's before us now. And I think that I -- as somebody  
23 who walks those streets on a regular basis, I would  
24 welcome the addition of some neighbors.

25 And that's it. I appreciate everybody's time.

1 I know everybody's just trying to get the right thing  
2 done here. Thank you.

3 CHAIRMAN KLEMENS: Thank you.

4 Is there any other member of the public who  
5 wishes to speak?

6 MS. CONROY: Mr. Chairman, we do have, I see  
7 some people put hands up. We also do have at least one  
8 person who is a phone call in listener. So, just in case  
9 they didn't get any directions before, if you are the one  
10 calling in on the phone and you want to raise your hand,  
11 you can dial star 9 and then, if prompted, you would dial  
12 star 6 to mute or unmute. But we have some hands up.  
13 So, we will go with the hands up.

14 CHAIRMAN KLEMENS: Right. Let's continue  
15 with --

16 MS. CONROY: Van Deusen perhaps?

17 CHAIRMAN KLEMENS: Van Deusen, yes.

18 MR. VAN DEUSEN: Can you hear me?

19 CHAIRMAN KLEMENS: Yes, we do.

20 MR. VAN DEUSEN: Okay, fine.

21 As you know, Deano's Pizza is just a few steps  
22 from where the people in the proposed building will be  
23 stepping out on the sidewalk along Route 44. Presently,  
24 there is public parking and [Unintelligible] proposed  
25 building all the way up to Deano's and Deano's is quite



1 busy. There's also an art gallery there. When they have  
2 showings, there's quite a bit of traffic there.

3 I was very sorry to hear that the box trucks,  
4 UPS and so forth would be stopping right in front of the  
5 building to make deliveries. And if there's parking  
6 there, they are going to be out in 44. That's very  
7 dangerous. This building is built -- would be built on a  
8 curve, a downward curve. As we all know people go quite  
9 fast down there.

10 There's a pole at the intersection that has  
11 been run into many times in the past. I'm very upset  
12 that school children or young children will come down  
13 that elevator, step right out on the sidewalk and  
14 possibly go out between parked cars where traffic on 44  
15 going down the hill won't see them. So, you have a very  
16 dangerous situation there. And it's especially dangerous  
17 if you're going to have a box truck parked outside of the  
18 cars parked there, actually park blocking Route 44.

19 Secondly, your traffic expert that you had said  
20 he had gone back to the records and there were no  
21 accidents of any consequence in that area. Isn't that  
22 true? Well, that's what he said. Well, I spoke to a  
23 woman who was parked between Deano's and the proposed  
24 site of the building, she was parked there, she was  
25 loading her car, she went back for another load, this is

1 on a snowy day, and as she was coming out, a car or a  
2 truck hit her car that was parked, totaled it, pushed it  
3 into a car that was in front of her car and that was also  
4 badly damaged. This is on a snowy day. So, accidents do  
5 happen and they happen right in that particular area.

6 So these children, parents, whoever is going to  
7 be using that, will be in peril at various times,  
8 especially on slippery days. But I can't believe you're  
9 going to have box trucks and UPS -- you have quite a  
10 number of people living in that building, so I'm sure  
11 there will be a daily delivery by one of the box trucks.

12 So what can you do about that? You can't build  
13 this building because it puts a lot of people in peril.  
14 That's what I wanted to say. Please. So, if you have a  
15 grandchild living in that building or a son and daughter,  
16 they will be at peril someday if you let this building be  
17 built. That the all I have to say. Thank you.

18 CHAIRMAN KLEMENS: Thank you, Mr. Van Deusen.

19 The next one is Bruce palmer, please.

20 MR. PALMER: Thanks, Michael. It just a  
21 question about the time capsule. I don't know if anybody  
22 has this answer, but I believe that Bicentennial Park  
23 does have a time capsule that was buried? I'm wondering  
24 if there are plans for that and what they are? Thank  
25 you.

1           CHAIRMAN KLEMENS: Thank you. I actually have  
2 a question you submitted. You submitted something in the  
3 record about that. Is the capsule in the walls; isn't  
4 it?

5           MR. PALMER: I truthfully don't know if the  
6 capsule is in the wall or in the ground.

7           CHAIRMAN KLEMENS: I think that's something we  
8 can task the Applicant in their response: Telling us  
9 where the capsule is.

10          MR. PALMER: I appreciate it.

11          CHAIRMAN KLEMENS: Thank you, Bruce.

12          Barbara Douglas's hand is up. I don't think  
13 she means it to be up. Does she?

14          Any other members of the --

15          MS. DOUGLAS: Barbara's here.

16          CHAIRMAN KLEMENS: Oh, but I mean let's first  
17 get through the first before we have a second. Is it  
18 quick, Barbara?

19          Susan Galluzzo?

20          MS. DOUGLAS: May I suggest that you walk the  
21 campus, what I call campus, of Salisbury Bank & Trust and  
22 have them do a light show for you lights on, lights off.  
23 All that you mentioned are exemplified on that property and  
24 you are welcome to come to my property to see how it is  
25 interpreted at a residential property.

1           And just minor, remember there may be no  
2 preference in allowing our local people to go into our  
3 new affordable housing. It may be a new issue of looking  
4 how to address worker housing and getting the funding  
5 that permits that. Thank you.

6           CHAIRMAN KLEMENS: Thank you, Barbara.

7           I think Susan Galluzzo is next.

8           MS. GALLUZZO: I'm --

9           CHAIRMAN KLEMENS: She's not there? Okay.

10          MS. GALLUZZO: I think it was Mr. Petitto and I  
11 know you're not supposed to ask a question you don't know  
12 the answer to, was it Mr. Petitto that said something  
13 about the elevation in the back where the trucks come  
14 through is about the same height as a McDonalds.  
15 Mr. Petitto is that you?

16          MR. PETITTO: Yes.

17          MS. GALLUZZO: Well, how high is McDonald's  
18 drive through?

19          MR. PETITTO: Typical drive throughs or 7-6 to  
20 8 feet.

21          MS. GALLUZZO: Said typically. But you said  
22 McDonald's. How high is McDonald's.

23          MR. PETITTO: Typically.

24          MS. GALLUZZO: You don't know, is the answer;  
25 is that right?

1 MR. PETITTO: Yeah, I'll say I don't know.

2 MS. GALLUZZO: That's all.

3 CHAIRMAN KLEMENS: Thank you, Susan.

4 Okay, no more hands.

5 Okay, I'm going to poll the Commission. Is the  
6 Commission ready to close this hearing? Mr. Riva? Mr.  
7 Riva?

8 MR. RIVA: Yes, Michael. Yeah, I would  
9 probably say yes, that we're ready to --

10 CHAIRMAN KLEMENS: Okay. Thank you. Ms.  
11 Shyer?

12 MS. SHYER: No, I have a couple of questions of  
13 the Applicant that haven't yet been addressed.

14 MS. ALLEE: Aren't we suppose to have a  
15 rebuttal.

16 CHAIRMAN KLEMENS: That is correct. The  
17 question is: Are we going to close the hearing tonight?  
18 If we are going to close the hearing tonight there's  
19 going to be rebuttal from both sides.

20 So, Cathy, if you have some questions, why  
21 don't you ask them now.

22 MS. SHYER: Thank you.

23 And firstly, just a shout out to our Land Use  
24 Administrator for putting all this new material on and  
25 making it very clear on the website what is new material.

1           And I came across a site plan that was done for  
2 Peter Oliver and I couldn't see in the corner of it who  
3 had prepared it, but it seemed to have been done to A2  
4 standard. Can anybody answer that for me? It seemed to  
5 come in in this week's submission from the applicant.  
6 Does anyone know what I'm talking about.

7           CHAIRMAN KLEMENS: Yes, I know what you're  
8 talking about. It was a submission that -- an A2 survey  
9 done [Unintelligible], yes.

10          MS. SHYER: Yes, But I couldn't see who had  
11 done it.

12          CHAIRMAN KLEMENS: What's the relevance to  
13 that?

14          MS. SHYER: I was just interested in who had  
15 prepared it. But it also raised a question that I had  
16 about the right of way that came up several times  
17 tonight. RJS, isn't that -- is that right of way  
18 actually parallel to Millerton Road and then swings up  
19 perpendicular to Millerton Road? Is that correct, so  
20 that it's on the northwest side of the proposed building?  
21 It isn't -- I'm asking for clarification. Is this right  
22 of way that RJS have, does it continue across the south  
23 side of the proposed building or is it nowhere on that  
24 land?

25          MR. SMITH: Commissioner Shyer, Jon, I don't

1 know if that's for you to answer. But it's my  
2 understanding that HE Coal prepared the survey.

3 MS. SHYER: Thank you.

4 MR. CASAGRANDE: Mr. Chairman, I think I can  
5 answer the second question.

6 MS. SHYER: Thank you.

7 MR. CASAGRANDE: If I may.

8 MR. SMITH: I think we are trying to respond to  
9 it if we can, Jon?

10 MR. TUNSKY: Yeah, I believe the right of way  
11 does not continue to the south side of the property.  
12 It's only along the RJS Holding property.

