

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 8, 2015
SPECIAL MEETING - MINUTES

The special meeting of the Newton Planning Board took place on the above date. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE: None

ROLL CALL: Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Hardmeyer, Mr. Ricciardo, Mrs. Le Frois, Mr. Flynn, Mrs. Diglio, Mr. Le Frois,

Excused: Mr. Russo, Mr. Hemschof

OLD BUSINESS

Affidavit of Eligibility: Mr. Flaherty

MNA Newton Realty, LLC (#PFSP-03-2015)
Block 9.01 Lot 1
45-47 Water Street;
Block 9.01 Lot 2
8 Hamilton Street;
Block 9.01 Lot 3
10 Hamilton Street

The applicant is requesting preliminary and final site plan approval and several "C" variances for a Taco Bell Restaurant at the corner of Water Street and Hamilton Street. (This is a continuation from the July 15, 2015, August 19, 2015 and September 23, 2015 Planning Board meetings)

The attorney representing the applicant is Mr. Wallace. I believe that we left off with a request for Mr. Gloede to take a look at a by-pass lane and what the impact would be. If you could, please continue on with that technical testimony.

Mr. Gloede stated: The plan that I submitted and presented last month showed a single lane with no by-pass. It showed the exit coming onto Hamilton Street. At the request of the Board, we put together a second plan showing a by-pass lane. So what this does now is it takes the entire site and shifts it a little bit more towards Hamilton Street. We still have the 2' widening of Hamilton Street. What this plan does now is it reduces the island that is between our parking lot and the new curb line of Hamilton Street. It reduces the island that's in front of the building from 24' to 22'. That provides us with a double-lane which goes completely around the building and exits back out. One is a 10' pick-up lane and the other an 11' by-pass. We also shifted the exit so that it lines up with the drive-pass of the parking area to the right-hand side. Just to quickly go over some of the differences in the plans. You've received a copy of the site comparison that I put together. The way I go through them is no by-pass and with by-pass. As far as parking goes, without the by-pass there are 24 spaces shown. By adding the by-pass, you lose one space so now we have 23. The aisle width of what was 24' on the no by-pass is now 22' with the by-pass lane. The impervious cover increased on the site from 72% on the no by-pass to 78% with the by-pass. The most impact is with the landscaping. The no by-pass plan had 15 trees and 113

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shrubs. With the by-pass the trees actually increase because I can fit more along Hamilton Street. But it reduces the amount of shrubs by 48% because there's not enough room in the strip along Hamilton Street to plant shrubs but we can plant trees. It's also eliminated all the shrubs along the Aberlour side of the property. There is only 3' of planting area next to the 4' sidewalk, which is right up against the curb, to try to maintain some sort of an area. The by-pass lane does encroach on the site triangle easement on Water Street. It shouldn't be too much of an issue because it is just the by-pass lane. It's not the lane where cars will be parked so there's not going to be an obstruction of the visuals through the site triangle. With the parking, 24 spaces were required. 23 spaces were provided with the by-pass plan. What we did was reduce the number of seats in the restaurant to 30, which require 8 spaces. The apartments were 8 and the retail was 10. With the shared parking it came down to 24. We are actually short one space by the shared parking calculation. That's basically the plan.

Mr. Wallace questioned: You mentioned a parking calculation. Does that calculation assume a certain use at the County Seat restaurant?

Mr. Gloede stated: Yes. This is what we originally submitted with our original site plans.

Mr. Wallace questioned: So any limitations would impact that space in the event that there's an application made at a later time to use the parking?

Mr. Gloede stated: Correct. It would be shy one space.

Mr. Wallace questioned: So for present purposes there is no need for a variance for parking?

Mr. Gloede stated: Not at this time.

Mr. Ricciardo questioned: You said this is taking into consideration the parking for the County Seat. Do you mean the apartments and not the restaurant?

Mr. Wallace stated: Correct.

Mr. Ricciardo questioned: We are not talking about anything to do with the County Seat with this application?

Mr. Wallace stated: We are to the extent that we know there are residential uses that would avail themselves of the parking. The commercial use is not defined. So there is adequate parking without a variance for residential use and for the intended Taco Bell use with some left over for whatever is done on the first floor of the County Seat building and not even accounting for some of the on-site parking at the County Seat building. In other words, if there's to be a variance it would have to be addressed when there's an application for a use on the first floor.

Mr. Soloway questioned: Is your client also the contract purchaser of that property?

Mr. Wallace stated: Yes.

Mr. Soloway stated: In effect there is a potential for a parking variance in the future. That would be a self-created hardship if the basis for the variance request was a hardship variance.

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Mr. Wallace stated: I don't know if I would agree that it is self-created. Certainly there would be some flexibility regarding the use that would be made on the first floor. Depending on what use is made it would affect how much parking is required.

Mr. Soloway questioned: How many spaces are left over after the Taco Bell restaurant use and the resident spaces there?

Ms. Caldwell stated: There's 10 allocated and with the shared parking it's reduced somewhat. It's safe to say that on a future site plan you could have 10 allocated for whatever use that would be. It covers 2500 square feet of retail.

Mr. Soloway stated: The testimony of the applicant was that the County Seat would close and that the Board, for purposes of any decision it makes on this application, has to assume that the County Seat is closing and will not operate at the same time as this restaurant. Otherwise, we would have to take into account whatever the present need of parking for the first floor of that building is. We've been told that there won't be any because there is nothing concrete planned. Although it's not relevant to this application that the County Seat restaurant is closing in the sense that we don't want the County Seat restaurant to close as a basis to deny relief to this applicant, but it is relevant to the extent that it has to close for the parking to work. In that sense only it is directly relevant.

Mr. Le Frois questioned: Any resolution that we would put forth would simply say that the parking spaces are available but has nothing to do with whether the proposed use would be approved or not?

Mr. Soloway stated: Correct. Any future use of the County Seat would have to come before this Board for site plan and variance approval depending on what it is. But nothing's before us now and we really can't speculate what we're going to have there.

Mr. Le Frois questioned: Is it appropriate to address the parking at this point in time?

Mr. Soloway stated: Well, it's certainly appropriate again for the residential.

Mr. Flaherty questioned: When the lease runs out on the County Seat?

Mr. Soloway stated: I think if you approve this, one of the conditions of the approval would have to be either before the issuance of the building permit or the c.o. the County Seat would have to shut down. Otherwise this whole thing was prosecuted as an application on an assumption that was not true. Would Mr. Wallace have any objection to that?

Mr. Wallace stated: There will come a time when we will have to make an election or the seller would have to make an election. Either he'll deliver the property without an operating restaurant or otherwise we have to understand that there's either going to be a Taco Bell or an operating County Seat but not both.

Mr. Soloway stated: When we get to that point, think about whether it makes more sense to tie it into a building permit or a certificate of occupancy.

Discussion ensued regarding parking spaces.

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Mr. Ricciardo questioned: I think Mr. Flaherty brought up a good question about the lease. When they purchase this building, the first floor is leased to the County Seat restaurant. When they purchase it they buy all of those leases along with it? Let's say the lease agreement expires in two or three years. Can they terminate that lease?

Mr. Soloway stated: I'd have to read the lease. I can't answer that question. Your question is do they inherit the lease and the answer is yes. In the absence of language addressing this whether there would be a voluntary shuttering of this restaurant by the tenant, a way for the Board and the Town to protect itself rather than trying to get involved in private leases which isn't a good idea, is to take the position that either we're not going to give a building permit or a certificate of occupancy until it's dark on the first floor. How you get to that point isn't our affair.

Mr. Hardmeyer questioned: It seems that the dual lane is coming at a pretty steep price in the way of landscaping and aesthetics of the site. Is that something we are going to decide on before we proceed as to whether or not we approve this or would that be something that we decide on after we make a decision assuming we approve it?

Mr. Le Frois stated: I would assume that among the Board members we would come to general consensus as to whether we want to have a by-pass lane or not. Then take that configuration into account as the one that we would approve or disapprove upon a subsequent vote.

Mr. Riccardo stated: I believe we directed them to come back with a plan showing a by-pass lane and what effects it would have on the original site plan. This is what they gave us and this is what we have to look at. Is it beneficial to the community as a whole or should it go back to the single lane without the by-pass with all the original landscaping?

