

Town Board Minutes
Town of North Castle
15 Bedford Road
Armonk, New York 10504

on
April 14, 2010

Supervisor Weaver called the meeting to order at 5:30 p.m. and the following persons were present:

Supervisor	William R. Weaver
Councilmen	Rebecca A. Kittredge Michael J. Schiliro Diane Roth John J. Cronin

Town Clerk	Anne Curran
Town Counsel	Roland A. Baroni

The meeting was immediately adjourned into executive session, which was then closed at 7:30 p.m. The regular meeting was reconvened at 7:35 p.m.

The minutes of the Public Hearing which commenced at 8:00 p.m. follow at the end of these minutes.

Councilman Schiliro moved, seconded by Councilman Kittredge, approval of the minutes of March 24, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Alan Kassay, Partner, O'Connor, Davies, Munns & Dobbins, LLP presented the 2009 Comprehensive Annual Report to the Board and noted a marked improvement in the fund balance and excellent results in budgeting and controlling expenses. The 2009 Comprehensive Annual Report and the 2009 Town Justice Report were received on the duly adopted motion of Councilman Kittredge.

Herb Oringel, acting Chair of the Northern Westchester Energy Action Consortium (NWEAC), addressed the Board to briefly describe the group's goals of increasing energy efficiency and reducing energy costs. The municipalities expected to sign the intermunicipal agreement include: the Towns of Bedford, Cortlandt, Lewisboro, New Castle, North Castle, North Salem, Ossining, Pound Ridge, Somers and the Villages of Croton-on-Hudson, Mount Kisco, and Ossining and the City of Peekskill in Westchester County. Each municipality will contribute an annual fee, set at \$1,000 for 2010, and will participate in the crafting of NWEAC by-laws.

Pursuant to the discussion, and on the motion of Councilman Kittredge, seconded by Councilman Roth, the following resolution was adopted by the Town Board of the Town of North Castle:

WHEREAS, on April 14, 2010, the Supervisor was authorized to sign the Northern Westchester Energy Action Coalition agreement; and

WHEREAS, the cooperating municipalities wish to consolidate and formalize their prior collaborations, some of which consist of agreements know as the Northern Westchester Energy Action coalition and to form the Northern Westchester Energy Action Consortium; and

WHEREAS, this Intermunicipal Agreement supersedes any prior agreements with the Consortium;

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NOW THEREFORE BE IT RESOLVED: that the Town Board hereby authorizes Supervisor Weaver to sign the Northern Westchester Energy Action Consortium agreement dated April 21, 2010.

Date: April 14, 2010

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a letter from the NYSDEC with regard to the Town of North Castle Organic Recycling Transfer Facility, DEC Registration #60R27, in accordance with NYS solid waste management facility regulations.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Susan R. Shimer, Chairman, Landmarks Preservation Committee, read a letter stating that the Committee is in support of Westchester County moving the Miller House (also known as Washington's Headquarters) to another location in North White Plains, provided the move does not imperil the Historic Landmark status of the Miller House. Ms. Shimer requested that a letter from the Supervisor's office be sent to the County Board of Legislators and County Executive urging the move, preservation of landmark status and that County funds allocated for Miller House be used to repair the roof.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Schiliro moved, seconded by Councilman Kittredge, approval of the request of General Foreman Useted to award the bids for catch basins, highway materials, pavement markings and guide rails to the lowest bidders, in the amounts indicated on the bid documents.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, approval for the Armonk Lions Club for the use of Wampus Brook Park for Jazz Knights concert, June 3, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Schiliro moved, seconded by Councilman Roth, authorization for Comptroller Donovan to make payment No. 8 to B.M.J. Construction Company, in the amount of \$278,226.50, in connection with wastewater treatment plant nitrogen removal project.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a letter from resident Marian Tobin with regard to a water condition on property at 38 Custis Avenue. Town Clerk Curran read the letter aloud at Mrs. Tobin's request.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a letter regarding the final determinations of the 2010 Census Local Update of Census Addresses (LUCA) Appeals Staff for the appeal filed by Town of North Castle (MC3611951693).

The roll call vote was as follows:

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Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, approval for Superintendent Futia to go to bid for Sewer District No. 3 emergency generator replacement.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, receipt of the Town Clerk's report for the month of March, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Councilman Schiliro moved, seconded by Councilman Roth, receipt of a report from Director of Planning Kaufman with regard to the Residential Project Review Committee. Mr. Kaufman said the committee has been successful in moving applications from submission to review in 2-3 weeks. Pursuant to Councilman Roth's query concerning applying the same expedited review to the commercial district, Supervisor Weaver asked Adam Kaufman to study this and report back to the Board.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Supervisor Weaver announced that he received much communication and a petition from residents opposed to the proposed Verizon cell tower.

On the motion of Councilman Kittredge, seconded by Councilman Roth, the following resolution was adopted by the Town Board of the Town of North Castle:

Resolved, that the Town Board of the Town of North Castle hereby rescinds the prior conditional authorization to the Supervisor to execute a lease agreement with Verizon for a cell tower off of Middle Patent Road on property owned by the Town for the benefit of Water District No. 2 and that the Town attorney is hereby directed to notify Verizon representatives accordingly.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt of a preliminary report dated April 14, 2010 from the Organic Recycling Study Group.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver
Noes: None.