13 MS. SHYER: Thank you.

14 CHAIRMAN KLEMENS: If you disagree with that  
15 Attorney Casagrande, you can do that on rebuttal.

16 MR. CASAGRANDE: Thank you.

17 MS. SHYER: And I have another question of the  
18 applicant. Assuming everybody got green lights and this  
19 project was a go, how long it -- is there any estimate  
20 how long it will take to build?

21 MS. AYER: I can try to respond to that. This  
22 is Jocelyn from the Salisbury Housing Committee. Again,  
23 you're talking about from the moment we start  
24 construction?

25 MS. SHYER: I'm thinking in terms of the amount

1 of disruption to the commercial businesses that are  
2 adjacent. That's who I'm thinking about with my  
3 question, yeah.

4 MS. AYER: Rocco, what is your opinion about  
5 how long a build like this takes to construct, typically?

6 MR. PETITTO: I would say typically a build  
7 this size is going to take somewhere between 12 and 18  
8 months depending on the contractor who builds it.

9 CHAIRMAN KLEMENS: Thank you.

10 Any other questions, Cathy?

11 MS. SHYER: No, that's all of mine. Thank you.

12 CHAIRMAN KLEMENS: After this, will you be  
13 ready to close the hearing?

14 MS. SHYER: I'll keep looking at my notes.  
15 Please go on and I'll answer that.

16 CHAIRMAN KLEMENS: Dr. Schiffer, are you ready  
17 to close the hearing?

18 DR. SCHIFFER: Yes, I am Mr. --  
19 Dr. Commissioner.

20 CHAIRMAN KLEMENS: Thank you.

21 Mr. Higgins, are you ready to close the  
22 hearing?

23 MR. HIGGINS: Yes, I mean, we've gotten a lot  
24 of good information and I think we're at a stage where a  
25 lot of the comments and a lot of the additional



1 information is a bit repetitive. It's important, but  
2 it's nothing that's new. So, I think yes, I'm ready.

3 CHAIRMAN KLEMENS: Ms. Allee? Debra? Unmute.  
4 Unmute. Debra, you have to unmute.

5 MS. ALLEE: Sorry, my mouse wasn't working. I  
6 apologize. Yes, I'm ready to close the hearing.  
7 Sorry.

8 CHAIRMAN KLEMENS: Thank you. Marty?

9 MR. WHALEN: Yeah, I agree. That's -- I've  
10 heard enough.

11 CHAIRMAN KLEMENS: Are there any other  
12 commissioners that I'm not seeing on the screen? It's  
13 very hard for me to -- okay.

14 All right. There seem to be no more hands  
15 raised. So there will be nobody to close the hearing,  
16 Cathy --

17 MS. SHYER: Chairman Klemens, I do have one  
18 more question of the Applicant.

19 CHAIRMAN KLEMENS: Please ask it.

20 MS. SHYER: Because this is very different  
21 project then what you are currently managing at  
22 [Unintelligible] or Faith Village -- Faith House, if  
23 residents nearby had a problem with leaves on the  
24 sidewalk being slippery, too much double parking on the  
25 road and sight lines, who would they address this to?

1 Neighbors, I mean.

2 MS. AYER: Chairman, I can respond to that if  
3 that's okay.

4 CHAIRMAN KLEMENS: Please.

5 MS. AYER: So, we do have a property manager of  
6 the site and she will have an office on site and they  
7 would be welcome to call her with any concerns about the  
8 way that the property is managed or if there was leaves  
9 or anything else that needed to be dealt with.

10 MS. SHYER: Thank you. And that would be a  
11 full-time -- sort of office hours 9 to 5 or 8 to 4 or  
12 something like that they would be available?

13 MS. AYER: Typically, we share a property  
14 manager between our sites because we don't have that many  
15 units. So, she would have hours at that site and again  
16 it would be available by phone at one of the sites in  
17 town so she would easily be able to come over if there  
18 was an issue.

19 MS. SHYER: Thank you. I'm finished,  
20 Dr. Klemens. Thanks, Michael.

21 CHAIRMAN KLEMENS: I have one -- I actually  
22 have one sort of nested set of questions. I remain sort  
23 of concerned by the situation of the trucks parking on  
24 the road. We've heard a lot about that. I was not  
25 pleased that we really don't know -- Ms. Galluzzo asked

1 night and then we don't know. So, I think the Applicant  
2 needs to really think this through in terms of parking  
3 and in terms of delivery. I think we've heard all kind  
4 of things. And I really think in your closing you need  
5 to get your act together on this. Because there's a lot  
6 of pieces out there concerning Commissioners, concerning  
7 neighbors, concerning Intervenor. I mean the idea of box  
8 trucks not being able to get in, maybe get in, maybe  
9 sitting on the roadway, maybe double parked, maybe taking  
10 up parking spots. This is an Achilles heel in your plan  
11 and I would like you to come up in your closing statement  
12 to give us some clarity. Because I've heard confusion on  
13 how this is going to work.

14 That's just my charge to the -- I don't know if  
15 you want to respond now or if you want to do it on  
16 rebuttal.

17 MR. SMITH: Mr. Chairman, Chris Smith for the  
18 record. We are prepared to do our rebuttal when you give  
19 us the green light.

20 CHAIRMAN KLEMENS: Okay. And you will address  
21 this issue brought up in your rebuttal?

22 MR. SMITH: Mr. Petitto can certainly address  
23 those and I think there was a little confusion in the  
24 height. There was a question concerning the height of a  
25 McDonald's drive-through.

1           CHAIRMAN KLEMENS: Right, I understand.

2           MR. SMITH: He didn't know what the height was,  
3 but that our site -- But anyway. But we're ready when  
4 you give us the okay.

5           CHAIRMAN KLEMENS: No more public wishes to  
6 speak. Let's go to closing statements. Attorney  
7 Casagrande.

8           MR. CASAGRANDE: Thank you, Mr. Chairman. I'll  
9 try to be very brief. I would like to just thank the  
10 Commission on behalf of the Intervenors for the -- your  
11 time and your patience and your consideration. These are  
12 vexing issues, to say the least, and it's much  
13 appreciated.

14           It's our position, members of the Commission,  
15 that approval of this application would be an unwarranted  
16 and unnecessary tragedy for Salisbury. Why is it a  
17 tragedy? Because, very simply, it involves the  
18 destruction of Bicentennial Park, which you've heard  
19 Ms. Carley's testimony, uncontradicted by Mr. McCoy, that  
20 Bicentennial Park is a critical component of this  
21 historic district and is a contributing source to it.

22           The applicant's response, their expert's  
23 response to that simple fact that it's going to destroy  
24 Bicentennial Park -- and you remember I asked him on  
25 cross-examination, are you saying to the Commission that

1 the destruction of Bicentennial Park will not  
2 unreasonably impair the public trust in this historic  
3 resource, and he said yes. Now, the only words I can  
4 find to characterize that response is it's Orwellian.  
5 It's Orwellian. It's double speak. It's simply not  
6 credible. It's almost an insult to your intelligence to  
7 suggest the destruction of this vital historical resource  
8 is not going to impair the historical resource.

9           Why is it unnecessary? Because we have  
10 demonstrated, through Mr. Miller, that there are feasible  
11 improvement alternatives available to the town and other  
12 sites as identified in the Affordable Housing Plan. The  
13 denial of this application, Mr. Chairman, would not  
14 impede the town's goal of more affordable housing. It  
15 would simply require the town, as Mr. Miller testified,  
16 to look to other sites that would be more compatible,  
17 will not raise issues of the destruction of historical  
18 resources and they could accommodate these 12 units,  
19 especially on the Pope property, very nicely.

20           Why would approval of the application be  
21 unreasonable? Several reasons. First, as Mr. Virbickas  
22 testified, it doesn't comply with the regulation's  
23 technical requirements. I'll just focus on two of those  
24 aspects. As he pointed out, the Holley Street setback is  
25 not a consistent front yard setback. That's what Section

1 405.2 of the regulations require. If you have a  
2 consistent front yard setback, yes, you can move it  
3 closer to the street line. That's not what we have. And  
4 the suggestion from Mr. Tunsky that the proposed building  
5 setback and the south -- the building south of that which  
6 is 30 feet back and then out to the curb with the  
7 Lakeville Interiors, that that's not inconsistent, it's  
8 just not credible. We ask the Commission to look at the  
9 regulation and interpret it in the manner in which it was  
10 intended.

11           Second, as you pointed out tonight and last  
12 time, it's going to create a situation of unsafe access  
13 for delivery vehicles in the rear of the building. I  
14 won't belabor his testimony. But the applicant's  
15 solution, which is you'll probably hear from in a bit, is  
16 well, we'll just make all the deliveries come in on  
17 Millerton Road. You see the sign all the time, all  
18 deliveries in the rear. Well, that's not what this  
19 applicant wants to do. It wants to make all deliveries  
20 in the front.

21           How is that possibly safe on Millerton Road?  
22 And in response to Dr. Schiff's [Verbatim] question  
23 tonight, Mr. Tunsky said well we'll look into this  
24 whether we can do the -- a loading area on Millerton  
25 Road; but he admitted that DOT might not allow a loading

1 area on Millerton Road and Attorney Smith said, well, we  
2 can look into it. Well, it's too late for that. This is  
3 the close of the hearing. As you pointed out,  
4 Mr. Chairman, there's a lot of unanswered questions. And  
5 it's too late for them to say, well, we're going to take  
6 a look at this later.