Mr. Soloway stated: I would anticipate what would happen is at the close of the hearing the Board would take a straw poll and the straw poll would be if you are inclined to approve either one of these, which design do you prefer? Whatever the consensus is in terms of the preferable design you can then put that up to a vote coupled with whatever other variance and design waivers are inextricably intertwined with the design; like setbacks, sign variance, and sign design waivers that you can vote separately because it's not necessarily tied in. To get back to Mr. Hardmeyer's question regarding landscaping, I don't think we are at the point yet where we have a specific landscaping plan. If you recall at the last meeting the applicant agreed to ratchet this back slightly and only ask for preliminary approval instead of final.

Mr. Soloway stated: That is what was filed. I think final, for tonight, is off the table. For Mr. Hardmeyer's purposes, certainly at a minimum in terms of the difference between the two plans you are able to consider how much landscaping you get. Whether you want to get more specific and have an actual landscape design as part of this vote is up to the Board. You could do it that way or you could defer that actual design of the landscaping to final keeping in mind what the capacity for landscaping is under the two designs.

Mr. Marion questioned Mr. Soloway: Should this Board be picking which design we could possibly go with? The reason being, the one with the drive-by reduces the parking spots by one. If there's a future use of the County Seat, are we creating a hardship now by reducing that one spot? And would they have a hardship if they came back and we wanted 24 but we approved it with 23. There are a lot of variables here that we are kind of guessing about the future use and do we make the choice on this plan? If we do, where does that leave the Town for possible future use of the County Seat?

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Mr. Soloway stated: That's about four good questions. In terms of the argument as to whether they or the ultimate applicant might argue that it's not fair to take the hardship away from us as to one spot. In terms of all of the rest of it I think when the Board weighs the two design options and weighs which one, if either, to approve it's appropriate to look at all of those factors when a Board member decides how to vote on this.

Mr. Flynn questioned Mr. Gloede on the proposed finished floor elevation of the building and the 103 contour that runs through it.

Mr. Gloede stated: It was on the original site plan and it hasn't changed. It is 102.78.

Mr. Flynn had questions on the site triangle line being 18' back from the curb return on Hamilton Street.

Mr. Gloede stated: That is based on the sight distance requirements from the intersection of the two curb lines.

Mr. Flynn questioned: Is there a stop bar on Hamilton? A painted white line.

Mr. Gloede stated: I don't believe there is. It could be added.

Mr. Flynn questioned Mr. Simmons: If this is approved would you require a stop bar?

Mr. Simmons stated: Yes.

Mr. Flynn questioned: But the stop bar wouldn't be 18' back. So that's right where the site line should be?

Mr. Gloede stated: That's not how it's calculated.

Mr. Ricciardo stated: It's so that nothing interferes with your vision in this triangle to see the cars coming out. It's not that the site line has to be in the stop bar.

Mr. Gloede stated: This is a major road, this is a secondary road. So the distances are set based on that. It's based in your ordinance that way, too.

Mr. Hardmeyer questioned: Regarding the by-pass, how many cars are going to be in that line to order and pick up food and how many are from the ordering kiosk back?

Mr. Gloede stated: We had 8 cars and I think 3 or 4 from the ordering kiosk back.

Mr. Hardmeyer stated: My point is that once you order your meal you aren't likely to change your mind and get out. So really we're putting in this whole extra by-pass in the chance that out of 3 or 4 cars maybe somebody may want to by-pass and get out of line. It seems like a big price for somebody to maybe change their mind.

Mr. Gloede stated: I agree with you.

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Mr. Wallace questioned Mr. Gloede: The current use of the property is for a parking lot. Where do the cars currently exit and where are the headlights shining when they exit?

Mr. Gloede stated: The entrance is right here (showing the Board). So it's probably coming right out at this first dwelling.

Mr. Wallace questioned: Would you please describe what you have in your exhibits. Do you have a list of variances required and can you provide a summary to the Board?

Mr. Gloede distributed exhibit A-13 and stated: This is a list of the variances we're applying for. I broke it down into with the by-pass and without the by-pass. As far as the front yard setbacks, the maximum front yard is 12'. As far as minimum goes we're beyond that. But the maximum is 12' and so from Water Street the maximum allowable would be 12' and we're showing 63.05' to the building. That's with the by-pass. Without the by-pass, it's 64.43'. From Hamilton Street it's 48.67' with the by-pass and 55.06' without the by-pass. The rear yard minimum is 3' and assuming the rear yard being the distance along Hamilton Street. I think there's a difference of opinion which was the rear yard. I was under the assumption that the rear yard is against the Aberlour building which is a 3' dimension. But if you think the rear yard as being along Hamilton, with the by-pass it's 87.05' and without the by-pass it's 86.45'.

Ms. Caldwell stated: There is no maximum on that one, so that's not actually a variance. It's a minimum of 3'.

Ms. Caldwell stated: The ordinance actually has a picture that shows that it would be the one to the west side. The west becomes the rear. Because of the two fronts it becomes the west side and the south side becomes the side yard. According to the ordinance, the orientation of the primary front yard is on Water Street and the secondary front yard is on Hamilton.

Ms. Caldwell stated: Exceeding the maximum front yard on both sides on both primary frontages that are considered front yards those are variances. Then there's a frontage build out requirement which is 80% at the frontage which is 0. That's the other variance because of building orientation. They have the parking in the first and second lot layers. Then there's a parking buffer which is actually a 10' buffer which is a variance buffer, which they provide, that is adjacent to the west side but on the south side adjacent to the Aberlour, they do not. So that's where the variance comes up.

Mr. Gloede stated: So this is the c variance?

Ms. Caldwell stated: There's a design waiver for a 25' buffer between commercial and residential. But the actual variance is for a 10' parking buffer from residential. You're under the 10' on the Aberlour side.

Mr. Le Frois stated: So this list isn't really complete?

Ms. Caldwell stated: The list is for variances so I just wanted to correct those items. If you cross out the rear yard, for the parking buffer required is 10' and the proposed is 3' and a pylon sign variance.

Mr. Soloway stated: Also, three design waivers. One Ms. Caldwell already mentioned which is similar in concept to the parking buffer and that's the buffer between the residential and non-

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residential uses. There's a second design waiver on the width by-pass design only for the aisle width. It's a 24' requirement and 22' is proposed. There's also a design waiver because they've requested an internally illuminated sign.

Ms. Caldwell stated: There is one sign variance for the pylon sign where 51 ½ square feet is proposed and 40' is required. There were some wall sign variances that they eliminated when they changed to the second building type that we're reviewing now.

Mr. Wallace questioned Mr. Gloede: Please provide an explanation for the aisle width. Where do you justify the 22' aisle width on the front of the building?

Mr. Gloede stated: The 22' feet basically started because creating a by-pass lane pushed everything forward towards Hamilton Street. You have the curb coming in and the widening of Hamilton Street from the other direction just took everything and shrunk it all together. We didn't want to change the size of the parking spaces or the sidewalk in front of the building, so we sacrificed the aisle width from 24' to 22'.

Mr. Wallace questioned: How do the proposed sign dimensions and sizes compare to the other signs on Water Street?

Mr. Gloede stated: Since the character of the neighborhood north on Water Street is commercial and gas stations, I would say it's comparable or maybe even smaller than most of the other signs.

Mr. Flaherty questioned: What is the width of the aisle at the rear?

Mr. Gloede stated: That's 24'. That goes with the ordinance.

Mr. Soloway stated: So the 22' is only on the Hamilton Street side of the building.

Mr. Soloway questioned: Where is the loading area?

Mr. Gloede stated: It is in the same location as before.

Mr. Soloway stated: When you testified that the smaller aisle width you said 22' but it's actually 21' on the other side. You said because it wouldn't interfere with the loading area. Just for the record, the loading area is going to be the rear side of the property when you look at it from Water Street.

Mr. Gloede stated: The dumpster location is also at the back of the building by the loading area.

Mr. Ricciardo questioned: The dumpsters in the rear of the loading area?

Mr. Gloede stated: Its right here. If you look on the original site plans it does show it.

Mr. Soloway stated: That's on the easterly side.

Mr. Gloede stated: Yes.

Mr. Flaherty questioned: What are the width and depth of the parking spots?

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Mr. Gloede stated: They're 9x18 except for the handicap spaces.

Mr. Soloway questioned: The parking spaces are 9x18 on both designs?

Mr. Gloede stated: Yes.

Mr. Wallace questioned Mr. Gloede: This is a c variance application. Could you describe the size of the property that we started with and the efforts made to maximize the use of the available space and where that left us in terms of sight restrictions?