Bob Greene and Howard Arden, Co-Chairs of the Organic Recycling Study Group, read comments from a prepared summary of the report delivered to the Town Board at the meeting. A summary of their remarks addressing four main points follows:

1) Westwood's proposal does not to comply with the Town's RFP requirements:

As a consequence, the Study Group believes the resulting License Agreement may be invalid or unenforceable.

2) Procedural irregularities in the Town's management of the RFP process:

The Study Group believes that the RFP management process was so flawed that the resulting License may be invalid. Concerns include:

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- The RFP was mailed to only four potential bidders, far fewer than would be expected for a project of this size.
- The RFP was mailed to potential respondents on September 11, 2009, requiring an answer by 10 AM on the 21st. This is an unreasonably short time requirement to impose on potential bidders, considering a project of this size and complexity.
- Town officials determined that the Middle Patent site was unsuitable and changed the proposed location from Middle Patent Road to the Town highway facility.
- The requirement that a \$150,000 bond be posted was dropped.
- The scope of the business was significantly expanded beyond collecting and processing yard waste from North Castle residents only.
- The requirement to prepare a site plan was eliminated.

The Study Group believes that making such substantial changes in the business terms obligates the Town to resubmit a new RFP to the original prospects.

3) Why Westwood is now in default of its License agreement:

The Study Group reported that Westwood's excavation and construction activity on the Property has been reckless and conducted without regard to basic safety precautions, in violation of its obligations under the License agreement. A list of 13 improper and unsafe acts by Westwood is detailed in the full report.

4) Recommendations for Town Board actions:

- Authorize Roland Baroni to bring in special counsel to assist in the review of the myriad legal issues and provide advice to the Town Board with respect to all issues relating to the RFP process and the resulting Westwood License.
- Authorize John Cronin to take the lead in representing the Town Board, in negotiations with Westwood.
- Reserve any decisions going forward until the Study Group has finished its work and submits a final report.
- There is plenty of room to store wood chips, on a temporary basis, at the Middle Patent facility.
- Authorize whatever expense is necessary to get the required site survey and as-built site plan completed as soon as possible.
- If a full environmental SEQRA process is contemplated, the Study Group recommends that the Town Board not accept responsibility as lead agency in the SEQRA process, and believes the Planning Board would be better suited for this role.

The Study Group continues to work toward finishing its report, and has requested an extension of time. As of this April 14, 2010, the Study Group has not received all of the information requested from Westwood and from the Town. This information will be needed to complete the final report.

Councilman Roth moved, seconded by Councilman Schiliro, authorization for the Supervisor to sign a proposal from Kellard Sessions Consulting, P.C. for engineering services for filing of compliance certificates to NYSDEC Stormwater Management Program – MS4, in the amount of \$4,500.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, receipt, with regret, the retirement of Amelia DeFeo, Senior Office Assistant, Automated Systems, Town Clerk's office, effective April 30, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver

Noes: None.

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Councilman Kittredge moved, seconded by Councilman Schiliro, approval of the request of Town Clerk Curran for the replacement of a vacancy in the Town Clerk's office as follows: Rita Ross, Intermediate Clerk, Part Time, up to 21 hours/week, at the budgeted hourly rate, effective April 19, 2010, term to expire August 31, 2010; and Amelia DeFeo, Intermediate Clerk, Part Time, 21 hours/week, at the budgeted hourly rate; effective May 3, 2010, term to expire August 31, 2010.

Ayes: Councilmen Kittredge, Schiliro, Supervisor Weaver.
Noes: Councilmen Roth, Cronin.

Councilman Kittredge moved, seconded by Councilman Cronin, the following:

Receipt of Workers Compensation Reports for Steve Gallo, Library and Joseph Remo, Highway Department.

Receipt of a letter from Evelyn Vlad regarding the lack of leaf and brush pickup in North White Plains due to the closing of the organic recycling facility.

Receipt of a letter from Dr. Lorraine Ronca and Dr. Emanuel Wurm, expressing opposition to the construction of a Verizon tower on the Middle Patent Road site.

Approval of the following requests to place signs under the eagle:

The Armonk Players to publicize the production of Ah, Wilderness! June 3 – June 6, 2010.

The Byram Hills School District to publicize the school budget vote on May 18, 2010.

The Byram Hills Bobcat Boosters to advertise the Spring Sports festival on May 8, 2010.

The Armonk United Methodist Church to advertise the Craft and Gift Bazaar on May 1, 2010.

The Armonk Chamber of Commerce to advertise the Sidewalk Sale on May 8, 2010, rain date May 15.

Approval of the request of General Foreman Useted for the release of highway bonds to New New Castle Contracting, Permit #930 in the amount of \$500; Mancino-Cioli, Inc., Permit #906 in the amount of \$500; reinstate \$4,250 of the \$50,000 bond provided by Con Edison for Permit #s 724, 815, 872 and 915; and to reinstate \$1,750 of the \$50,000 bond provided by Cablevision for Permit #944.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.
Noes: None.

Councilman Kittredge moved, seconded by Councilman Cronin, denial of the request by Melissa Kamen, DDS, to place a sign at the eagle to publicize the in-office tooth whitening campaign for the month of May, with all profits designated for charity. The Board noted that only requests from not-for-profit organizations based in the Town of North Castle will be considered to post signs on town-owned property.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.
Noes: None.