7           And Attorney Smith also said you cannot  
8 condition approval on establishing a loading area -- on  
9 having DOT establishing a loading area or approve a  
10 loading area on Millerton. I agree with that because the  
11 Commission cannot impose a condition which is dependent  
12 on the approval of another agency unless that approval is  
13 reasonably probable from the record. There is no  
14 evidence on this record that they've even contacted DOT  
15 about that. And frankly, the notion that DOT would  
16 approve a loading area on this road is -- it's frankly  
17 preposterous.

18           And one other point was made I think by  
19 Mr. Grickis about your concerns, Mr. Chairman, about  
20 traffic safety and you said, well, those concerns were  
21 already in the previous record. I would just point out  
22 to the Commission that we asked the Commission to  
23 incorporate the record from the prior public hearing and  
24 that request was denied. So, I would reiterate that  
25 request that the transcript and the exhibits from the

1 prior hearing be incorporated. If I'm wrong on that --

2 CHAIRMAN KLEMENS: Who -- [Unintelligible].

3 MR. CASAGRANDE: I believe Abby Conroy  
4 indicated that would not be possible. But I would ask  
5 that the Commission do that. It's entirely common in  
6 these kind of applications, which are denied or approved,  
7 and then a new application is filed for a Commission to  
8 incorporate the prior public record. So we would ask  
9 that be incorporated.

10 But again, there is just too many unanswered  
11 questions about the safety of this building and the  
12 proposal to have delivery vehicles come in on the front  
13 in a loading zone is just not credible.

14 Second, why is it unreasonable. The  
15 application we believe does not comply with the  
16 compatibility and suitability of location requirements of  
17 the regulations. I won't belabor this point, we talked  
18 about the loss of parking spaces critical to the  
19 surrounding businesses. As I said before, put aside the  
20 legal issue of whether losing the Bicentennial Park will  
21 create or exacerbate non-conformities of these  
22 businesses. The facts are you have firsthand testimony  
23 of these business owners in affidavits testifying to  
24 their average daily use of this parking lot of 12 to 16  
25 spaces. And testifying that if those spaces are



1 drastically reduced or eliminated, it will jeopardize the  
2 viability of their businesses.

3           The applicant's traffic expert's response --  
4 and curiously, I saw in the applicant's submission for  
5 tonight that, well, the record shows over ten years  
6 there's only been three to five spaces used per day by  
7 the surrounding business. I don't see any testimony in  
8 the record to support that assertion. And again, -- and  
9 the suggestion, frankly, that each tenant of this  
10 building of the 12 units is only going to use one space.  
11 That just does not jive with the reality of real parking  
12 needs of families in this area of working couples.

13           So again, as I said in the first session, in  
14 the end who's testimony should you credit? An  
15 out-of-town consultant who obviously was acting in good  
16 faith, but knows nothing about the parking needs of  
17 downtown Salisbury or these businesses; or the business  
18 owners who say to you, plead to you, please don't do this  
19 because we need these spaces for the viability of our  
20 businesses.

21           We submit that the answer should be clear.

22           We ask the Commission to ask itself in your  
23 deliberations, why is it worth it to destroy Bicentennial  
24 Park? Why jeopardize these businesses? Especially when  
25 you have viable alternatives that the town could explore.

1 And especially when we've introduced evidence that show  
2 that the funding for this project received from CHFA was  
3 obtained based on misrepresentations about the very  
4 nature of the site.

5 So, in conclusion, members of the Commission,  
6 again thank you for your time. We believe if it wasn't  
7 clear before, it should be clear by now that my clients,  
8 the Intervenors, they don't oppose affordable housing  
9 anywhere in Salisbury.

10 VOICE: Right.

11 MR. CASAGRANDE: Suggestions to the contrary on  
12 and off this record are frankly they are outlandish and  
13 they are offensive to the integrity of my clients. Their  
14 need are real. They are not Nimbies. All they are  
15 saying is this is the wrong site. Other sites are  
16 available and should be pursued.

17 We ask the Commission to fairly consider our  
18 arguments on the merits. Please, please do not be swayed  
19 by the personal public attacks on my clients as elitists  
20 who don't want lower income people in town. You've seen  
21 the articles. Please. You know and I need not remind  
22 you that that kind of bias and pretuberative (ph.)  
23 attacks have no place in your deliberations.

24 We all should have the same goals here. We  
25 want to increase affordable housing in Salisbury. That

1 is a laudable public purpose. We all agree on that. But  
2 not at the expense of destroying a valuable historic  
3 resource of the town and of jeopardizing the viability of  
4 the businesses who depend on it for parking. And for  
5 these reasons, Mr. Chairman, members of the Commission,  
6 thank you for your time. We ask you to deny this  
7 application.

8 CHAIRMAN KLEMENS: Thank you, Attorney  
9 Casagrande.

10 Land Use Administrator would like a moment  
11 before we get to Attorney Smith.

12 MS. CONROY: Just, we did get an e-mail in  
13 while I was -- while we've been on this, that included  
14 some additional supplemental information from the  
15 Applicant. Just communications back and forth with DPH.  
16 They did include their DPH notification in the original  
17 packet. But they've submitted more -- some more  
18 supporting documentation for that that demonstrates that  
19 communication. So, I don't necessarily think you need me  
20 to read it for you line for line but it will be included  
21 and uploaded to the website as it was received prior to  
22 the close of the hearing.

23 CHAIRMAN KLEMENS: Did you want to say  
24 something about the --

25 MS. CONROY: As far as the record goes, we

1 actually had an e-mail discussion about this,  
2 Mr. Casagrande and I, that I had not been -- nobody's  
3 requested that I include the whole record. The -- it was  
4 my opinion that wasn't your intent because nobody had  
5 requested it. But again, I emphasize that it was my  
6 opinion and it was also my opinion at the time that the  
7 Intervenor did not have an intent to include that because  
8 they had re-submitted specific documentation from the  
9 prior hearing and not requested that the full record from  
10 the prior application be included. So --

11 MR. CASAGRANDE: May I just respond to that  
12 very quickly.

13 CHAIRMAN KLEMENS: Let me talk --

14 MR. CASAGRANDE: Sure.

15 CHAIRMAN KLEMENS: I mean, at this juncture can  
16 we bring forward traffic report and put them in the  
17 record?

18 MS. CONROY: The traffic reports are in.

19 CHAIRMAN KLEMENS: In the record?

20 MS. CONROY: Yeah.

21 MR. CASAGRANDE: I would just add to what  
22 Ms. Conroy said. There may be a little bit of  
23 misunderstanding. My position clearly said that we want  
24 the record of the prior hearing to be incorporated and  
25 that's when Ms. Conroy e-mailed me and said that would be

1 an issue and -- So the Intervenors have requested it.  
2 And we did submit other reports from the first hearing  
3 only because, you know, we understood that her position,  
4 presumably the Commission's, was that the entire record  
5 would not be incorporated. But I still think it's  
6 appropriate to incorporate the entire record.

7 MS. CONROY: I guess I miss that had when we  
8 had a specific dialogue you didn't ask me to include it,  
9 so I must have missed that.

10 MR. CASAGRANDE: That's okay.

11 MR. SMITH: Chris Smith, on that issue and I  
12 know our rebuttal time is what it is here. But --

13 CHAIRMAN KLEMENS: You have plenty of rebuilt  
14 time.

15 MR. SMITH: Thank you. I would respectfully  
16 submit to the Commission, but subject to your counsel  
17 weighing in, certainly I would respectfully submit  
18 that -- and only because the hearing may be closed  
19 tonight, that the record from the prior application not  
20 be included. I would have had no objection to it at the  
21 outset but to do that now as you're about to close the  
22 hearing would -- I don't think that would be appropriate  
23 just because of the -- you're about to close the hearing  
24 and then you are incorporating items that may not be in  
25 the record now that were in the record the first time. I

1 didn't participate the first time, so I have no idea -- I  
2 just don't know what was in there. I think, from a  
3 procedural standpoint, that it would not be appropriate  
4 to do that. And the Intervenor certainly -- as I said, I  
5 would have agreed with Attorney Casagrande, I wouldn't  
6 have had any problem with it. But it do it now I don't  
7 think would be appropriate.

8 CHAIRMAN KLEMENS: My concern --

9 MR. SMITH: [Unintelligible] before now.

10 CHAIRMAN KLEMENS: My concern, Attorney Smith,  
11 were the traffic reports were brought forward and they  
12 are in the record.

13 MR. SMITH: And I think we specifically  
14 requested that since we were using the same traffic  
15 reports when Mr. Balskus was --

16 CHAIRMAN KLEMENS: That was my -- I was  
17 concerned about. My concern has been resolved.

18 Mr. Smith, you remember -- it seemed like a  
19 lifetime ago -- I asked you when you do your rebuttal,  
20 are there onsite measures, other measures not involving  
21 an offsite development that can be taken to address the  
22 alleged impairment of historic resource. Should the  
23 Commission conclude that the Intervenor has met their  
24 burden. If they are, please be prepared to discuss them  
25 during your presentation which now is turning to you.

1 I would ask you one more thing.

2 MR. SMITH: Yes, sir.

3 CHAIRMAN KLEMENS: To have you opinion consider  
4 this: Why is there no consideration to having a loading  
5 area on Holley Street?