Mr. Gloede stated: Going back to the original plan, the site tract area is .51 acres. There's a minor adjustment to the property line along Water Street. My surveyor took a look at it and said it is such a minor amount it doesn't affect the area of the property. But again, because of the constraints of the width of the property we are kind of constrained as to how we can fit everything in here. The reason was the single lane around the building that showed on the other plans and the access as was requested by Mr. Simmons, was a bail out exit on the property. If we go back to the original plan if somebody is in a lane here and can't find a parking space, they go back out onto Hamilton and then go back in. Regarding loading, the plan without the by-pass also has an entrance aligned with the loading which would make it easier for deliveries and garbage trucks.

Mr. Wallace stated: So the existing lot was properly zoned for a fast food restaurant with a drive-thru as a permitted use and we're not here for a d variance. The applicant is actually trying to maximize the existing lot to add an increase of property to the configuration.

Mr. Gloede stated: Right. We will be purchasing the house adjacent to us along Hamilton Street to give us more area for more parking to meet the requirements. By purchasing that extra lot it allow us to move the entrance back from Water Street.

Mr. Wallace questioned: So for purposes of traffic, by adding the additional lot haven't you maximized the traffic flow and accentuated the design features of this property?

Mr. Gloede stated: Yes. The further away from the main intersection, the better.

Mr. Wallace questioned: You've heard Mr. Staigar testify and you've read his report. The design features you're describing are in keeping with Mr. Staigar's opinion. Correct?

Mr. Gloede stated: Yes.

Mr. Wallace questioned: And you are also an engineer qualified to offer that opinion?

Mr. Gloede stated: Yes.

Mr. Wallace stated: What is the reason for you not having an entrance onto Water Street?

Mr. Gloede stated: The intersection is too busy. It's also too close to the two other intersections to have an entrance in this location here. Mr. Staigar stated the same thing that it would not be a good location for an entrance.

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Mr. Wallace questioned: To summarize the benefit of this particular applicant's proposal list, you're taking an undersized lot and increasing it and you're also widening Hamilton Street for traffic flow, correct?

Mr. Gloede stated: Yes.

Mr. Wallace questioned: In terms of the public turning from Water Street on to Hamilton, based on your design features have you adequately provided for safety of the public turning on to Hamilton Street and how?

Mr. Gloede stated: Yes. To allow anybody coming out of Hamilton and anybody coming in from Water Street to see any vehicles at the intersection.

Mr. Wallace questioned: And you've moved the entrance and exit to the site as far from Water Street as possible in order to provide for the best traffic flow that's possible?

Mr. Gloede stated: Yes.

Mr. Wallace questioned: And that would represent the best possible use of the property for a permitted fast food restaurant with drive-thru as is allowed in the T-3 zone?

Mr. Gloede stated: Yes.

Mr. Wallace questioned: The existing situation with the traffic exiting from this property, would you also anticipate the current use of this lot would mean that cars may travel down the residential end of Hamilton Street away from Water Street?

Mr. Gloede stated: Yes. I think Mr. Staigar also got into that with great detail as to the traffic flow patterns coming out of the site.

Mr. Wallace questioned: The traffic lights shining from the proposed use would still have an impact on the residences but it would be similar to the prior impact of the current use of the lot?

Mr. Gloede stated: Yes.

Mr. Wallace questioned: There's really no other option in terms of siting that exit and entrance in order to mitigate headlights?

Mr. Gloede stated: I don't believe so.

Mr. Marion questioned: At the entrance and exit for the site, are there going to be illuminated signs for in and out?

Mr. Gloede stated: I don't recall.

Ms. Caldwell stated: There were two directional signs proposed which I believe would be internally lit to see the driveway.

Mr. Gloede stated: Which could be toned down.

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Mr. Flynn questioned: Are you proposing a grease trap for the building?

Mr. Gloede stated: There's an internal grease trap but not outside.

Mr. Wallace stated: Mr. Cameron testified previously that the cooking is done by steam so the operation does not generate grease. So the various Taco Bell's around the area don't require a grease trap feature. I assume that is a building department issue to be addressed.

With no more questions from the Board, this portion was opened to the public.

1st Public – Missy Muller, 3 Wood Run, Newton, Hampton Twp. Concerned with parking for the County Seat, the length of the lease, parking calculations, approval contingent on whether County Seat may close.

Mr. Soloway stated: The testimony was that during construction, they would provide the County Seat residents 8 spots.

Ms. Muller questioned: The residents, but not the restaurant.

Mr. Soloway continued: As I indicated if the Board approves this, one of the conditions would have to be that the Taco Bell can't open unless the County Seat closes. If the County Seat isn't operating there wouldn't be any parking except for the residents. But the residents will be accommodated.

Ms. Muller stated: So what you're saying to me is that once this is approved, that it's on contingent that the County Seat will close. But it's under lease.

Mr. Soloway stated: If the County Seat doesn't close, and the Board accepts my recommendation and approves the application, the Taco Bell won't be allowed to open. Or the alternative is they need to get a building permit.

Ms. Muller questioned: How can you approve something contingent on that the County Seat might close?

2nd Public – Mike Bezney, 1 Bartek Lane, Wharton. Owns 7-7.5 Hamilton Street. Concerned with the elimination of parking spaces on Hamilton Street, stopping Taco Bell employees from parking on Hamilton Street, the by-pass lane and putting a concrete divider between the by-pass lane and the service lane.

Mr. Bezney stated: There are approximately 8 driveways on Hamilton Street and only 8 parking spaces between your entrance and number 22.

Mr. Gloede stated: Our traffic engineer did testify to all of those issues the last time we were here.

Mr. Le Frois stated: The applicant has no responsibilities for regulating on-street parking that I'm aware of. Whatever it is today and whatever it is in the future is not under the purview of this applicant.

Mr. Wallace stated: Respectfully, I think both professionals agree that the parking requirements have been met for Taco Bell.

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Mr. Bezney questioned: Is there going to be a divider between the by-pass lane and the service lane at any point?

Mr. Gloede stated: There will be a stripe, and no concrete barrier. That would defeat the purpose of what the by-pass was for. We talked about that earlier that if somebody is in the line and decides that they want to leave they pull into the by-pass and leave. If you put a concrete barrier up, they can't do that.

3rd Public – Ed Muller, Wood Run, Hampton. Concerned with the dumpster access areas and comments that it looks tight for a truck to pull in, pick up a dumpster and pull back out without being a straight shot out. Is it physically possible for a garbage truck to get the dumpster?

Mr. Gloede stated: It can work. Is it better to have it over here? Yes. If we put it back over here people will complain about headlights shining into the properties. My preference is without the by-pass. But again, that's up to the Board.

4th Public – Tom Lawlor, 41 Condit Street, Newton. How are you going to store snow?

Mr. Le Frois stated: There has been previous testimony that any snow will be trucked off site.

5th Public – Earl Schick, 14 Cory Rd., Newton. Concerned with the width between the new entrance and where you have the curb and the dumpster area.

Mr. Schick stated: If it's a 36' garbage truck. You have 22' for it to come in. So it's going to come in from Water Street because it's a one-way currently. You have to swing that 36' truck in. You have to come in that 22' space and then try to get into that loading dock area to get the dumpster. The old plan gives you a straight shot. With the new plan, you aren't going to get a 36' truck in and out of that space. Is there a way that you can widen that area so you can get the garbage truck in as well as emergency vehicles?

Mr. Gloede stated: Getting back to the entrance, my preference is without the by-pass. But again we're trying to accommodate others and prevent the headlights. I agree it's a better plan to have a straight shot into our loading area. A car that's coming through here can make this maneuver a lot easier than trucks.

Mr. Schick stated: Emergency vehicles, delivery vehicles, garbage vehicles are all over 36' or a bucket loader to remove snow, this plan is not allowing us to bring these vehicles in very easily.

Mr. Gloede stated: I'm not a fireman so I can't speak to that. But having done plans like this in the past and dealing with the fire companies they wouldn't bring a fire truck into this site anyway. They would park right on Hamilton and fight the fire from that location.

6th Public – Karl Lantz, 42 Cherry Lane, Hampton. What is the minimum size allowed for parking spaces?

Mr. Gloede stated: 9 x 18. That is the ordinance requirement.

No more public, portion closed

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Mr. Le Frois questioned: Have you confirmed the use of that driveway for garbage pick-up and delivery with turning templates with the by-pass?

Mr. Gloede stated: It would be difficult but could be done. Deliveries and garbage trucks are coming in at off-hours when the restaurant is not open.

Mr. Wallace questioned: Would the truck go all the way around to get to the garbage area?