Councilman Schiliro moved, seconded by Councilman Roth, approval for the Highway Depart. to order Item 4 for repairs of the Fisher Lane parking lot; and approval for overtime, at a cost of approximately \$2,200.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.
Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, approval for the

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Armonk Rotary Club to post a sign at the site of the eagle to publicize the Rubber Duck Race on May 8, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Councilman Schiliro moved, seconded by Councilman Roth, the appointment of Lorraine Pompei to the position of Intermediate Account Clerk Typist, Part Time, in the Tax Receiver's office, at the budgeted hourly rate, up to 17 hours per week, effective April 14, 2010.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, approval of the request of Armonk resident (and student at New York Film Academy, New York City), Josh Berry, for filming on the sidewalk of the Town Plaza on April 24, 2010. There is no fee for students.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Councilman Roth moved, seconded by Councilman Schiliro, authorization for the Supervisor to sign an agreement with Hahn Engineering for the engineering review and inspection of projects before Town Board approval.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

The Town Board audited and approved payments totaling \$661,379.66 as indicated on Warrant #7.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 12:15 a.m. in memory of retired Highway General Foreman Michael (Mickey) Sicuranzo; former resident and member of the American Legion post #1097, Alfred Cirillo; resident Marshall Winston and resident Richard Prince.

Anne Curran, Town Clerk

Dated: April 27, 2010

PUBLIC HEARING

April 14, 2010

At 7:55 p.m. Supervisor Weaver reconvened the Public Hearing which was adjourned from March 24, 2010 for the purpose of considering the adoption of a Local Law to eliminate Outdoor Dining as a Special Use Permit and create a new Chapter 142 to regulate Outdoor Dining within the Town of North Castle.

Supervisor Weaver said that the Board wanted to streamline the process for businesses to apply for outdoor dining. A license would no longer require a Special Use Permit and would be granted by the Building Inspector upon the applicant meeting the criteria in the proposed law.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Kittredge moved, seconded by Councilman Schiliro, that the Public Hearing be closed at 8:00 p.m.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impact and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Councilman Kittredge moved, seconded by Councilman Schiliro, the adoption of Local Law 2 of the year 2010 to eliminate Outdoor Dining as a Special Use Permit and create a new Chapter 142 to regulate Outdoor Dining within the Town of North Castle.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

The Local Law follows at the end of these minutes.

Anne Curran, Town Clerk

Dated: April 15, 2010

TOWN OF NORTH CASTLE

Local Law No. 2 For The Year 2010 (Adopted April 14, 2010)

A local law to eliminate Outdoor Dining as a Special Use Permit and create a new Chapter 142 to regulate Outdoor Dining within the Town of North Castle.

Section 1. Create the following new Chapter 142 entitled "Outdoor Dining" in the Town of North Castle Town Code:

§ 142-1 Purpose.

The outdoor dining regulations as established in this chapter are designed to allow outdoor dining or sidewalk cafes on public and private property, in locations where they are determined to be appropriate by the Building Inspector and to promote and protect the public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- A. To provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes and to ensure access to adjacent commercial and retail uses.
- B. To promote outdoor dining areas as useful and properly planned visual amenities for the Town of North Castle.
- C. To promote the most desirable use of land and buildings and thereby protect the Town's tax revenues.

§ 142-2 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

PUBLIC SERVICE FACILITY -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

SIDEWALK -- Any area between the curblineline and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

OUTDOOR DINING AREA -- An outdoor dining area located on a sidewalk or on any portion of the property of a food service establishment.

§ 142-3 License required.

- A. No person shall engage in the operation of an outdoor dining area except upon the granting of a license therefor by the Building Inspector pursuant to this chapter and in accordance with the terms and conditions of such license.
- B. Rules and regulations. The Building Inspector is hereby authorized to grant revocable licenses for the use of an outdoor dining area upon the following terms and conditions:
 - (1) The license shall be valid only during a single calendar year, and shall be renewed each year thereafter on application of the licensee specifying any change from the information originally set forth pursuant to § 142-3C unless the Building Inspector, for cause, or the licensee does not renew said license. In the event the Building Inspector determines not to renew a license, he shall give notice to licensee of said intention, by certified mail return receipt requested, not later than 30 days after receipt of an application for renewal of said license, and the reason therefor. The licensee may seek review of the Building Inspector's determination by appealing to the Town Board. Such review shall be requested by the licensee in writing and not later than 15 days from the receipt of the denial of the application by the Building Inspector of said license. Upon appeal, the Town Board shall give notice to the licensee of the meeting at which the appeal will be considered, which notice shall be delivered personally or by certified mail and addressed to the licensee's address as shown on the application. Such licensee

shall be entitled to attend the meeting before the Town Board and shall be afforded a full opportunity to be heard. The Town Board shall render a final determination within 30 days of the said meeting.