6 MR. SMITH: I'm sorry, Mr. Chairman, why is  
7 there no consideration?

8 CHAIRMAN KLEMENS: Why isn't that -- we've  
9 talked about we can't get the box trucks and the moving  
10 vans in the back. We're talking about delivering from  
11 the front of the building, which does create -- I can see  
12 problems there. What is to prevent using, certainly for  
13 deliveries and that, maybe not for moving, but for your  
14 standard deliveries, why can't they park on Holley  
15 Street.

16 MR. SMITH: I will let Mr. Petitto respond to  
17 that. He was going to be going first in the rebuttal.  
18 So, I presume that Rocco can incorporate that -- respond  
19 to that. And it was the Commission that raised that  
20 issue. Attorney Casagrande seemed to be indicating that  
21 we brought that up and that was our proposal; but I'll  
22 let Mr. Petitto address that. If you would like, we can  
23 start our rebuttal now with Rocco.

24 CHAIRMAN KLEMENS: Yes, let's start the  
25 rebuttal.

1 MR. SMITH: Thank you, Mr. Chairman.

2 MR. PETITTO: Thank you, Mr. Chairman. As we  
3 designed the building, the process was creating a public  
4 access to the building, not access the private part of  
5 the building where the residents would be. Creating a  
6 private access for the residents there that no one else  
7 would be able to get into.

8 So, if you look at the plan of the building,  
9 you can see that the front door is where all the public  
10 access is. Public rest rooms, there's community room,  
11 there's the office. There's also a mail room that's  
12 accessed off that lobby. So, that is the front door. In  
13 our discussions through design we discussed where  
14 vehicles may go and it was brought up that several  
15 businesses on Millerton Road have their deliveries  
16 delivered from Millerton Road. We also do, as you  
17 pointed out, have a pull off parking area on Holley  
18 Street. So, if -- I don't foresee that a UPS driver will  
19 be driving down Millerton Road, have to make a delivery  
20 to the building and decide it would be a good idea to  
21 double park there. I would assume that they would take  
22 the time to drive around the corner and park on Holley  
23 Street and walk around the building to the front door or  
24 they would have to park in the parking lot in the back,  
25 taking up a lane and a half, to unload there and then



1 walk around the building to deliver the packages. So,  
2 there's actually three access points where they can stop.

3 And in discussions with the design team and  
4 some people that are on the design team from the local  
5 area, the access from Millerton Road to the building  
6 didn't seem like an issue. And access for voluntary  
7 ambulance, there's 9-foot clearance under the building,  
8 so there's enough room for a typical ambulance. As I  
9 said before, the elevator is large enough for a gurney  
10 and emergency vehicles. [Verbatim].

11 If we can go to the next slide.

12 MR. SMITH: Excuse me, Rocco just to confirm  
13 that: The building does provide for a 9-foot clearance?  
14 I'm just reading what's there but just to confirm that.

15 MR. PETITTO: Yes, the building will have a  
16 9-foot clearance all the way into the drive lot.

17 MR. SMITH: Thank you.

18 MR. PETITTO: I think you pass this on to Kent  
19 McCoy now.

20 MR. SMITH: Hold on, I think there's -- I  
21 thought there was another slide with the fire. I think  
22 there was a slide --

23 MR. PETITTO: That's the previous one. Yep,  
24 that's the letter we have from the fire marshal from the  
25 town of Salisbury that he will be reviewing all plans and

1 confirming and life safety issues with our design which  
2 will include, you know, sprinklers and other measures as  
3 well as access to the outside of the building where  
4 emergency vehicles will be able to supply the building  
5 with any life safety equipment need.

6 MR. SMITH: Mr. Chairman, for the record, Chris  
7 Smith, one of the points that Mr. Balskus had asked me to  
8 point out to the Commission, because he is teaching a  
9 class that I think goes to 10 o'clock this evening and he  
10 apologizes for not being able to be here. But just to  
11 note that the fire marshal, who is the fire marshal --  
12 most towns that I go to it's the fire marshal that  
13 provides comments. There is a fire chief. I understand  
14 that. But the fire marshal opines that the site design,  
15 the building as designed is, quote, in compliance with  
16 current building and fire codes, end of quote. So, we  
17 spent a lot of time being concerned about a delivery  
18 truck, a UPS truck being able to get there, when your  
19 fire marshal in your town feels that access can be made  
20 to the building with fire trucks and whatnot.

21 So --

22 CHAIRMAN KLEMENS: I'm not going to sit and  
23 spar with you, Attorney Smith. But I think the number of  
24 UPS trucks will be much more frequent than the number of  
25 fire trucks.

1           MR. SMITH: Exactly, but the point being that  
2 there is the ability to access to drive in; and it keeps  
3 being brought up as an alleged safety concern when, in  
4 reality, it's not. And that's been the testimony from  
5 our experts on that. I know the Intervenor's counsel, in  
6 his summation, was making reference to it being a safety  
7 issue. And it simply is not.

8           CHAIRMAN KLEMENS: Point taken.

9           MR. SMITH: I agree with you, too. Definitely  
10 it would be different. But with your permission,  
11 Mr. Chairman, Mr. McCoy had prepared a response in his  
12 presentation for rebuttal relative to Ms. Carley's  
13 report.

14           MR. McCOY: Thanks. Kent McCoy here, QA+M  
15 Architecture. I think a lot of the issues that you see  
16 on the page here we've talked about already in our  
17 presentation and in our conversation. But one thing I  
18 would like to rebut right away was that Attorney  
19 Casagrande's statement that I referred to Bicentennial  
20 Park as a vital historical resource. What I was asked by  
21 Attorney Casagrande was, is it a contributing feature of  
22 the historic district. Those were two entirely different  
23 things. Because a contributing feature is the kind of  
24 technical terminology that a National Register  
25 application uses to identify features that get reviewed

1 by the SHPO. I agree that the park -- anything that goes  
2 on the park has to be reviewed by the SHPO if the project  
3 is Federally or State-funded. But I did not call it a  
4 vital historic resource. But it is a contributing  
5 feature because that's how it's listed in the  
6 application.

7           Moving on from that, though, you know, I  
8 have -- you'll see this slide and the next two I talk a  
9 lot about the size of the building and its bulk. But I  
10 think really the more salient point here is the second  
11 bullet point, Typology. And as Ms. Carley pointed out,  
12 the Federal style typology of the village is single  
13 family houses set back from the road with foundation,  
14 plantings and driveways and that sort of thing. That  
15 doesn't mean that there are no Federal-style buildings of  
16 the size that we're proposing on this site. So, I think  
17 there's a little disagreement there about what's  
18 appropriate for the district and what the donor's request  
19 for Federal-style building implies.

20           I think we have already cleared up the issue of  
21 concrete walks and steps. Yes, our walks are concrete as  
22 all concrete walks are -- all sidewalks are on Millerton  
23 Road and that we intend to relocate the historic stones  
24 and include them in site walls and building walls.

25           However, the next -- skipping to the next one,

1 I want to point out we're specifically not designing a  
2 replica building. We're trying to as much as possible  
3 reflect the spirit and scale and -- of the federal style,  
4 but in a new building. In fact, the secretary of  
5 interior who administers new construction in historic  
6 districts reviewed by SHPO, but the guidelines are that  
7 you can't do replica building. They are not approved.  
8 Buildings must be reflective of their time, but there's  
9 some respect for their location.

10 Also, as we said earlier in the presentation,  
11 SHPO will not give us any review until a notification  
12 form is filed and that we need our funding for.

13 The other thing is the images that were in  
14 Ms. Carley's report that were the sort of paste-ups on  
15 top of our -- on top of the photographs are a bit  
16 misleading because an elevation is a direct projection in  
17 a way that a building is never seen. And so it gives a  
18 false impression of bulk where the modeling software that  
19 we use in the office actually gives the correct  
20 proportion and image of the bulk.

21 We can go on to the next slide.

22 But again, these are not as important, but  
23 just -- I was looking at buildings in and around the  
24 historic district, in the neighborhood and/or the  
25 national or local historic district; and I kept thinking

1 not only was a building of this size already on the site  
2 previously, but all -- so many buildings in the area,  
3 including single family houses, are not incredibly  
4 different from what we're showing here.

5           You can see that the Boathouse and the Farnam  
6 Inn are very large. Certainly, we all know the Interiors  
7 building is large. The Shannon footprint is not unlike  
8 ours. And then, in terms of height, if you go to the  
9 next slide, the -- yeah. You know, as previously said,  
10 you know, we've got the old factory which it's window  
11 placement and window rhythms and overall height, even the  
12 change of material from the base is not dissimilar to  
13 what we're proposing. So, to my eye, what is being  
14 proposed is compatible with the district.

15           I think that's it. Thank you.

16           MR. SMITH: Mr. Chairman, with your permission  
17 I have just a couple quick questions for Mr. McCoy.

18           Mr. McCoy, based on your experience and your  
19 knowledge of this particular site, is this site located  
20 in any type of district where it is regulated with any  
21 specific type of criteria?

22           MR. McCOY: No. No. Again, as I said, it only  
23 depends on funding and then it's an advisory review from  
24 SHPO. It's not regulated.