Mr. Gloede stated: They wouldn't have to. The garbage is right here. They would come in, back in this way, or front end and pick up. The dumpster back here is next to a masonry structure and it's only open on the one side.

Mr. Wallace stated: When the properties closed they could reverse through the by-pass lanes and come out the other direction?

Mr. Gloede stated: I wouldn't suggest that.

Mr. Wallace stated: But they could back in and k-turn?

Mr. Gloede stated: Yes.

Mr. Ricciardo stated: What we received on the 28th has very limited information on it. I was under the impression we had asked for more information than what you've provided. And I see from reading the engineers report there's a lot of information that's not even addressed on this.

Mr. Gloede stated: We talked about that at the last meeting. You wanted to see a plan as to how it all fits together with a by-pass. The details will be the same on the plan as it is on our current site plan. Just slightly changed a little bit because of the configuration now. The drainage is going to be what we agreed to do; there are some lane changes taking place here, crosswalks at the entrances. In order to get the plan done in time for submission, the plan is the by-pass and what effects it has on the rest of the plan this is what we provided.

Mr. Marion stated: We asked to see a plan similar to this without a great deal of detail. We just wanted to see the by-pass lane.

Mr. Le Frois questioned: The plan with the by-pass moves the driveway. The plan without has the driveway back in the original location. Do the two go hand in hand or could the driveway shift either way in either plan?

Mr. Gloede stated: I think this driveway could shift back over this way. But we shifted over to accommodate the headlights.

Mr. Le Frois questioned: So that shift could work on the plan with the by-pass as well?

Mr. Gloede stated: I believe it could.

Mr. Wallace questioned Mr. Gordon Cameron: The design contemplated is beige and a brick color. Do you have a sample of the stone to show to the Board?

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Mr. Cameron showed exhibit A-14 and stated: This is a cultured stone, Rosetta stone. It is about a 2 ½ " veneer. It would have a similar material as the building next door. It is not a cheap stone. It's a very nice product. We are intending to colorize it to match the Aberlour building.

Mr. Wallace questioned: If for a condition of approval the engineer would prefer a modification of color, you can modify that fairly simply?

Mr. Cameron stated: Yes.

Mr. Cameron stated: I would like to make a comment about the grease traps. A grease interceptor is what you were talking about that is not on the site plan. That's a 1500 gallon big vault that goes in the ground. Taco Bell is not like a Dunkin Donuts where they're putting the coffee in the drains and coolatta stuff. At Dunkin Donuts you often see a grease interceptor. But in both stores, at Taco Bell especially, for the three bay sink and for the dish washing they have a grease trap. It's usually a 75lb grease trap in the floor and that's what's cleaned out for the certification by the Board of Health.

Mr. Marion questioned: Would Taco Bell allow deviations in their color schemes for this building?

Mr. Cameron stated: Generally speaking they don't have that kind of leeway, but they do make exceptions.

Mr. Wallace questioned: So if you need to skootch the color one way or the other it wouldn't make a difference? It would be a small deviation on the color?

Mr. Cameron stated: I don't intend to do that. The intention is to match the Aberlour.

With no more questions from the Board, this portion was opened to the public.

1st Public – Mike Bezney, 1 Bartek Lane, Wharton. As far as the stone columns on the building and the horizontal slats, do you feel it fits in with others in the neighborhood and would conform to it?

Mr. Cameron stated: My personal, not professional opinion, is that it would fit well with the existing building next door.

Mr. Bezney questioned: But not the existing houses?

Mr. Cameron stated: Correct.

No other public, portion closed.

Ms. Caldwell stated: I issued a new report on September 29th due to the shifting of all of the plans rather than revise the prior report. The primary bulk of my report was trying to identify the variances which I think we did with Mr. Gloede's exhibit. I will reiterate it when the Board decides on which plan to select. The frontage build out variance is there, parking in the first and second layer, and the parking buffer. We have the sign variance for just the pylon size which is oversized at 51 ½ square feet where 40 square feet is permitted, the internal illumination of all of the signs is a design waiver, along with the 25' buffer between residential and commercial properties is another design waiver, and the 22' aisle width on the one side in the parking area is

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a design waiver as well. In terms of other issues that are raised in my report, there's a lot of discussion about the parking and it's a little bit confusing but the way our ordinance is set up is to have shared parking. The idea is that parking is used at different times of the day for different uses. So while you're looking at parking for apartments and parking for retail they are not always going to be there at the same time. The idea is that the same space can be shared by different uses. From my understanding of the way the site plan is laid out there's not necessarily identified spaces for specific uses. So all parking spaces are flexible and can be used by different uses. The future use of the retail goes into the ten spaces that would be allocated as yet to be determined.

Mr. Flaherty questioned Ms. Caldwell: I thought the parking for the residents of the County Seat was restricted and not going to be shared; that they had to be dedicated.

Ms. Caldwell stated: That was not my understanding, but it is something the Board can weigh in on if that's something that you want to be signed. So far there hasn't been any signage shown on the plans. I think it's still an open question at this point.

Mr. Soloway questioned: Is the applicant willing to do this?

Mr. Wallace stated: I think what happens is people park where they want to park. The ability to police that would be quite difficult. Putting up a sign wouldn't hurt. We don't object to putting in a sign.

Mr. Flaherty stated: If it is designated for the apartment does it still qualify as shared space?

Ms. Caldwell stated: If they are only identified and no one else is allowed to park in those spaces then they are not technically shared space.

Mr. Soloway stated: In the signage where you indicate that it is reserved for residential uses you can indicate specific hours because I think the rationale behind the shared parking provision in the ordinance is that certain types of uses will be during the day time and residential parking is going to be at night.

Mr. Le Frois questioned Ms. Caldwell: Would you please clarify for everyone that employee parking is or isn't included in the calculation for parking for the restaurant? So it says one space for four seats equals 7.5 spaces and 8 were provided. Is there some background calculation in there that's also assuming that includes employee parking?

Ms. Caldwell stated: Yes. I understand the concerns with the parking but I think also with a restaurant use such as this you're not going to get a lot of people parking in the parking lot. A lot of people are going through the drive-thru. I can look at the shared parking factor and get back to you on the apartment spaces if we decide to assign them separately so they are not shared spaces. I also want to reiterate that there should be a crosswalk. I said in my report at the driveway entrance, but also at the drive-thru lane. It creates that awareness when people are driving that there may be a pedestrian coming across when they see those bars. I think there will be a lot of foot traffic if this is approved to this site. You are in a vicinity of a lot of residential uses and actually a lot of people do walk up and down Water Street to get to Shop Rite and Weis.

Mr. Flynn questioned: What locations are you proposing?

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Ms. Caldwell stated: Across the drive-thru aisle and at the entrance driveway. The two places where there are sidewalk connections. I would just reiterate that as far as the architectural plans that I think it should be a stone and brick veneer if the Board should choose to approve that design and not an EIFS type of siding.

Ms. Caldwell stated: There are some minor things with landscaping that they agreed to address which could be carried through in any conditions.

Mr. Gloede stated: I think I had submitted a letter back in August going over the different reports and what we've agreed to do. Just reiterating what we've gone over in the meetings.

Mr. Hardmeyer questioned Ms. Caldwell: Regarding the trees, are you expecting him to provide the calculation for the number we have, the number removed, and the number to be replaced? When would that happen?

Ms. Caldwell stated: I'm not concerned. I think they are ok based on the calculation. If they have to increase the number of trees on the site they would.

Mr. Hardmeyer questioned: There are quite a few trees in that lot you're buying in the corner. Have you taken that into consideration?

Mr. Gloede stated: Yes. We will show the calculation as requested.

Mrs. Le Frois questioned: So as part of your report, for the benefit of the public, number 2-2b, that we based on our zoning that it is in a T-5 zone and that the proposed plan is permitted in this zone?

Ms. Caldwell stated: Yes. The restaurant and accessory drive-thru are permitted uses in the T-5 zone.