- (2) No outdoor dining area may be operated except:
 - (a) As an accessory use to a restaurant, carry-out restaurant, accessory cafe or retail food store lawfully operating on the first floor of the premises;
 - (b) On the sidewalk in front of the principal place of business of such entity or on the side or rear of the principal place of business of such entity so long as the outdoor dining area is located on the same property as the principal place of business; and
 - (c) By the entity which operates the restaurant, carry-out restaurant, accessory cafe or retail food store.
 - (d) The number of outdoor dining seats shall not exceed the total maximum permitted number of seats within the premises to which the outdoor dining area is accessory.
- (3) No outdoor dining area shall operate after midnight or when the entity with which it is associated is not open to the public.
- (4) Furnishing of an outdoor dining area shall consist solely of readily removable tables, chairs, umbrellas, seasonal heating, planters (containing only live plants), and decorative accessories and trash receptacles (together "furnishings") of a design, type, size and color approved by the Building Inspector and all of which shall be uniform in style, color, and material. All furnishings shall be removed from the outdoor dining area and stored indoors at closing in an approved manner when the outdoor dining area is not in operation. The advertising of products or brands on any furnishings shall be prohibited.
- (5) No furnishings may be permanently affixed to the sidewalk or any building. The licensee shall be responsible for any damage caused to any sidewalk or public property as a result of the licensee's operations under this chapter.
- (6) Signage shall be limited to small, nonilluminated identification signs attached to the physical barrier or base wall of the outdoor dining area. Said signage shall not exceed four square feet in area.
- (7) Outdoor dining areas, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter and debris.
- (8) An outdoor dining area shall be delineated by a removable physical barrier or base wall separating patrons from pedestrian traffic no larger than 30 inches in height. Acceptable delineators shall be paneled flower boxes, flower box posts and chains, wrought iron fencing, wooden fencing, picket fencing (with blunt pickets) and posts and chains.
- (9) The licensee shall dispose of all refuse and shall recycle appropriate materials in accordance with their designated and customary place of disposal and shall have the affirmative obligation to maintain the outdoor dining area and surrounding premises free of litter at all times. Licensees may maintain receptacles for the disposal of waste and recyclable materials on the property or sidewalk in a design, type, size and color approved by the Building Inspector. Licensees shall not use Town receptacles for disposal of garbage or recyclable material.
- (10) The licensee shall have the consent of the owner and lessee, if any, of the premises which the licensed activity is to be conducted.

- (11) No outdoor lighting (except for candles) or live or mechanical music shall be permitted.
- (12) All food and beverages to be served or consumed at outdoor dining areas shall be prepared within the existing restaurant, carry out restaurant, accessory cafe or retail food store. The restaurant, carry-out restaurant, accessory cafe or retail food store shall not serve food or beverage to a patron at an outdoor dining area unless that patron is seated at a table.
- (13) All alcoholic beverages to be served at outdoor dining areas shall be prepared within the existing restaurant, and alcoholic drinks shall only be served to patrons seated at tables. The drinking of alcoholic beverages by a member of the public while a patron at an outdoor dining area, within the confines of the sidewalk area, shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the outdoor dining area shall take whatever steps are necessary to procure the appropriate license from the state liquor authority if he/she intends to serve alcoholic beverages in the outdoor dining area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in this state.
- (14) Operation of an outdoor dining area shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties and shall be in accordance with all applicable codes and regulations.
- (15) Restaurants, carry out restaurants, accessory cafes or retail food stores located next to each other, without intervening uses or entranceways to buildings, may have outdoor dining areas that abut each other.
- (16) At all times a four-foot walking area between the cafe table area and the curb must be maintained. Furnishings or other property must not be allowed to intrude upon the four-foot walking area.
- (17) The licensee shall at all times maintain free and clear from all obstruction an aisle not less than four feet in width providing access to any establishment fronting on a sidewalk.
- (18) The outdoor dining area shall not interfere with access to any public service facility.
- (19) The number and location of tables shall comply with the maximum occupancy and aisle width standards for dining facilities set forth in the New York State Uniform Fire Prevention and Building Code.

C. Application. Application for a license pursuant to this section shall be made on a form designed by the Building Inspector. Such form shall contain at least the following information:

- (1) The name and address of the licensee.
- (2) The proposed site for the activity.
- (3) A site plan showing the following:
 - (a) A proposed layout.
 - (b) The capacity of the existing facility and capacity of proposed outdoor dining area.
 - (c) A statement of the months, days and hours of intended operation.

- (d) The licensee's entire property and adjacent properties on a location map with streets for a distance of at least 25 feet, at a scale of one inch equals 10 feet.
- (e) A plan at a scale of 1/2 inch equals one foot showing the design and location of all furnishings.

§ 142-4 Approval or disapproval of application.

The Building Inspector shall grant or deny an application for a license pursuant to this chapter within 30 days of its complete submission.

§ 142-5 Notice of violation; revocation or suspension of license; hearing; administrative sanctions.

Upon a finding by the Building Inspector that the applicant has violated any provision of this chapter or the terms and conditions of the license or has engaged in any practice in conjunction with the regulated activity which constitutes a danger to the health or safety of any patron or pedestrian, the Building Inspector shall give notice to the applicant to correct such violation or cease such practice within 24 hours. If the applicant fails to comply with such notice, the Building Inspector may suspend the license for a period not in excess of 30 days, during which time the applicant shall be entitled to a hearing, at which the licensee may be represented by counsel, to present evidence in his behalf and confront the evidence against him. If, upon considering the evidence presented at the hearing, the Building Inspector adheres to the finding, the Building Inspector may reinstate the license with additional conditions related to the violation or improper practice which has been found, or revoke the license and forfeit the applicant's cash deposit. In addition to, or in substitution for, the suspension or revocation of the license, the Building Inspector may impose an administrative sanction in an amount determined by him to be the cost to the Town of the applicant's failure to comply with the terms of this chapter or the permit issued to the applicant pursuant hereto, which such sanction shall be deducted by the Town Board from the applicant's cash deposit. The suspension, revocation or other action taken pursuant to this section shall not relieve the applicant or any other person from any liability which may be imposed pursuant to §§ 142-9 and 142-10 of this chapter.

§ 142-6 Reservation of rights by Town.

Neither the adoption of this chapter nor the granting of any license pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the Town of North Castle concerning its public easement over the streets and sidewalks, or of any requirement of law concerning the liability of the Town of North Castle with respect to streets and sidewalks, whether expressed or implied.