25           MR. SMITH: And as far as the -- Chris Smith

1 for the record -- as far as the grass area which is known  
2 as Bicentennial Park, that portion of the property that's  
3 not parking lot, is -- would this building replacing the  
4 existing parking lot in that area on the existing  
5 property, would that, in your opinion, result -- would  
6 that be reasonably likely to result in the unreasonable  
7 pollution, impairment or destruction of the air, water or  
8 other -- whatever type of historic resource of the State  
9 of Connecticut may be attributed to the site and or the  
10 immediate neighborhood?

11 MR. McCOY: I would say no.

12 MR. SMITH: And as to -- because we heard from  
13 Ms. Carley, as you recall, there was a little unclarity  
14 whether replacing the park would be okay and then if you  
15 put a building in with the scale and size, I believe that  
16 you're familiar with the building that was there and that  
17 was demolished in the mid 1960s; correct?

18 MR. McCOY: Yes, I am.

19 MR. SMITH: I think that was indicated on the  
20 Intervenor slide from this evening, slide No. 15 in the  
21 bottom right-hand corner?

22 MR. McCOY: That's correct, yes.

23 MR. SMITH: And in your opinion, would the --  
24 is this proposed building consistent with what was there  
25 before and demolished in the 1960s?

1 MR. McCOY: Yes, it's actually smaller. It's  
2 smaller and lower than what existed there previously.

3 MR. SMITH: In your professional opinion, will  
4 the construction of the proposed building and use of the  
5 property, will that -- is that reasonably likely result  
6 in the unreasonable pollution, impairment or destruction  
7 of the air, water or other natural resource of the State  
8 of Connecticut including any type of historic resource?

9 MR. McCOY: No.

10 MR. SMITH: Okay.

11 And in your opinion, does the proposal comply  
12 with the special permit and site plan criteria as pride  
13 in Salisbury zoning regulations?

14 MR. McCOY: Yes.

15 MR. SMITH: Okay. Thank you very much.

16 I do have similar questions, Mr. Chairman, just  
17 very quickly for both Mr. Tunsky and Mr. Petitto, if  
18 possible.

19 CHAIRMAN KLEMENS: You are going to going to  
20 submit this Power Point for the record?

21 MR. SMITH: Yes, sir. It's already in the  
22 record. We submitted this yesterday.

23 MS. CONROY: This one -- yeah, Mr. Chairman,  
24 this one is submitted and I just received an e-mail from  
25 the Intervenor with their slides.



1           CHAIRMAN KLEMENS: Great. So, all of that will  
2 be available to us for deliberations. Thank you.

3           MR. SMITH: There was a Power Point slide a  
4 couple slides ago before the photographs it said I  
5 believe, Berke, at the bottom but it's Bulk Images.

6           To both Mr. Tunsky and Mr. Petitto, in your  
7 opinions, does the application, as submitted, comply with  
8 the site plan and special permit regulations and cite as  
9 provided in the Salisbury zoning regulations?

10          MR. TUNSKY: It does.

11          MR. PETITTO: Yes.

12          CHAIRMAN KLEMENS: If you can identify just who  
13 it is.

14          MR. TUNSKY: Jon Tunsky, it does.

15          MR. PETITTO: Rocco Petitto. It does.

16          MR. SMITH: And last question. In your opinion  
17 will the proposal, is it reasonably likely that the  
18 proposal, if approved and constructed, will result in the  
19 unreasonable pollution, impairment or destruction in the  
20 air, water or other natural resource of the State of  
21 Connecticut? Mr. Tunsky?

22          MR. TUNSKY: Jon Tunsky. No.

23          MR. SMITH: Mr. Petitto.

24          MR. PETITTO: Rocco Petitto. No.

25          MR. SMITH: Thank you, Mr. Petitto. Thank you

1 Mr. Chairman.

2           What I would like to do is just spend just a  
3 summary, a brief amount of time on legal issues which, as  
4 Mr. Casagrande indicated, no attorney likes to discuss  
5 with a land use board or Commission in our state;  
6 however, the legal issues have been first and foremost at  
7 the forefront of the Intervenor's claim. So, I do think  
8 that I should address them and explain very briefly  
9 what's in my letter that I did submit to the Commission.  
10 And that was dated April 8th, 2021, that I believe  
11 addresses the pertinent issues that have been raised.  
12 The legal issues. They dovetail into the record. So, in  
13 my conclusion, I would like to tie these comments into  
14 the record, which is what you'll be basing your decision  
15 on.

16           And at the outset, with regards to the Section  
17 22A-19 intervention, as we're aware, historic issues have  
18 been raised and again, at the outset, I would like to  
19 reiterate that there is no regulatory authority, state,  
20 federal or local, involving historic impact review that  
21 governs this proposal. Certainly, it's not located  
22 within an historic district as provided by Chapter 97 a  
23 of the Connecticut General Statutes which governs the  
24 historic district commissions throughout the state. And  
25 I would like to note that the historic district

1 commission did not determine it necessary to locate this  
2 property within that district.

3           Going to the burden of proof, I think everybody  
4 agrees that the burden of proof when concerning the  
5 claims and allegations in a Section 22A-19 intervention  
6 pleading is on the Intervenors. The folks that have  
7 submitted that pleading. And they have the burden -- and  
8 I'm not going to walk through it -- but they have the  
9 burden of establishing, by substantial expert testimony,  
10 that the conduct is reasonably likely to result in the  
11 unreasonable pollution, impairment or destruction in the  
12 air, water or other natural resource of the State of  
13 Connecticut. And that's a very important burden because  
14 it can't be conclusory, and it can't be speculative.

15           The Intervenors have to identify and quantify  
16 the alleged unreasonable pollution or destruction or  
17 impairment. Very similar to a wetlands type of standard  
18 in review as set forth in the River Bend decision with  
19 Simsbury. Expert testimony, and you have to identify and  
20 quantify harm. You can't just have a broad stroke that  
21 it will result in an adverse impact to a wetlands, for  
22 example. You have to identify and quantify it.

23           I think what I would respectfully submit what  
24 we have on the record before you is the substantial  
25 evidence is the testimony from Ms. Carley and I think

1 when questioned by the Chair as to whether the removal of  
2 the park area of this site that's the non-parking area,  
3 you know, vehicle parking area, if that was prohibited.  
4 I don't think we got a definitive answer that it was.  
5 There was testimony that it was a contributing factor to  
6 the historic area, in general, to that neighborhood, but  
7 I don't think the testimony was that it could not be  
8 built on.

9 I also think that in response, if I'm not  
10 mistaken, that a building could be put on there and then  
11 when specifically asked as to what type of design should  
12 be incorporated, it was a little blurry. I would  
13 respectfully submit that's not enough to substantiate  
14 your burden of proof that this proposal is going to  
15 somehow unreasonably destroy some natural resource in the  
16 State and in the center of Salisbury and this Lakeville  
17 center. There was no specific resource was identified  
18 where it was going to be unreasonably destroyed and where  
19 that didn't comply with the statute.

20 In fact, I think the testimony from Ms. Carley  
21 was that you could replace -- you could build on this  
22 site and then she had some concerns, general concerns  
23 with the architecture; and I would respectfully submit  
24 that doesn't rise to the level of unreasonable pollution  
25 of a natural resource. It's one thing to say something

1 is going to happen on a site where a wetlands is being  
2 destroyed. It's another thing to say that something's  
3 going to happen on a property that somehow adversely  
4 affects some historical component of the neighborhood.  
5 And I would respectfully submit that's fairly speculative  
6 and it doesn't rise to the occasion of sustaining the  
7 burden of proof in order to establish and satisfy the  
8 burden of proof under 22A-19.

9 Now, of course, as the Chair indicated and as  
10 everyone is aware, that unless the Commission finds,  
11 based on the substantial expert testimony in the record,  
12 that this conduct will -- is reasonably likely to result  
13 in unreasonable pollution or destruction of the air,  
14 water or other natural resource, we don't get the  
15 feasible improvement alternatives. Everyone agrees on  
16 that. That's the Paige decision.

17 And I was specifically asked and both Attorney  
18 Casagrande and I were asked by the Chair as to whether we  
19 had an opinion as to whether offsite alternatives for  
20 construction would be included as a potential feasible  
21 and prudent alternative under 22A-19. And in my letter  
22 to the Commission on April 8th, 2021, I point out to you  
23 that the only case that either one of us found was a case  
24 with Attorney Casagrande -- that involved one of his  
25 partners' family, I guess, up in Litchfield in a

1 wetlands, and the Court did point out that offsite  
2 alternatives could be considered within a wetlands  
3 application on adjacent property if the Commission found  
4 that there was going to be an adverse impact. And in  
5 that case the Commission hadn't found it, so the Court  
6 didn't go any further. And they just said that in that  
7 particular case, and it was quoted by Attorney Casagrande  
8 in his letter to you of April 8th at page 3 or 4 at the  
9 bottom where the Court held, quote, If the Court required  
10 the Commission to consider whether the applicant's  
11 adjacent land contained a feasible and prudent  
12 alternative, then the plaintiff, the neighbor, would be  
13 allowed to dictate where an applicant can develop land  
14 even when the Commission is satisfied the subject  
15 property does not interfere with the wetlands and water  
16 course, end of quote.