Mr. Simmons referenced his report dated October 1st, 2015 and stated: Page one and the top of page two is a summary of everything we've looked at to date. The number two on the zoning has already been discussed with various variances. Number three on the site plan, my first comment to put it on the record, there was some right-of-way that is dedicated to the DOT for a route 206 third lane widening project. It's a small area, about 11/100th of an acre. The other reason I bring that up, other than to get the survey correct and the area correct, there was as I recall, subject to checking, a radius return at the intersection of Hamilton and Water Street that was deeded to the DOT as part of that right-of-way as opposed to the roughly 90 degree angle. The reason I bring that up is that it's somewhat in the area of the proposed pylon sign and just to make sure we've got the right setbacks from any right-of-way line. That's what I want to make the applicant's engineer and surveyor aware of. By the same token with that sight triangle easement, as far as the metes and bounds, that will all be a function of the survey to show the correct right-of-way configuration as it was deeded as well. Then I went into analyzing the site plan with the by-pass lane and without the by-pass lane. On page 3 with the by-pass lane the aisle width behind the nine spaces that face towards Hamilton Street under normal standard is required by the Town Ordinance as 24', this is 22'. Mr. Gloede was correct in that there's no parking on the opposite side of that aisle so it's a good thing as far as that aisle width goes. If you decide to go with this configuration the trees that are located in that remaining width between the curbs by Hamilton Street be in such a position that they not be in the back up area

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where the vehicles tend to back up. I would have an issue with those trees. Number two, I pointed out the portion of the by-pass lane is located in the sight triangle easement that's proposed on the corner of Hamilton and Water Street. My belief is that anyone in that by-pass is going to be moving and not necessarily stopping and creating a permanent blockage in that part of the sight triangle easement. In regards to number three, I know Mr. Gloede worked diligently to try and get everything into the site plan given the dimensions that he had. I just point out that on the southerly side there are some issues to deal with, the down spouts on the roof area, the stone tower over the front right corner if you are looking from Water Street, and the gas service on the back right corner shown on the architectural plans. All those features are very close to that proposed curb line. I would suggest that those would have to be evaluated to see if perhaps the gas service meter could be relocated to the rear of the building so it's not in an area that's subject to traffic impact. If the leaders could be brought out to the front and the back directly somehow to eliminate that issue. Perhaps some addition tweaking of the stone towers along the front right corner to get that out of the way. We did point out that on this particular plan the curb opening was moved further to the east which is a good thing for not shining the lights in to the neighbors across the street. I agree it is a more difficult move to get the vehicles in and out for a loading space, but as Mr. Gloede said this entrance could be shifted back to make it more of a straight run. We talked about the parking spaces going down to 23 in this plan. The impervious area went up slightly and it will change just a little bit based on the correct denominator for the overall lot area. Landscaping was reduced on this plan especially along the southerly line with the 222.16' distance. The one thing I did notice when I visited the site over a number of times is when you go to that southerly line, there is a retaining wall and board-on-board fence there. The neighbors on the Aberlour side are not really going to see it because there is a privacy fence there. By the same token it's on the back of the building where the drive-thru is only going to be. On this particular plan, the right turn out to help the vehicle that comes in to the site, makes a right and isn't able to find a vacant space in those nine spaces. That's been eliminated. That was suggested as an escape right turn because without that, if you did make the right, go into the site and weren't willing to sit in the drive-thru lane you were basically stuck. You either had to go through the lane, get to the window and pass for this particular time, or someone would have to do a k-turn which would interfere with traffic coming in. It would be a bit of a congestion issue. The good thing about the by-pass, when you come in and you don't find a space in the nine, you can use the by-pass lane and get to the additional parking spaces on the right side of the property when looking at the plan. The good thing about this is it doesn't force you back out into Hamilton Street again. You have a situation where with the right hand turn out to go out clockwise around to get to other parking, again interfering with traffic on Hamilton Street. This eliminates that, so in my opinion that's a good thing. We talked about the access point to the dumpster and the maneuverability. Looking at the site plan without the by-pass lane you've got 10 parking spaces up front so you've got that extra space back, you've got the standard 24' wide aisle. I pointed out that a small portion of the drive-thru lane does encroach in sight triangle easement. However, in the encroachment area the aisle is 13' wide which is a transition back to the 24' wide aisle. Normally vehicles won't be all the way to the right hand side. On the plan without the by-pass they show about a foot and a half additional rim on the south side of the building to accommodate the down spouts and the curbing and what have you. Again, the access to Hamilton Street did line up with the loading zone and refuse area for deliveries. The total number of parking spaces is 24. The impervious is somewhat less. There is additional landscaping provided. The right turn exit from the parking lot onto Hamilton Street is included. It is an alternative. Once again you do have the issue of possible interference with vehicles making a right or left off of Water Street and Hamilton Street. You don't have that issue with the by-pass lane. Access to the dumpster was basically a straight line as shown on that plan. The

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applicant has shown Hamilton Street to be widened out an additional 2' as we talked about. While we're dealing with this particular property for a proposed Taco Bell, I know in the future they may or may not come in for a site plan for what we now refer to as the County Seat building, but the reality of it is the way it's been discussed even without the County Seat restaurant, the two lots are married. From the standpoint that some parking to accommodate the apartments on the second and third floors of the County Seat building are going on this particular lot. My understanding from discussions with various people involved in the application is, other than in the lease agreements, there's no resolution on file that marries the two properties together in regards to parking. I would suggest to the Board that unless the applicant has some other legal vehicle in mind, it should be done so that it's on the record so everyone understands just exactly what's involved and which properties depend on others.

Mrs. Le Frois questioned: So up until this point, you're saying that it's been a courtesy?

Mr. Simmons stated: As far as the Town goes, I think so. Mrs. Citterbart and I have discussed this in the past and researched the files and I don't believe we were able to find anything.

Mr. Soloway stated: I suspect that it's been that way for a long time and that's the reason nothing is there. I think Mr. Simmons's suggestion is a good one and there should be steps taken to formalize the marriage as it were. One thing I might suggest is that since at a minimum the residential parking is going to be provided here there be something recorded in the chain of title for the County Seat property so that anybody who acquires that is on notice for it.

Mr. Simmons continued with his report: On page 6 and item 4 for parking, we talked about the residential and the restaurant parking and the retail. I just want to point out to everyone on page 6 under 4c – "for retail use under Newton's ordinances, 10 parking spaces would provide for 2,500 square feet of retail based on one space for 250 square feet. It's not clear whether 2,500 square feet of retail area is located in the County Seat restaurant area on the first floor. An aerial photo of the footprint of the County Seat shows the scale as approximately 70' x 45' subject to field verification. This calculates out to 3,150 square feet. The applicant should be aware of the parking limitations in the future for the first floor of the County Seat building. The reason I bring that up is that if they go to a retail use at one space for 250 square feet you've got 10 spaces other than with the by-pass, you meet the parking requirement. I don't know if the 2,500 square feet is the total area of the County Seat first floor. I've seen applications in the past where the area of the particular property we're talking about is 5,000 square feet but the applicant is limited to using 2,500 square feet and not using the rest of it because they literally don't have the facilities for the parking.

Mr. Simmons stated: The last item for the record on page 6 is item 4e – "During construction of the proposed Taco Bell restaurant, adequate parking will not be available for the County Seat restaurant and the residential apartments. The applicant to explain how the County Seat building parking will be handled during the Taco Bell construction phase. In particular, will the easterly side of Tax Lots 1, 2, and 3 be cordoned off and reserved for the apartment parking, or will temporary arrangements be made elsewhere for parking? I know that was discussed that they would have to make arrangements. I know at one point they were talking about the easterly lot that they would cordon it off.

Mr. Gloede stated: It was on one of our exhibits. We did show that we would utilize the existing driveway from the house that is going to be taken down. So we would use that without having to create a new driveway and then cordon off those 10 spaces along that side for parking.

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Mr. Simmons stated: Basically, put some kind of construction fencing along there and then use the area from the construction fencing out towards Water Street as the work area.

Mr. Gloede stated: Yes. That's what we agreed to.

Mr. Soloway stated: They also testified that they would provide parking during construction at the easterly end, where you look from Water Street, in a fenced off area with room for 10 spaces until construction was done. They agreed it could be a condition.

Mr. Simmons stated: Mr. Soloway brought up some discussion with the Board, whether there should be a building permit or c/o before the issue was resolved as far as working on the County Seat restaurant. I would suggest going a step back further before any site improvements have started. Once you start the site improvements then you're basically starting the construction of the overall project.

Mr. Marion questioned: Does that include the house that will be torn down?

Mr. Simmons stated: Subject to the Board considering this application with the ultimate goal that everybody knows what the applicant has in mind here having Taco Bell sharing parking spots, if we don't have all the ducks in a row we probably shouldn't start.