§ 142-7 Indemnification.

The applicant shall agree, on a form approved by the Town Attorney, to indemnify and save harmless the Town of North Castle, its officers, agents, attorneys and employees, from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the outdoor dining area.

§ 142-8 Insurance.

The applicant shall obtain, and maintain in full force and effect throughout the term of the license, a policy of general liability insurance, which such policy shall:

- A. Name the Town of North Castle, its officers, agents, attorneys and employees as additional insureds;
- B. Have a combined single limit of not less than \$1,000,000; and
- C. Contain a provision prohibiting its cancellation except upon a minimum of 10 days' notice to the Town of North Castle. The applicant shall file with the Town Board, prior to the issuance of the license, a certificate evidencing the requisite insurance and setting forth the actual cancellation notice provision contained in the policy.

§ 142-9 Penalties for offenses.

Any person who shall violate any of the provisions of this chapter shall be liable to prosecution in the Town Justice Court and shall, upon conviction thereof, be liable to a fine that shall not exceed \$500. If a fine imposed pursuant to this section or resulting from the maintenance, use or operation of an outdoor dining area is not paid within five business days after the fine is imposed, except as otherwise ordered by the Court, the Town may immediately revoke the license for any such licensee.

§ 142-10 Fees.

A cash deposit of \$500 shall be required. The deposit shall be returned upon expiration of the license. The fee for outdoor dining shall be \$100.

Section 2. Amend Section 213-33.F of the Town Code to remove reference to outdoor service as follows:

F. Outside display and sales. In specified Business Districts and in Residential Districts where directly related to a permitted principal nonresidential use, outdoor display and sales shall be permitted as an accessory use, provided that the Town Board finds that such a use is essential to the permitted principal use on the lot and provided that the following standards are met:

(1) Location. Merchandise shall not be displayed, nor shall any tables, chairs or other furnishings be placed in such a way so as to interfere with ingress and egress by pedestrian and/or vehicular traffic. Where sidewalk areas are to be used, there shall be a clear, unobstructed path for pedestrians no less than four feet in width measured from the edge of the curb. In the CB-A District, in addition to the above, merchandise shall not be displayed nor shall tables, chairs or other furnishings be located outside of the building area for the particular lot. In all cases, the area to be used shall be entirely on the same lot as the principal use. Outdoor display and sales shall not be located in any yard adjacent to or across the street from a residential district nor shall such use be located within any yard adjacent to an occupied residence located within nonresidential district where the Town Board determines that such residence would be negatively impacted.

(2) Area.

(a) The total area for outdoor display and sales shall not exceed the following:

Business Districts

CB, CB-B, GB, RB and SC	25% of the unused portion (i.e., the area of the lot not used for buildings, required parking spaces, aisles, access drives and any required buffer areas) of the lot
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CB-A District	25% of the unused portion of the building area
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Residential Districts	5% of the lot area
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(b) The Town Board may waive the above requirements for fairs, tag sales or other events of a short-term duration not exceeding five days. The Town Board shall reduce the allowable area where it finds that the effects of the use would negatively impact on areawide traffic conditions, that noise levels would exceed levels permitted in the North Castle Noise Control Law or that any adjacent uses would be negatively impacted.

- (3) Parking. The Planning Board shall review the parking needs of both the principal use and the proposed special permit accessory use and shall provide a recommendation to the Town Board with regard to the adequacy of the existing parking and any additional parking that should be provided to serve the use. If the Town Board determines, based on the Planning Board's recommendation, that additional parking is needed, the Town Board shall not grant the special permit unless such spaces can be provided and shall require the improvement of such spaces either prior to or as a condition of the issuance of the special permit.
- (4) Materials and landscaping. Materials shall be displayed and tables, chairs and other furnishings shall be placed on a paved surface that shall be located and designed so as to provide for cleanliness and ease of maintenance and to prevent any disturbance to landscaping. Areas shall be suitably landscaped to provide attractive and effective buffering and screening. The Town Board shall refer the design to the Architectural Review Board for its review and report regarding the proposed type and arrangement of outdoor furnishings, the relationship to existing structures uses and other aesthetic considerations.
- (5) Application. Application procedures shall be as stated in § 213-27 of this chapter. However, the Town Board may waive the submission of a detailed development plan required in § 213-27C where it deems appropriate. In such cases, the applicant shall submit a drawing of an appropriate scale with details and dimensions sufficient to be easily discernible in the field. Where the proposed use is a seasonal activity so that such use may be temporarily discontinued for a period not to exceed 12 months and where not precluded by the Town Board, the special permit application may be renewed by application to the Town Building Inspector prior to the display of merchandise or placement of tables and chairs outside, provided that the location and arrangement is the same as that approved by the Town Board. The fee for such renewal shall be \$20.

Section 3. Amend Section 213-23(B)(3)(e) of the Town Code to state the following:

- (e) Outside display and sales subject to the requirements of § 213-33F.

Section 4. Create the following new Section 213-23(B)(3)(i) of the Town Code as follows:

- (i) Outside dining subject to the requirements of Chapter 142.

Section 5. Amend Section 213-19 permitted Accessory Uses *20 as follows:

- *20. Outdoor display and sales where accessory to a permitted principal nonresidential use.