17 Attorney Casagrande has not provided this  
18 Commission -- and I'm not aware of any -- legal authority  
19 that says that when a Commission is reviewing claims  
20 under 22A-19 that a feasible and prudent alternative  
21 would consider a no-build situation on that property in  
22 requiring the applicant or the owner of that property to  
23 go build on some other property that they have in town.  
24 It doesn't exist.

25 And I know Attorney Casagrande, in one of his

1 letters that came in I think today, and possibly  
2 yesterday, pointed out that I didn't provide the  
3 Commission with any case law to -- that held that you  
4 can't do it. Well, when you're looking at authority for  
5 a Commission, you look at your enabling legislation.  
6 What you are authorized by the General Assembly to do and  
7 to consider.

8           And that's generally pretty explicit. And I  
9 respectfully submit that there is absolutely no authority  
10 for this Commission to deny an owner of a property the  
11 ability to develop their property saying that you would  
12 be better off putting this pharmacy, this 12 units, this  
13 addition for an accessory apartment on another property  
14 owned by yourself.

15           So that's -- I respectfully submit to the  
16 Commission that the Intervenors have not sustained their  
17 burden of proof relative to 22A-19. There is no need to  
18 look at feasible and prudent alternatives. And if you  
19 were to look at feasible and prudent alternatives, I  
20 would respectfully submit that the Commission is not  
21 authorized to look for offsite alternatives, unless, as a  
22 in the wetlands situation, it's on adjacent property  
23 controlled where the alleged harm can be addressed and  
24 mitigated.

25           As to the next slide, if we can go there,

1 Jocelyn. Thank you.

2 Zoning 9 conformities and satellite parking.

3 I'm just spending a little time on these two because  
4 these are two of the main legal issues that have been  
5 brought up. They really weren't addressed this evening.  
6 But there's a lot of material in the record concerning  
7 such. And in my -- I would simply ask you with regards  
8 to my letter of April 8th, 2021, under the second  
9 heading: Valid Legal Non-conformities Allegedly  
10 Associated with Other Neighboring Properties, there's two  
11 concept that were raised by Attorney Capecelatro. And  
12 it's in the record. And Mr. Casagrande has raised it as  
13 well and subscribes to it. And that is the false claim  
14 that if you were to approve this proposal, it will  
15 somehow increase valid zoning non-conformities with other  
16 properties.

17 That just doesn't make any sense, whatsoever.  
18 I provide you with a good -- I think is a good example  
19 with the shopping center and essentially, if one property  
20 owner has a valid non-conformity, they don't have the  
21 ability to prevent their adjacent property owner from  
22 developing their property claiming that somehow that  
23 development is going to make their non-conformity -- it's  
24 going to increase. And I gave you the example of a  
25 shopping center where shopping center A has 120 spaces --



1 excuse me, has 100 spaces and that's what it was -- when  
2 it was initially approved and built, it required 100  
3 parking spaces for the square footage. Zoning was  
4 changed and now requires 150. So, shop center A,  
5 presumably these other properties adjacent to -- and in  
6 the immediate neighborhood, has a valid non-conformity as  
7 to park of 50 spaces. It's short 50 spaces, but they  
8 pre-dated zoning so they're okay.

9 Now, shopping center B immediately adjacent,  
10 they have 150 spaces but with their current tenant, they  
11 only need 120 spaces. So, there's 30 extra spaces for  
12 the adjacent property center B. Center B goes to add a  
13 restaurant use to the center, shopping center B, which  
14 requires an additional 30 spaces, well they can do that,  
15 they are within the parking requirements. They will be  
16 going from 120 to 150 and they provide 150 spaces.

17 The point being that the shopping owner of A --  
18 the shop owner of shopping center A, the owner of  
19 shopping center A cannot appear before the Commission and  
20 legally claim that his adjacent neighbor, his adjacent  
21 property owner who owns shopping center B can't add the  
22 restaurant and use up those parking spaces on shopping  
23 center B's property because shopping owner A shopping  
24 center A uses them. And that's what you're hearing here.  
25 And if that were to be approved by the Commission in my

1 hypothetical, that is not going to be increase the  
2 conformity of that first shopping center, shopping center  
3 A. They are still going to be short 30 parking spaces  
4 under the regulations, but they are still valid.

5           So, to claim that legally by approving this  
6 application for special permit approval it somehow  
7 increases some non-conformity on some other be  
8 properties, either in the immediate neighborhood or  
9 anywhere in the town off Salisbury, that's just not  
10 legally correct.

11           Now, as to the second claim, the pizza shop,  
12 Deano's, there's evidence in the record there was a  
13 special permit application going back in 2006. These are  
14 all in the record. The application indicates that there  
15 were four onsite parking spaces that were required --  
16 excuse me, five. And the application indicated that  
17 there were four onsite and one in front of the shop. So,  
18 they didn't need any additional offsite parking. They  
19 complied. They required five spaces, four onsite, one  
20 right out in front of the pizza shop. They may have  
21 shown satellite parking on a piece of paper -- on the  
22 sheet that the site plan that they had made pending  
23 satellite parking, somebody had. But what's important to  
24 realize is one, not only was it not required to comply  
25 with your zoning regulations, but your zoning regulations

1 specifically and explicitly state that when there's going  
2 to be satellite parking, that the, quote, Applicant shall  
3 provide a written agreement with the owner of the  
4 satellite parking space for the use of such parking  
5 space, end of quote. That's Section 703.7 of your  
6 regulations.

7           And that exists throughout the state. One  
8 property owner can't bind another to parking by just  
9 showing it on an application without having the owner of  
10 the property's authorization to submit that application.  
11 And your regulations, as just every other regulation that  
12 I've seen dealing with satellite parking throughout the  
13 state, requires something in writing from the owner who  
14 allegedly is supplying the satellite parking in order for  
15 that to be part of an application.

16           And just as the pizza -- Deano's can't encumber  
17 this property that we're talking about, the subject  
18 property this evening, with satellite parking, I  
19 respectfully submit that the Commission, when it approved  
20 the special permit in 2006, in turn did not and cannot  
21 and could not at that point in time encumber this  
22 property with that satellite parking. Most importantly,  
23 it's simply just not needed.

24           So, you are -- if you were to approve this  
25 contrary to what's been told to you from counsel and

1 what's been represented by THE intervenors and Attorney  
2 Capecelatro, you will not be creating a violation of that  
3 special permit. It wasn't even needed and your own  
4 regulations require a written agreement which wasn't  
5 provided, so therefore, there isn't any satellite parking  
6 attributed to that special permit. And my guess is that  
7 Deano's, the pizza operation, will not be shut down if  
8 this building is built and that there's plenty of on  
9 street parking that will accommodate; but more  
10 importantly, the legal arguments that have been made to  
11 you are just inappropriate and do not apply.

12 The next slide with the site design.

13 Respectfully submit and you heard testimony  
14 from our experts that the right-of-ways, we heard a lot  
15 of concern about this right-of-way on that side of the  
16 building and the easement. It's not encumbered,  
17 whatsoever. Mr. Casagrande -- Attorney Casagrande did  
18 submit a letter, I think it might have come in today,  
19 about how by putting fire striping there for a fire lane  
20 that encroaches in the easement. Well, there's a fire  
21 and the fire trucks are there, nobody's going to be able  
22 to get by and -- but that's the encroaching on any  
23 easement. It's -- in addition to that, there is access  
24 heading in the other direction from that property. But I  
25 would respectfully submit that there is no encroachment

1 that's going to impede any rights-of-ways associated with  
2 any adjacent property owners.

3 As far as any disputes, as Attorney Casagrande  
4 indicated that there could be potentially litigation for  
5 years tying this up relative to that right-of-way and in  
6 a quiet title action, I presume. The two cases I provide  
7 in my letter to you are just that. The Courts have held  
8 that if there's a dispute concerning whether an easement  
9 exists or restrictive covenant and whether an application  
10 is going to affect it in some way or whether that  
11 easement somehow affects the application, that's for a  
12 quiet title action. That's not for the Planning and  
13 Zoning Commission to consider, with all due respect.

14 The last point dealing with the donor's  
15 intents. We have heard quite a bit about that. And I  
16 think it very simple. Number one, the town of -- this is  
17 right from the letter from -- an excerpt from the donor's  
18 letter, Mr. Belcher, to the Town Board of Selectmen from  
19 December 20, 1969. One that the town agrees -- this was  
20 the basis, the donor was providing money to the town to  
21 purchase the subject property.

22 First provision, Town of Salisbury agrees that  
23 the present structure will be removed within nine months.  
24 That's what happened. It was taken down. That's the  
25 building that's in slide No. 15 in the Intervenor's

1 presentation this evening on the bottom left-hand side.

2           Number 2, If the building construction is not  
3 started within one year of acquiring title thereto and  
4 demoing the then current building, then the site will be  
5 what, it will be cleared, graded and landscaped for a  
6 town park or attractively landscaped for a parking area.  
7 It will be maintained in a neat and attractive fashion.  
8 You got both of those. There's a little park area. I  
9 don't know if there's benches there, and then you have  
10 the parking.