Mr. Simmons continued: Going on to stormwater management, Mr. Gloede presented the plans for concept but just so everybody remembers, along the parking lot where the 9 spaces are, that aisle width that is the proposed underground pipes for stormwater retention mitigation. We had a meeting with Mr. Gloede in our office about enlarging some of those pipes. I think we are in agreement to do that. The exact final design will be a function of which option the Board considers going with. The one with the by-pass has additional impervious area so it would have to be enlarged a little bit more, but I think we can agree to that. With regards to the facilities report, we talked about that and commented on the parking. With the traffic impact, on item 7a I asked the applicant to point out which access location they were talking about, the one straight in at the loading area or the one to mitigate some of the lights. I pointed out in 7b, that subject to approval we are going to have to get DOT approval for work and staging at the site during construction.

Mr. Simmons continued: Number 8, as far as utilities go, we talked about existing utilities that are going to be taken away and adding new ones in. A new lighting plan would have to be developed for either plan presented here tonight. The actual size and footprint of the building and geometry has changed. That lighting plan would have to be developed according to the Town ordinance. I believe the ornamental fixtures are the ones that the Board wants and that the applicant has agreed to provide.

Mrs. Le Frois stated: I believe there was some discussion and testimony at the last meeting without the by-pass with the new second story and based on the testimony of Mr. Cameron he did go over some testimony of the lighting on the building. But you're talking about the lighting in the parking lot?

Mr. Simmons stated: Actually both. They originally had those sconce fixtures on the side of the building. They originally faced up and down, but now they just face down for the privacy of the Aberlour people. The other concern I had was on the southerly side where there wasn't a lot of

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light produced by the parking lot fixtures and they were going to rely on the sconces on the side of the building to light up the drive-thru aisle. There may have to be some additional lighting aimed toward their facility as well.

Mr. Gloede stated: There was another comment too. The height of the light fixtures was not to exceed the first floor of the Aberlour building.

Mr. Simmons stated: That is an important condition. With regards to the landscaping the only additional comment I have is looking at the plan with the by-pass lane, there are two larger trees that I suggest be moved out of the sight triangle easement for safety purposes. The signage was discussed previously. Regarding the architectural plans, I believe the trend and what the applicant is aiming for is using all the veneer and not the EIFS system on the outside of the building. Is it colored stone or does it require painting?

Mr. Gloede and Mr. Cameron stated: It is already done. It's manufactured into it.

Mr. Simmons questioned: I understand that the HVAC units were going to be on the white painted deck of the roof system. If you look at the architectural views of the cooler on the back of the building which is stepped down, are there going to be any compressor on top of that?

Mr. Gloede stated: There will be nothing on the cooler deck.

Mr. Simmons stated: The way the architectural plans depict it will be the way it is in the real world?

Mr. Gloede stated: Yes.

Mr. Ricciardo questioned: Regarding lighting item b. Has he agreed to do the streetscape lighting?

Mr. Simmons stated: Yes. Regarding construction details, I pointed out some items that are needed. I pointed out the various approvals that I was aware that the applicant would have to get. And finally, I realize this is preliminary, but with the final we will require an as-built.

Mrs. Le Frois questioned Mr. Simmons: From a purely safety standpoint, is your preference for the by-pass or no by-pass?

Mr. Simmons stated: My preference is for the by-pass. You don't have the traffic going back on to Hamilton Street. I know it makes things very tight, but it gets people out of the way and it gets them through the parking lot with a minimal disruption of traffic on Hamilton Street from that standpoint.

Mrs. Le Frois questioned Ms. Caldwell: What is your preference?

Ms. Caldwell stated: I also favor the by-pass because I think it improves the circulation on the site and it doesn't have that exit out onto Hamilton Street quite as close to the stop sign as before. It is also consistent with what we've required throughout the Town when we've had these applications for drive-thru's and they tend to work very well to have an extra lane. It's not just for people who choose not to go through the drive-thru. It's also for people who go through and

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the spaces are full and need to travel around rather than having to back up in the lot with other people coming in.

Mrs. Le Frois questioned: Would both of you address where the egress/ingress is currently and on the other plan? Is it your opinion that they should move it back in line with access to deliveries and garbage removal?

Ms. Caldwell stated: That's a tough one and I think it's really a trade-off. The way that it's shown now, it lines up nicely with the parking spaces and you're not shining lights directly on the residences. However, with all the testimony I understand that the deliveries and garbage removal might be difficult. Perhaps the trade-off is better to have it between the residences and behind the parking spaces and the applicant will have to deal with the inconveniences of pick-up and delivery. It's really on them. They could do it on off-hours when the restaurant's closed. They could do that and not interfere with other uses and be able to offer the residents where it's not shining on their properties and perhaps a better line up with the parking lot.

Mr. Simmons stated: One additional thing I was going to suggest is if you look at the plan with the by-pass and you've got those 9 parking spaces along the front towards Hamilton Street, on the space furthest to the right where Mr. Gloede shows it as curb, perhaps that could be a flush curb or done in striping so that it's flush with the pavement. That way when the delivery vehicle or garbage truck comes in they could back over the curb and make the radius easier.

Mr. Wallace stated: That sounds fine. No objections.

Mr. Simmons stated: Subject to putting the templates on it. There is delineation. The pavement is going to be asphalt. Perhaps this island area could actually be flush concrete just to provide a color difference to help delineate it. Yet when you went to make the turn you'd be driving over a flush curb.

Mr. Gloede stated: Ok.

Mr. Marion questioned: We've been talking a lot about the entrance/exit and the trucks coming in. What if right in front of the proposed loading zone we make that just an entrance. So trucks can back straight in and get straight out but customers only come in that way. Then the exit/entrance that's there would be a left/right. Make that an exit. That way there aren't lights shining on the house because it's only an entrance and you have a separate exit. That takes care of the trucks coming in and out and the light issues on the house.

Discussion ensued on separate entrance/exit.

Mr. Simmons stated: The good thing about that is that people naturally want to go in the closest entrance they get to which is the way it works out here.

Mr. Marion stated: You won't have issues with people coming in and out of the same exit making a wide turn. You have a straight shot out. They're separate.

Mr. Flynn stated: One of the things I'd like to see on the final plans is all of the street parking on Hamilton Street denoted on the plan that's along your property. It's relevant to the application. You don't show the stripes on the plan.

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Mr. Gloede stated: Ok.

No more comments from the Board. 5 minute break.

Returned from break at 9:36PM

Portion opened to public

1st Public Sworn in – Earl Schick, 14 Kory Rd., Newton. We in this room and the many who cannot be here with us today as well as the 800 plus petitions we have signed against this proposal believe that on the record before you there is insufficient evidence by which this Board can possibly find that the applicant has met the positive or negative criteria stated in the Municipal Land Use Statute. As to the positive criteria, there is no legitimate basis for the Board to find that there are "special reasons" to grant this application. This property is particularly unsuitable for this use. It is a small lot at the end of a residential street at the bottom of a very new traffic funnel created by our redirection of Spring Street as well as some of the redirection of traffic in this current area. There's nothing unique or special about this property that makes it suitable for this business. There are other properties in the Town of Newton that are more suitable that are for lease or for sale. As to the negative criteria, all the evidence, testimony, and petitions presented to this Board demonstrate that granting this application will cause a substantial detriment to the public good. This applicant is asking you to shoehorn this project aimed for the good and the benefit of two corporations over the welfare of the public. One corporation, the Heidi Corporation, already enjoys the economic benefit from the property receiving rent both from tenants and a thriving business. The other is MNA Realty who will only own the property that they wish to operate for their own financial reasons. This particular meeting is being held solely for the benefit of the real estate deal. The expiration of the 1031 exchange that was mentioned at the end of the last meeting presents an unprofitable situation that upon expiration is the reason why we're even having this meeting. If that expires, there is no deal. Saving real estate deals between two parties is not the responsibility of the Board. The public safety is. By approving this application you will render an active restaurant liquor license inactive which cannot be converted to a liquor store license as was previously suggested. You are creating a possible Pandora's Box with future variance requests. You will have to accommodate approximately over 1000 customers per day that this infrastructure cannot handle. You'll increase the loitering with the number of the youth crossing between cars and against the traffic lights, creating a traffic bottle neck both on Water Street north and south and Moran Street which will directly affect existing local businesses, County employees, commuters, and the shopping public. And with the new pedestrian traffic issue people will avoid this area at every opportunity. Let us be very clear. The public is not against the Taco Bell in the Town of Newton. We are against it at that particular location. Thank you for your time.