Section 6. Amend Section 213-19 permitted Accessory Uses to create a new number 21 as follows:

21. Outdoor dining pursuant to Chapter 142 where accessory to a permitted principal nonresidential use.

Section 7. Amend Section 213-20 permitted Accessory Uses as follows:

- | | | |
|---------------|-----|---|
| SC District | *8. | Outside display and sales subject to the requirements of § 213-33F. |
| CB-A District | *5. | Outside display and sales and service subject to the requirements of § 213-33F. |
| CB-A District | 9. | Outdoor dining pursuant to Chapter 142. |
| CB-B | *5. | Outside display and sales and service subject to the requirements of § 213-33F. |

Section 8. Add the following new permitted Accessory Uses to Section 213-20 as follows:

- SC District 9. Outdoor dining pursuant to Chapter 142.
- CB-B 10. Outdoor dining pursuant to Chapter 142.
- NB 11. Outdoor dining pursuant to Chapter 142 and the more restrictive requirements of § 213-23.G(7) and the definition of accessory cafe.

Section 9. Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

Section 10. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 11. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

Dated: April 14, 2010

PUBLIC HEARING

April 14, 2010

At 8:00 p.m. Supervisor Weaver stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on April 14, 2010 at 7:30 p.m., or as soon thereafter, at North Castle Town Hall, 15 Bedford Road, Armonk, New York for the purpose of considering the adoption of a Local Law to amend Chapter 107 Fire Prevention to require installation of sprinklers in all new residential and commercial buildings.

By Order of the Town Board
Anne Curran, Town Clerk

Dated: March 31, 2010
Armonk, New York

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

A letter from Fire Marshal/Assistant Building Inspector William Richardson regarding a proposed revision to the Town's ordinance for fire sprinklers at the request of the New York State Fire Prevention and Building Code Council Exhibit "D" for the record.

Mr. Richardson said that the Town Board adopted a fire sprinkler ordinance on June 25, 2008. The law, with supporting documentation, was sent to the NYS Building Code Council for its review and approval. Mr. Richardson said that subsequently he and Richard Fon were required to meet with the Council in Albany on several occasions to provide additional information. The Council said they would support and approve the law if the section which would exempt certain spaces from sprinklers was removed.

Councilman Kittredge confirmed with Mr. Richardson that the revised ordinance is supported by all three of the Town's fire departments.

Mr. Richardson said that the ordinance would require all new construction and those which are extensively remodeled to have fire sprinklers installed. He said this was important since many homes in Town rely on wells and water is not always available. He said that two lives were lost on New Year's Eve in a North White Plains home which did not have sprinklers.

Councilman Schiliro confirmed with Mr. Richardson that in cases of remodeling only the new portion of the building if it exceeded a certain threshold percentage of the total gross floor area of the building would be required to have sprinklers.

In response to questions from Councilman Cronin regarding whether other towns in Westchester have a sprinkler ordinance, what the cost is, and what the insurance savings are, Mr. Richardson said that several towns did including New Castle and Greenburgh, the cost was approximately \$1.00 to \$1.50 per square feet for new construction and approximately \$3.00 per square feet for a retrofit, and the cost is paid off in about ten years through insurance savings..

Frank Benish, Sterling Road North, said he was required to have his entire home retrofitted with a fire sprinkler system, which he was found to be very costly, when he lived in another community and had a third floor addition done. Mr. Richardson said that a sprinkler system is required by state law whenever there is a third floor addition. Mr. Benish said he was opposed to the legislation due to the expense of sprinkler system in a sluggish economy, adding that sprinklers were not required by state law.

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Alex Bacon, Mead Road asked for clarification that section A.(1) which read *new all* residential and commercial buildings should be revised to read *all new*. Mr. Bacon also asked for clarification of the wording *if insurance allows*. Mr. Schiliro suggested that the wording be amended and explained that if insurance would not cover the cost of a sprinkler system following damage from fire or storm, the property owner would not be required to have a system installed.

Mr. Benish asked if the prospective or current property owner would have to submit a separate drawing detailing the location of fire sprinklers for a new or remodeled home. Mr. Richardson said that no additional drawing would be needed and the number and location of the sprinklers, which are standardized by the National Fire Prevention Association, would be determined by the design professional and included on the building plans. Mr. Benish said this additional professional service would incur more costs for the property owner. He asked Mr. Richardson to confirm that PVC is used for sprinkler pipes and said that toxins are released when it burns. Mr. Richardson said the pipes would not burn because a sprinkler head would put out the fire.

Mr. Cronin said he would like to follow up with Mr. Richardson before voting on the legislation. Councilman Roth expressed concerns with the impact of additional costs and said she wanted to do more research.

Mike Alpino, Agnew Farm Road, said he had a sprinkler system installed in the 1980s which he found to be costly and included the costs of increasing the size of the water main, a separate line for the service, and possibly deepening the well. Supervisor Weaver said the technology has changed since that time. Mr. Richardson said that the new sprinkler system include a 300 gallon plastic tank with a built in pump which is included in the cost. In the event of a fire, the sprinkler head would release water at a rate of three gallons per minute. Tony Futia said that if the power goes out the pump would need a generator in order to work. Mr. Richardson explained that the pump is pressurized with air and would work without electricity and a generator or a backup system would not be required.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Kittredge moved, seconded by Councilman Schiliro, that the Public Hearing be adjourned at 8:27p.m.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Anne Curran, Town Clerk

Dated: April 23, 2010

PUBLIC HEARING

April 14, 2010

At 8:28 p.m. Supervisor Weaver stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on April 14, 2010 at 7:30 p.m., or as soon thereafter, at North Castle Town Hall, 15 Bedford Road, Armonk, New York for the purpose of considering the adoption of a Local Law to create a new Section 213-23.D(3) to incorporate into the Central Business District new off-street parking requirements for Shopping Centers in the Central Business Zoning District.