11           Number 3, The town agrees that if any building  
12 were ever erected on this cleared land then the building  
13 shall have an exterior design in keeping with the Federal  
14 or early 18th century image of our village. And, quite  
15 frankly, that's what's happened. And that's what's  
16 before you this evening. And I would respectfully submit  
17 that with the last application there was concern from the  
18 Commission that it did not comply with the Federal style,  
19 so that was withdrawn. The building was re-designed and  
20 this application was re-submitted to incorporate  
21 Federal -- the Federal style architectural features and  
22 components into this exterior design.

23           And in conclusion, and I know Jocelyn has a few  
24 quick comments for you from SHC, but as we know, there's  
25 two applications before you. One is the special permit

1 application I respectfully submit that the application  
2 does comply with your special permit and site plan  
3 requirements in your -- provided in your regulations.  
4 And secondly, as the 22A-19 intervention claims, that I  
5 respectfully submit that the Intervenors have not  
6 sustained their burden of proof and that there's no need  
7 to go to a feasible and prudent alternative.

8           And even if they -- the Commission determines  
9 the Intervenors did sustain burden of proof and  
10 identified and quantified harm to some sort of specific  
11 resource out there, and how it was going to be harmed,  
12 that a feasible and prudent alternative is not to  
13 relocate these 12 affordable housing units to some other  
14 property in the town owned by the town, especially, for  
15 example, on a site adjacent -- immediate adjacent to a  
16 transfer station. I mean, I do quite a bit of affordable  
17 housing applications throughout the state and I have  
18 never heard, not with one application, have I not heard  
19 that everyone's in favor of affordable housing, however,  
20 this isn't the most appropriate site. Up until now, to  
21 be honest with you, Mr. Chairman and members of the  
22 Commission, my example for one of the more interesting  
23 alternatives that I heard was the old warehouse down by  
24 the train station. That was in Westport with an  
25 application. I have to say that I haven't heard a more

1 inappropriate alternative as I heard with this  
2 application would be to re-locate next to the town's  
3 transfer station.

4           Again, I would respectfully submit that the  
5 Intervenors have not sustained their burden and then the  
6 question is: Does the application comply with your  
7 criteria for special permit approval and I respectfully  
8 submit that it does.

9           And with that, I would -- on behalf of myself I  
10 know Jocelyn has a few closing comments but I would like  
11 to thank the Commission for your time. Thank you.

12           CHAIRMAN KLEMENS: Attorney Smith, I do have  
13 one question.

14           MR. SMITH: Yes, sir.

15           CHAIRMAN KLEMENS: Maybe you can help me here.  
16 You brought up River Bend.

17           MR. SMITH: Yes.

18           CHAIRMAN KLEMENS: I know that when you deal  
19 with natural resources, these are quite quantifiable.

20           MR. SMITH: Yes.

21           CHAIRMAN KLEMENS: And when you deal with this  
22 historic intervention, which I've never dealt with, isn't  
23 by very nature this a much more subjective analysis than  
24 would be -- River Bend was just lack of evidence  
25 [Unintelligible] of harm. Here, isn't it by very nature,



1 because this is historic, because it deals with  
2 interpretation, isn't it by nature a more subjective,  
3 less evidence-based matter?

4 MR. SMITH: I would respectfully submit that  
5 it's not, Mr. Chairman. And there is one case, and  
6 Attorney Casagrande pointed to it, I'm very familiar with  
7 it. United Progress out of Stonington with the borough.  
8 That was back in 1994, Judge Berger. That was an 8-30g  
9 application which is an affordable housing application, a  
10 fairly Substantial one. That was denied for a number of  
11 reasons under 8-30g. And there had been an intervention  
12 and Judge Berger does make reference to historic being a  
13 consideration under 22A-19. He also found it could be  
14 under -- 8-30g as well. And as the Chair maybe members  
15 of the Commission are aware, dealing with an 8-30g the  
16 question is there going to be an adverse impact to a  
17 substantial public interest. Of course the question is  
18 what's a substantial public interest. And I can tell you  
19 that when you think about it, since that one case, it's  
20 been 26, 27 years, you haven't had any cases on it  
21 dealing with historic; because it's probably a nebulous  
22 and very difficult burden of proof to sustain but you --  
23 the Intervenor still has that burden. You can't just  
24 haphazardly -- and just -- for an example, in an 8-30g  
25 decision within a 22A-19 to say that well there's going

1 to be an adverse impact on an adjacent historic district,  
2 where it's just well what's causing the harm and it's  
3 like, well, it's the scale and size of the building.  
4 It's like, well, it's pretty comparable what was there or  
5 in some cases what is there and how is that somehow going  
6 to harm a property in the historic district.

7           And that is totally subjective. And  
8 Mr. Chairman, I would -- that's not enough. That's  
9 almost being subjective and conclusory. That's like  
10 saying I don't think it compatible with the neighborhood  
11 with a special permit application. You know, is that  
12 really being -- is that fair? Is that actually  
13 substantiating the standard? It's a very high standard  
14 here. We're talking about reasonably likely to  
15 unreasonably pollute, impair or destroy a natural  
16 resource or the air or water.

17           So, I would respectfully submit that I do  
18 recognize that historic is extremely subjective. But I  
19 do think that what we heard from the Intervenor's  
20 consultant was -- you asked the specific questions, was  
21 the consultant saying that they couldn't replace the  
22 park. And I don't think there was a straight answer  
23 there, but I don't think the answer was no. The park has  
24 to stay because then the next follow up was, if there's a  
25 building, what is wrong with this architecture. And

1 there wasn't any real answer other than it's not my  
2 job -- I'm paraphrasing, it not my responsibility to  
3 design this building.

4 So, I would respectfully submit that it isn't  
5 just pure subjectively. That there has to be some sort  
6 of expert testimony and that's why we have Mr. McCoy here  
7 for you this evening.

8 CHAIRMAN KLEMENS: Thank you. That helps me  
9 greatly. Sorry so to interrupt.

10 MR. SMITH: No, no. Thank you. And I think  
11 Jocelyn is up.

12 MS. AYER: Jocelyn Ayer, Salisbury Housing  
13 Committee. I see Abby yawning. I agree. I just want to  
14 make some very quick closing comments.

15 As you all know and has been brought up  
16 tonight, we have -- we listened, we brought back a  
17 substantially revised design. This is just a couple of  
18 the folks that, again, did have concerns with our last  
19 design and now are fully supportive of the project. So,  
20 I just wanted to very briefly reiterate that.

21 And again, a lot of issues, questions about  
22 parking, you know, we do have 22 onsite parking spaces  
23 which exceeds the minimum requirements of the zone by 8  
24 spaces. And is more than adequate to accommodate our  
25 units. It does leave 8 outdoor spaces for the public.

1 And that's during peak time for our building. So, there  
2 will be even more than 8 spaces available, typically, you  
3 know, over the -- during the hours where the businesses  
4 need them.

5 So again, I just want to -- in closing, I just  
6 want to say, you know, from our perspective, this is not  
7 an either/or project. This project can give us both the  
8 affordable housing that we all know Salisbury desperately  
9 needs and continue to provide public parking as much  
10 public parking as is currently used. Again, First  
11 Selectman Rand did submit photos between 2010 and 2018  
12 that show 3 to 5 cars parked there, typically. We are  
13 going to have 8 spaces available.

14 You know, the neighboring businesses have  
15 testified that they need 12 to 16 parking spaces per day.  
16 But again, is that for an hour? Is that for eight hours?  
17 If it's for an hour, then again we have the shared park  
18 on the site that can accommodate what we have seen and  
19 what has been shown in the record to be the need for  
20 parking.

21 And again, also there is on street parking on  
22 Holley Street and on Millerton Road as well. So, we  
23 believe that this project can do both. Meet two vital  
24 needs of the town, which is shared public parking and  
25 affordable housing. It's not either/or.

1           And the other piece that's not either/or is  
2   that we can have affordable housing here and still have  
3   that historic resource of the wall. Again, this wall was  
4   substantially rebuilt not that long ago. We can keep the  
5   historic portions of the wall and integrate them into  
6   this building so we can have both. We can have the wall,  
7   the historic resource and a little pocket park for people  
8   to enjoy. We can even fix the bench. We can have a  
9   non-broken bench in our little park.

10           So, we can have both that historic resource,  
11   the wall incorporated into the new building and  
12   affordable housing.

13           As you all know, Salisbury residents voted to  
14   provide this site, this specific site for 12 to 18 units.  
15   We can't make it any smaller than that and keep up our  
16   end of the bargain which was to create 12 to 18 units of  
17   affordable housing on this site. The suggestion, I think  
18   Mr. Miller said, there should be potentially up to 104  
19   units on the Pope field site. I don't think that would  
20   go over very well for the neighbors of Pope. So again,  
21   every site will have challenges. This is the site we're  
22   talking about today. We believe that everything we have  
23   submitted that we have answered all of the questions and  
24   that we meet the zoning requirements in the Pocketknife  
25   Square regulations.

1           Again, we really do appreciate all of your time  
2   on this, staying up late, and we obviously would very  
3   much like for you to approve this special permit for  
4   providing these critically needed affordable housing  
5   units as well as shared parking and, you know, a pocket  
6   park preserving the historic pieces of the wall.

7           I also would just say, again, we can obviously  
8   relocate the time capsule to also put that back into the  
9   wall located on the property. So again, this is a  
10   both/and project and we really appreciate your time. So,  
11   thank you.