2nd Public Sworn in – Mike Bezney, 1 Bartek Lane, Wharton. Owns 7-7.5 Hamilton St. I would like to say that even if the Board thinks that there is no chance that the applicant cannot get a right-of-way by the State to have an entrance and exit off route 206, it is the applicant's responsibility to pursue all avenues to make this site feasible to all residents in the community. It should not be based on the Planning Board's assumption that because of past experience that this Board had that this could not happen. There's always a chance that the State may go along with the request. Never assume anything. It never hurts to apply. The building design is modern and does not, despite the testimony offered by a contractor at the last meeting, reflect the architecture of this neighborhood in our community. In fact, the use of stone face columns and 3 dimensional horizontal slats are architectural features that cannot be found anywhere in

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this area. These are in fact modern architectural features of fast food retailers and not of a building that is supposed to visually fit in a neighborhood it is supposed to be located in. The applicant is seeking a number of variances from the Planning Board for the proposed site improvements. Some of these include front yard, side setbacks, both primary and secondary front yards. The Town of Newton has taken a great deal of time and energy and money to develop a vision plan and a totally new Master Plan in an innovative approach to planning in our community and the use of tiers to finely develop a completely new land management ordinance. All of these documents reflect the desire of our Town in terms of how the future development should take place relating to not only uses by the physical arrangement of the proposed improvements on the individual parcels. The proposed layout has the building set back from Water Street by 65' with a driveway running between the building and a road. The same conditions exist on Hamilton Street having parking areas separate from the building. This was not what was envisioned by either the Master Plan or the Land Management Ordinance. Rather ordinances call for minimum of 2' setback and a maximum of 12' setback which we've discussed. Thus requiring the building to be in very close proximity to the road and the sidewalk. The proposal is completely antithetical to what is required by the Master Plan and the Land Management Ordinance. Additionally, the layouts specified by the alternative proposals are going to cause circulation problems just like we currently have. The Dunkin Donuts facility further out on Route 206, the layout without the by-pass lane, has turning radiuses that are too tight as the traffic lane passes throughout the parking area. It will also create a situation that will readily lend itself to vehicle to vehicle incidents while drivers try to get in and out of their parking areas and driveways in the rear of the lot with cars and trying to exit the site. The applicant has requested a considerable number of variances for the proposal site with improvements trying to shoehorn it into the site.

Mr. Bezney continued: The applicant has not provided the necessary planning testimony to try to justify such variances other than to say that they are needed in order to accommodate this specific use on this particular piece of property. The applicant is relying on receiving such a variance relief under section 40:55D-70.c(1) of the Municipal Land Ordinance. Here the law talks about granting relief for exceptional narrowness, shallowness, or shape of a specific piece of property. It also addresses exceptional topography conditions or physical features that uniquely affect a specific piece of property. It also talks about extraordinary and exceptional situations that uniquely affect a specific piece of property or structure that lawfully existing thereon. The strict application of any regulation persistent to this law would result in peculiar and exceptional practical difficulties to or exceptional in undue hardship upon the developer of such property. The applicant has not justified the request for a use variance under c(1) or c(2) of section 70 of the Land Management Ordinance. The property is not an odd shape. This is geared toward an existing building presence. None of these conditions exist in this instance. Rather, I would propose to the Planning Board that the relief under the Municipal Land Law should be governed by section 70c2 which states "where an application or appeal relating to a specific piece of property the purpose of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh the detriment. The Planning Board could grant departure from the regulated persistence to the Land Law. This is a critical point in the application. The applicant has to prove to the Planning Board that the attributes of the proposed use outweigh the detriments to the neighborhood it is proposed to be located in and that the proposed use would not be to the detriment to the intent of the Master Plan or the Land Management Ordinance. It is important to keep in mind that just because a use is listed in the ordinance as an approved use it does not necessarily mean or require the Planning Board to approve it if it is shown that the use does not fit into the site and does not comply with the intent of the Master Plan nor does it comply with the Land Management

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Ordinance that guides the site development requirements. In this case, the use definitely does not fit the particular site. In fact, the proposed site plan is trying to cram 10 lbs. of wet horse manure into 2 lbs. of a rated paper bag. This use and the required site improvements do not work on this site or this particular neighborhood. It has also eliminated a lot of parking on Hamilton Street.

3rd Public Sworn in – Bob Wehrenberg, 19 East Shore Dr., Newton, Hampton Twp. I'm a fireman with 30+ years with two fire companies. Looking at your layout here, the by-pass is vital. The way it was before, getting an ambulance in there, do you think people are going to move out of the way when a call goes out or an emergency happens? I can tell you that multiple calls in a huge parking lot down the road, people don't move. Go on Route 80, what happens? People stop and are rubbernecking. That area for emergency services is too tight. I've been on multiple calls in the Town of Newton. Streets are tight and that road is one of the tightest. The cars that are going to be bottled up on that street because there will be no parking spots is going to be horrendous to get a truck in and out. This is my big concern that I've heard very little of. I've heard landscaping, trees and bushes and happy things. How about somebody's life? That is the main thing you guys should be thinking about up there. Number two, you talked about the parking for the residents of the County Seat. You have 8 spots dedicated. What happens when somebody goes and they come back and there are no spots because it's taken by patrons? How is that a dedicated spot? How can that be considered a shared spot? It's not a shared spot if it's a dedicated spot. Even though you don't have them marked out, there should be 8 spots available. Lastly, there's the traffic. The traffic was horrendous before. Now Spring Street is one-way. I know where I used to catch the back up on traffic. I'm way back now because of that. Everything is bottle-necked down in that area. Add this into the mix and it's going to be ridiculous trying to get around. You will have so many residents, me included, who avoid this area like the plague. That's what's going to happen in this Town. You are trying to boast business. We're all for the Taco Bell. My son is dying for Taco Bell in this Town. That location is not the right location. There are other locations out there that would welcome that business. That is going to be a cluster and it's going to be a disaster.

4th Public is Sworn in – Missy Muller, 3 Wood Run, Newton, Hampton Twp. I realize I'm not a resident of Newton but I shop here, I eat here and I go to the performances at the theatre. We are contributing to the economy here and have a direct impact on the taxpayers by keeping local businesses running so this has a great effect on me and I'm sure many others in the surrounding community and that's why this means so much to us. I want to start about by saying, and I agree with Earl Schick, we do not oppose the Taco Bell. We just oppose it in that location. It's not a good idea. It's not large enough. There's so much traffic coming through here. The pedestrian traffic alone. Taking into consideration the high school traffic is going to be coming in and out of here at lunch because they're allowed to leave at noon time or whenever their lunch is. They're going to be coming to Taco Bell for their \$5. Today I was coming into Town northbound at 12:50 and again at 2:30. Traffic was backed up past the square. This happens every day. What's going to happen when a tractor trailer is pulling off to get a taco? It happens at Burger King and McDonalds up the street. They pull off onto the shoulder there. You're going to have the blocking of view sights for anyone pulling out of the Aberlour apartments or anybody pulling out of Hamilton Street. That's an accident waiting to happen. It's going to clog up the traffic up into the square and it definitely will happen. I see it all the time. You cannot pull out of Burger King when a tractor trailer is there. It's gonna happen. This proposal can be taken right up the street where it's not going to have a negative impact on the community. I know the applicant doesn't want to lease the land, but they don't live in the area and they don't even live in the County and will not have to deal with the fact

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that we have to deal with the traffic. They are razing the residents to fit their needs. There are noise disturbances that will occur and livelihoods that are going to get destroyed because they want to put this Taco Bell in this lot. Even though it's a permitted use, there are so many concessions they are asking us as a community and you as a Planning Board just to put this Taco Bell in. I don't understand how that can be a good thing for the community. Where is the line going to be drawn when somebody else comes down the road and says let's raze the next 3 or 4 residences here because we bought them out. In that sense I don't think that this is a true suitable location for a Taco Bell. I understand the vision that we're all trying to do in Newton. We want to make this place safer. We don't want this place to be a Ledgewood. But again, it's just not a suitable location. They could take it up the street where all the other fast food restaurants are. Everybody could have access to them. It's great visibility for them. With this particular parcel of land I don't think it would be good for our community.

5th Public Sworn in – Ed Muller, Greenwood Run, Newton, Hampton Twp. I want to read something to you that I read in Town of Newton earlier this week that disturbs me as a citizen. I quote - At this point it is simply between two different options, said Town Manager, Tom Russo in an interview. He explained the project has met all of Newton's zoning codes and Town ordinances and the final decision that remains to be made is the configuration of flow, parking, and one egress or two. This disturbs me as a citizen because I thought part of this was that we had a choice in it. We had an opportunity to say and express concerns, etc. But the way I read this tells me this decision is made. That was his quote. Well if it has, why do we need all these variances? I realize you may not be able to answer that, but as a public citizen it looks like it's been railroaded in and it's already a done deal and it's really very upsetting.