By Order of the Town Board
Anne Curran, Town Clerk

Dated: March 29, 2010
Armonk, New York

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

The green cards denoting mailing to and receipt of certified mail by adjoining property owners were received and marked Exhibit "D" for the record.

The amended petition to amend the Zoning Ordinance dated February 12, 2010 was marked Exhibit "E" for the record.

The following correspondence was marked Exhibit "F" for the record.

A letter from Frederick P. Clark Associates, Inc. dated March 4, 2010 regarding review of the revised Traffic Impact Study and Site Plan prepared by John Meyer Consulting, PC.

A letter from Director of Planning Adam Kaufman dated March 10, 2010 on behalf of the Planning Board with a positive recommendation.

An e-mail from W. Gerald Hendricks dated April 12, 2010, and a letter from Fran Cicia dated April 13, 2010 which were read aloud by Town Clerk Curran as per their requests.

Supervisor said that the public hearing would need to be adjourned until the Town's traffic consultant, Michael Galante of Frederick P. Clark, was present.

Councilman Roth moved, seconded by Councilman Schiliro, that the public hearing be adjourned at 8:30 p.m.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

The public hearing was reconvened at 9:00 p.m.

Alfred DelBello of DelBello Donnellan Weingarten, et al., appeared before the Board on behalf of his clients Martin and David Werber, of Eden Enterprises LLC, the property owners of the Armonk Shopping Center. Mr. DelBello briefly reviewed the history of the past three years regarding the proposed project to redevelop the Armonk Shopping Center. He said the community had expressed interest in a new supermarket and A&P had also expressed its interest in an expanded supermarket at this location. He said the Werbers have invested time and money in the project and the site plan has gone through many generations and alterations in response to comments from the Planning Board. The site plan has been amended to eliminate the proposed improvements to the Hergenhan Recreation Center property and the development of retail stores on Main Street which were found to be deficient by the Planning Board. In response to

comments from residents, town professionals, and consultants, the petitioner has reduced the scope of the project and reconfigured the proposed redevelopment with a new parking concept. Mr. DelBello said the amended site plan has received relative consensus from the Planning Board which has found it to be workable.

The amended project would not meet the off-street parking requirements under the current Zoning Ordinance. Mr. DelBello said the petition for the zone text amendment would create new parking requirements for a supermarket in a shopping center in the Central Business District. The proposed amendment would require one parking space for every 1,200 square feet of mezzanine floor area in a supermarket, and one parking space for each 200 square feet of retail floor area in a supermarket. In addition, parking would not be required for floor area devoted to food preparation, storage of food and non-food items, and and/or any other floor areas not accessible to the public. A minimum of one off-street loading space would be required for each 15,000 square feet of gross floor area. Mr. DelBello said the Planning Board adopted a positive recommendation of the proposed amendment; and A&P thinks that the design of the facility, the design of the site plan, and the adequacy of the parking are workable.

Bob Roth, of John Meyer Consulting, PC, displayed the revised site plan. It consists of a new building of approximately 34,725 square feet of supermarket floor area, comprised of a 33,225 square foot supermarket and a 1,500 square foot mezzanine level; a new building containing approximately 7,235 square feet of floor area; and a total of 157 parking spaces and related infrastructure and landscaping. Mr. Roth said that the current retail tenants would have the option to relocate to the new 7,235 square foot building. He said the revised plan would provide for an increase in the space between the two buildings, and for both a two-way connection between the smaller northerly parking lot and the main parking lot and a two-way circulation in the rear for the loading area.

Rich Pearson, professional traffic operations engineer with John Meyer Consulting, reviewed data from its Parking and Traffic Study of the shopping center. The parking analysis reviewed demand for the busiest hours at a supermarket on a typical Friday, a typical Saturday and the Wednesday before Thanksgiving, one of the busiest parking days of the year. The study reported existing parking demand for these days was 82, 66 and 106 spaces respectively for the 143 available parking spaces currently at the site; and estimated a proposed parking demand of 111, 104 and 143 spaces for the 157 proposed parking spaces. Mr. Pearson said that the supermarket would be relatively small and tend not to bring people from outside the area; therefore a large increase in patronage was not expected. He said there is currently a substantial surplus of parking spaces and the proposed number of parking spaces would sufficiently accommodate future parking demand using a ratio of 3.7 spaces per 1,000 square feet. He said that Michael Galante of Frederick P. Clark Associates has recommended 5 spaces per 1,000 square feet.

In response to a query from Councilman Kittredge regarding whether the new loading docks would be used, rather than trucks unloading in the parking lot as is often the current practice, Mr. Pearson said the plan has three modern bays in the back of the store. Supervisor Weaver questioned the ability for trucks to maneuver in the loading area. Mr. Roth said the Planning Board has reviewed in detail how the trucks would maneuver into and leave the loading area without interfering with parking.

Councilman Cronin asked if the parking proposal was similar to the parking requirements for the Stop & Shop Shopping Center in North White Plains. Mr. Kaufman said that requirements in the Shopping Center zoning district in which Stop & Stop is located requires one parking space per 200 square feet of gross floor area as compared to one space per 200 square feet of retail sales area proposed for the Armonk Shopping Center. Mr. DelBello said that supermarkets in the SC zoning district are destination shopping, while a new A&P would still be for store for local shopping, not a regional shopping center. Supervisor Weaver said that the parking which is allowed would determine the size of the facility.