12           CHAIRMAN KLEMENS: Thank you. That concludes  
13   your presentation, Attorney Smith?

14           MR. SMITH: Yes, sir. And thank you again and  
15   members of the Commission for your time and  
16   consideration. Yes.

17           CHAIRMAN KLEMENS: I notice that there are  
18   members of the public who have raised their hand.  
19   Unfortunately, the time for the public to have spoken,  
20   and I repeatedly asked if there were more comments, was  
21   earlier. We are in the process of summation and I can't  
22   recognize the members of the public who wish to speak  
23   again. I'm sorry.

24           MS. CONROY: Mr. Chairman, just to clarify and  
25   perhaps this is an Attorney Andres question. I have now

1 received an e-mail at 9:45 and 9:57 from Barbara Douglas  
2 that she's requested that it be shared.

3 CHAIRMAN KLEMENS: I --

4 (People spoke at the same time.)

5 MS. CONROY: -- appropriate or not because it's  
6 after the public comment part of the hearing.

7 CHAIRMAN KLEMENS: I would just say we can put  
8 it in the record. I don't think we need to read it into  
9 the record. Do you, Chuck?

10 MR. ANDRES: Well, I -- you know, it says so  
11 I --

12 CHAIRMAN KLEMENS: Two e-mails you received?

13 MS. CONROY: Yes. It just feels a little  
14 strange because it's clearly been beyond the part where  
15 we offered --

16 CHAIRMAN KLEMENS: If I'm going to have Barbara  
17 Douglas's letter read into that, I have to recognize the  
18 members of the public. And the attorneys have done her  
19 summation and rebuttals.

20 MR. ANDRES: Right.

21 MS. CONROY: Right.

22 CHAIRMAN KLEMENS: It would be nice if people  
23 would follow the very scripted and clear directions that  
24 were laid out at 5:30.

25 MS. CONROY: And if we were in an in person

1 meeting, we wouldn't be able to accept it at that  
2 point -- at this point; is that correct?

3 MR. ANDRES: Yeah, you could either do either.  
4 You could-- it's up to you, you can open it up and let  
5 people speak and then allow the Applicant to respond if  
6 any or you can say what you said earlier, that all the  
7 communications either with the hands raised now or the  
8 written e-mail were submitted after you closed the public  
9 portion of the meeting. You indicated there are no more  
10 public comment simply reserve the rebuttal. So --

11 CHAIRMAN KLEMENS: So --

12 MR. ANDRES: It shouldn't come in.

13 CHAIRMAN KLEMENS: What shouldn't come in. The  
14 Douglas memo?

15 MR. ANDRES: All of them. There's no  
16 difference between someone raising their hand and  
17 speaking and someone putting an e-mail in. Same thing.

18 CHAIRMAN KLEMENS: My sense is that everyone's  
19 had a shot at this. I mean -- what does the rest of the  
20 Commission think? Wake up guys and --

21 MR. HIGGINS: I agree with you, Michael. I  
22 think you have set the rules and the standards and we need  
23 to abide by them. My question was going to be I'm  
24 assuming you would like to close the hearing tonight and  
25 deliberate some time besides tonight.



1           CHAIRMAN KLEMENS: That would be my intention.

2       I would like a motion to close the public hearing at

3       10:04 p.m.

4           MS. SHYER: I'll say the motion --

5           CHAIRMAN KLEMENS: You'll make the motion,

6       Cathy?

7           MS. SHYER: Yeah, I make the motion.

8           CHAIRMAN KLEMENS: Do I have a second.

9           MR. RIVA: Second. Bob Riva, Michael.

10          CHAIRMAN KLEMENS: Let's call the roll for this

11       one with the members. We have Marty Whalen?

12          MR. WHALEN: Aye.

13          CHAIRMAN KLEMENS: Bear with me, it's late.

14       Jon Higgins is voting tonight?

15          MR. HIGGINS: Aye.

16          CHAIRMAN KLEMENS: Bob Riva?

17          MR. RIVA: Aye.

18          CHAIRMAN KLEMENS: Cathy Shyer?

19          MS. SHYER: Aye.

20          CHAIRMAN KLEMENS: Michael Klemens?

21       Klemens is aye, also.

22       The hearing is closed at 10:04.

23       I have set the following. Deliberations are

24       going to begin on Wednesday, April 28th. That is an

25       open, public meeting but the public cannot comment.

1 All materials submitted at the close of the  
2 public hearing will be posted in the town website by no  
3 later end of day, April 19th, 2021. No additional  
4 materials can be accepted after the close of the public  
5 hearing. That is at 10:04, April 14th, 2021.

6 And I remind and I restate again that all ex  
7 parte communications between members of the public as  
8 well as the Applicant and the Intervenor with Commission  
9 members and staff is illegal. Please do not send  
10 comments, copy us on group memos. We have to remain  
11 sequestered from all of you until we basically begin our  
12 deliberations.

13 And somehow, Abby, could you please get Mary  
14 Oppenheimer to get all the Commission members off of her  
15 mailing blast lists.

16 With that --

17 MR. HIGGINS: Michael, I have just a question.

18 CHAIRMAN KLEMENS: Yes, sir.

19 MR. HIGGINS: Because I have some questions  
20 about the Intervenor that I think would involve Chuck.  
21 So, I wasn't sure if you were going to have a meeting  
22 before the deliberations to talk about process in  
23 executive session or are you going to --

24 CHAIRMAN KLEMENS: No, we can't do it --  
25 there's -- I don't believe we should do it in executive

1 session. I do believe that Chuck will be there at our  
2 deliberations. And at that point, before we even start,  
3 we can ask our questions.

4 MR. HIGGINS: That was the question, whether it  
5 was going to be an executive session or whether we can  
6 have the discussion with him as part of the public  
7 hearing. I'm fine --

8 CHAIRMAN KLEMENS: It is not a public  
9 hearing -- it's part of deliberations. Chuck, I believe  
10 we can't do -- we cannot have a Q and A session in  
11 executive session.

12 MR. ANDRES: Correct. Yeah, questions can just  
13 be asked during the normal deliberations.

14 CHAIRMAN KLEMENS: My goal, Jon, for the  
15 deliberations, is that we're first going to have quite a  
16 bit of discussion with Chuck to answer everyone's  
17 questions. I have questions, also. But it will be done  
18 in a public forum. But there will be no public input.

19 MR. HIGGINS: Okay.

20 CHAIRMAN KLEMENS: There will be lots of eyes  
21 watching us.

22 MR. HIGGINS: Thank you for the  
23 clarification.

24 CHAIRMAN KLEMENS: What time -- we should say  
25 what time are the deliberations. That's one thing I

1 didn't think of. How do you all feel about doing it at  
2 5:30 or do you want to go back to 6:30?

3 MR. HIGGINS: I'm fine with either.

4 MR. RIVA: 5:30 is fine with me if you choose  
5 that. I'm flexible.

6 CHAIRMAN KLEMENS: Debra?

7 MS. ALLEE: I think I prefer 6:30 because then  
8 I could eat something before the meeting.

9 CHAIRMAN KLEMENS: Yes, I eat a meal late,  
10 somewhere in the middle of it. Okay.

11 Marty?

12 MR. WHALEN: 5:30.

13 CHAIRMAN KLEMENS: 5:30. Cathy's gone?

14 MS. SHYER: No, I'm here. I'm here. I am  
15 here. I would prefer 5:30.

16 CHAIRMAN KLEMENS: Okay. Debra, you're going  
17 to have to pack yourself a picnic.

18 MS. SHYER: Sorry, Debra.

19 CHAIRMAN KLEMENS: Okay, so it's going to be at  
20 5:30.

21 MS. ALLEE: All right.

22 CHAIRMAN KLEMENS: Good.

23 MS. ALLEE: It's 5:30 on the 28th?

24 CHAIRMAN KLEMENS: 5:30 on the 28th.

25 MS. CONROY: Which is a Wednesday.

1           CHAIRMAN KLEMENS: Correct. We are doing it on  
2 Wednesday because our schedules are so full between  
3 wetlands and P&Z, we have to do this on Wednesdays. Abby  
4 does to have sleep once in a while.

5           And there's no guaranty we're going to finish  
6 it. We'll start deliberations. We may well have to  
7 extend it. I have no idea. Because, in my sense, there  
8 comes a point of no return when you really are not sharp  
9 and I think for the deliberations we really have to be on  
10 point for this.

11           All right. Good night. Thank everyone for  
12 their patience. Public. Abby, do you want to say  
13 something.

14           MS. CONROY: Just a motion to adjourn.

15           CHAIRMAN KLEMENS: Oh, yes. Thank you.

16           Do I have a motion to adjourn the hearing?  
17 Thank you, Abby.

18           MR. HIGGINS: So moved.

19           CHAIRMAN KLEMENS: Second?

20           MR. RIVA: Bob Riva, second, Michael.

21           CHAIRMAN KLEMENS: All those in favor?

22           ALL: Aye.

23           CHAIRMAN KLEMENS: We are adjourned at 10:11.

24                           (Whereby, the hearing adjourned.)

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C E R T I F I C A T I O N

I hereby certify that the above and  
foregoing is a true and correct transcript of the audio  
recording provided, limited only by the technology of the  
recording.

Dated this 16th day of July, 2021.



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VIKTORIA V. STOCKMAL, CRR, RMR

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