Michael Galante said that the applicant has addressed all of Frederick P. Clark's comments regarding traffic analysis and site plan. With regard to parking, Mr. Galante said his recommendation is that one parking space per 200 square feet of gross floor area would be appropriate for this site and use, and would account for all staff. He said that a new A&P would probably have a better draw of customers and its use and demand would grow. In response to a

question from Supervisor Weaver regarding the number of spaces which would be required to meet the gross floor area requirement, Mr. DelBello said it would be about 202 spaces.

Councilman Kittredge said that Citibank at Main Street and Maple Ave is considering reopening their drive up window and asked if there would be sufficient distance between this driveway and the proposed shopping center driveway. Mr. Galante said the traffic would not interlock. Mr. Kaufman added that the six spaces to the left of the shopping center driveway would be eliminated and the five spaces across from Annadale Street would be restored, thereby resulting in a net loss of one parking space. Linda Trummer, Agnew Farm Road, said permitting a right turn only from the Main Street exit of the shopping center would be safer than permitting a left turn onto Main Street. Mr. Galante said that the parking spaces to the left of the shopping center driveway would need to be eliminated whether or not a right turn only were permitted.

Chris Carthy, Sarles Street, asked if it were reasonable for the shopping center owners to provide curb cuts at the corner of Main Street and Maple Avenue to help with its redevelopment. Mr. Kaufman said it could be beneficial for three properties to the west of the shopping center driveway, but the owners are not interested in doing this.

Bob Greene, North Lake Road, who has managed and developed shopping centers for many years, said he reviewed the proposed redevelopment plan and expressed his view that the plan is for a supermarket, not a shopping center. Mr. Greene said that, other than restaurants, grocery stores which are not located in large strips or shopping centers have the highest demand for parking at 6.7 spaces per 1,000 square feet versus the 6 spaces currently required by code. He said that the reduction of the parking requirement from 6 per 1,000 square feet to 5 was generous and there was no justification for further reduction. Referring to the proposed zoning text amendment, he said the requirement of one parking space for every 1,200 square feet of mezzanine floor was adequate, but recommended that remaining sections be deleted. Mr. Greene gave a written report of his findings to the Board. He said it would be improbable that an A&P Fresh Market parking lot would not be fully utilized. Since the current store has had a bad reputation among residents, the existing lot appears to be large because many spaces are often empty. He said he hoped the proposal would be revised, adding that a developer should not be given more square feet of floor area ratio than he is entitled to.

Al LaPorta, who has a dental practice on Maple Avenue adjacent to the shopping center property, said that proposed plan is excessive and represents over development. Dr. LaPorta expressed concerns that a larger shopping center would negatively impact safety and traffic in the area and on Maple Avenue which is 28^{1/2} feet wide, and would result in more trucking and tree removal. He said that the traffic study was limited in scope and omitted the potential impact on Armonk Square, and thanked Bob Greene for his report. He said the Armonk Shopping Center should not be compared to the Stop & Shop Shopping Center which is a highway destination with no pedestrians. He said a new town comprehensive plan was needed prior to considering amendments to the parking requirements.

Lydia Rippstein, School Street, expressed concerns about the proposed change in parking requirements, referencing a recommendation to increase parking in Armonk made in a 2001 report from Frederick P. Clark. Ms. Rippstein expressed concerns about an increase in the truck traffic which she said already exists on local roads.

Alana Adler, Bankville Road, expressed concerns about the proposal and said that agencies which are intended to protect and inform citizen often do not. Alex Bacon, Mead Road, asked for and was given confirmation that standard sized parking spaces are proposed for the site and the Main Street driveway would be less steep than the one which currently exists. Mark DiCintio, Faraway Road, suggested that elevated parking might be considered.

Councilman Roth said the Planning Board has approved the site plan and the review process has not been rushed. Ms. Roth said the Town Board's decision is whether to approve the proposed parking plan. She proposed removing from the parking calculation the approximately 10,000 square feet "back of house" area used for food preparation, food and non-food storage, and other floor areas not accessible to the public. Mr. Greene said that back of house in a supermarket should be counted because it could include a large number of employees who would use parking spaces. In response to a query from Ms. Roth, Mr. Galante said that he recommended including

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the back of house. Norma Hill, Wampus Close, asked how supermarket employees would travel to work since the bus service is being reduced and where those who drove to work would park.

Jeff Garson, Town Center property owner, and Charlene Jacobi, Town Center Pharmacy business owner, expressed their concerns about the impact of having a big box store rather than an A&P at the shopping center location. They said having an A&P would keep the character of the Armonk hamlet and help the businesses on Main Street. They said if small retailers do not do well, national tenants will come into Armonk.

Sue Shimer, Pond Lane, said it is the Board's responsibility to review the parking issue which she said has been a problem for many years. She said that numbers do matter and parking at Stop & Shop Plains has not always been sufficient and people have illegally parked in handicapped spaces.

Mr. DelBello said that the Werbers have met with the Town's officials and have had numerous redesigns made to the shopping center, following every direction the Town has requested. Mr. DelBello said that various opposing views and comments expressed tonight are confusing.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman Kittredge moved, seconded by Councilman Schiliro, that the Public Hearing be adjourned at 10:45 p.m.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

Anne Curran, Town Clerk

Dated: April 23, 2010

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