6th Public Sworn in – Karl Lantz, 42 Cherry Lane, Newton, Hampton Twp. This is probably going to be a repeat of what you've heard, but there's strength in numbers. I've been to three of these meetings now and if the Board approves this I will be dumbfounded. I've not seen a bigger mismatch than Taco Bell at this location. But generally speaking like everybody said, it's not Taco Bell. It's any fast food restaurant. It's just a mismatch for this location. I've listened to probably the most short-sighted traffic study that was ever presented. The conclusion was that somebody might have to wait a little bit to turn left into Taco Bell. It has no impact. How he came up with the number that only one out of ten people are going to turn right onto Hamilton Street is beyond me. I don't know. As far as the plans go, all I've been hearing is probably this, probably that, maybe, we think it's going to go this way, but we don't know. It's pretty much been the most disorganized presentation I've ever seen. I'm concerned about the safety of the foot traffic. We all want foot traffic coming in to Newton that came from the traffic study too. But we want foot traffic that's going to come downtown to shop Newton. I don't sit at home at night, and I don't think many people do, and say "hey honey, let's go to Taco Bell and get dinner and then we'll go downtown and shop". That's not the kind of foot traffic you're going to get. Then the foot traffic is going to be crossing the worst intersection we have in Town. You're going to have more and more people crossing. The traffic study had nothing to indicate what was going down Hamilton, what was going in, feeding in or feeding out. He just sat there and said, this many cars are coming, one out ten will go this way, and the only impact is a left hand turn. Again, it's a permitted use, but it's not the right use.

7th Public Sworn in – Joe Kocur, 29 Hamilton St., Newton. You seem to have made Hamilton Street a good street for relaxing. It's good that you could make it a one-way street and just go in that way. Now it appears to be made more difficult. Really, what happens is that's going to become too strong. That was made a one-way street, but when it meets the highway you could go in and out. I live on that street and we have a parking space in the front and in the

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back for the ice and snow and the parking it's not that bad. It's not perfect. It's far from it. I feel there is a better way of doing it. In other words, a better way of doing it to me is that our street is so slow but if it changes it could be so fast.

8th Public Sworn in – Florence LaFlame, 7 Hamilton St., Newton. If Taco Bell goes in, right now we have three parking spaces out front. I live in a duplex and we have to share a driveway. If we take away that, we have nowhere else to park or our company because the road up there is also filled with cars. The second thing is, aren't they going to have to have trucks there to do piping, gas, water? Is that also going to block our driveway for us to get in and out?

9th Public Sworn in- Suzanne Datria, 40 Rhea Run, Newton, Hampton Twp. We have a business here in Lafayette. We've been here since 2006. I have 13 people who work for me and none of them can be here tonight. They all feel, as the people here tonight, that it's not bad to have the business here but it's not the right location. I haven't spoken to anyone who has had a favorable opinion of it being in this location. That should mean something to you, what the people here feel in this community because we're the ones who live here. We had Amazon here for our business on Monday and my husband was taking them out to dinner. They came through Newton and they commented on what a unique and interesting town it is and Taco Bell doesn't seem to fit into that plan. I don't know what the Master Plans are but it just doesn't fit. You put the Aberlour here; a beautiful high rise for residents to live in and now you want to put a Taco Bell right underneath them. The noise, the smell, the light pollution, the traffic, the danger with people coming and deliveries. The trucks may come in at off hours which won't affect the traffic of the Taco Bell. But what about the residents? Horns will be blowing at all hours of the day and night. You're infringing on their right for the enjoyment of their own property. Why you would put something in a residential area? I just don't understand it. It's already an uncomfortable place for foot traffic to come to downtown Newton. You see all the empty stores. I don't go there any more if I can help it. I guess that's it. Again the traffic challenges. You can't repeat everything everyone says. Just because somebody wants to do something in one place doesn't make it the right thing to do. Taco Bell would be a great thing to have in the community, just not in this location.

With no more public stepping forward, this portion closed to public.

Mr. Ricciardo stated: If either one is approved I would like to see at the intersection of Hamilton and Water Street a "No Left Turn from 7-9AM and from 4-7PM" sign. That's the time that traffic is the heaviest at that intersection.

Mr. Le Frois stated: I understand your point, but I'd be a tad concerned that people that did want to go south are going to go down Hamilton Street. People unfamiliar with Town might not try that because they'll be nervous that they'll get lost.

Mr. Hardmeyer stated: I think Hamilton Street is going to take a beating on this. A lot of people are not going to want to go out on 206 and are going to go right off of Hamilton Street. It is a small narrow street with 20+ homes on it that are close together and close to the street. I think we'd be doing them a disservice by permitting this in this location.

Mr. Flynn stated: I want to respond to Mr. Muller's comment on Mr. Russo's opinion of the project and the zoning criteria. That doesn't represent the opinion of the entire Board by any means. That was the paper calling him up and asking him what he thought. It does conform to the zone

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but it doesn't represent the opinion of the Board. It is just the opinion of one who happens to be the Town Manager.

Mr. Le Frois stated: After listening to our professionals and some of the public, I'm in favor of having a by-pass lane. I realize it tightens things up a bit but I think keeping traffic off Hamilton, I know they aren't going to go all the way down, but if there is some additional circulation there it can clog up the western part of Hamilton near the intersection of Water Street. I think that's a bad thing. I agree with you on that, Dave. And from a safety standpoint and convenience for the public.

Mr. Ricciardo stated: I've been pushing for the by-pass from day one. I thought it was the only way that if any plan like this was going to be considered it was an integral part and a very important part of a site plan like this. I am very in favor of a by-pass being discussed by this Board.

Mr. Le Frois stated: I would like to add that it is consistent with what we've done with all the other fast food restaurants in Town.

Mr. Le Frois stated: Raise your hand if you favor a by-pass lane. Slight favor for by-pass lane. So that's what we will consider.

Mr. Soloway crafted a motion for approval on the by-pass design. The motion would be to grant preliminary site plan approval for the by-pass design which would require front yard setback variance on the Water Street setback side of 63.05'; front yard setback variance on the Hamilton Street side of 48.67'; 12' being required in each case would require a variance from the ordinance requirement that you have a frontage build out of 80%. 0% is proposed. A variance to allow parking in the first and second layers of the lot. A variance to allow a 3' parking buffer to residential instead of the 10'. It would also be to grant a design waiver for not providing a 25' buffer between residential and non-residential uses. There will also be a variance and a design waiver relating to signage which I think you could separate from this because I think they can be separated and voted on separately. I don't think these other things could because it's all part of the same package. In terms of possible conditions, this could take a while.

Mr. Marion questioned Mr. Soloway: Do you have to go through all those when somebody makes a motion to deny the application?

Mr. Soloway stated: No. But I think it would be appropriate to take separate votes on each design. Its possible Board members might perceive them differently.

Mr. Marion made a motion to deny the application for preliminary site plan approval for the by-pass design because there hasn't been adequate information brought to this Board about traffic studies. There was nothing considered about the lunchtime traffic. Where it's located is a permitted use, but it is not the right choice for that spot due to traffic.

Mr. Wallace addressed the Board: The applicant has presented the application to take a permitted use and find an appropriate design for the permitted use and even to expand the lot to fit this use onto the property. We believe that because of the size of the lot, when we are looking for a c variance, as Mr. Russo indicated we have satisfied the criteria to put a permitted use onto this site with the limitations that are there, both the fast food restaurant use and the drive-thru use are both permitted.

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Mr. Marion questioned: Did your traffic engineer do a lunch hour observation?

Mr. Wallace stated: He determined that the peak traffic times would be dinner and Saturday lunchtime.

Mr. Marion stated: I don't know any fast food restaurant that does dinner as their main business. To me, lunchtime was not considered and that is the main factor in my decision.

Mr. Wallace stated: I would like to also point out that the issue of the traffic study would be more pertinent, respectfully, if we were seeking a d variance or a use variance. We are seeking a c variance where the permitted use is really what drives the traffic. The use is already permitted there. We've done what we can in terms of the design criteria to make the traffic flow as easily as possible to mitigate any issue that there may be. But because the planning for the Town has determined that this T-5 zone is suited for drive-thru fast food restaurants that the traffic, per say, is really something that has already been considered in the Master Plan. I would respectfully submit that the applicant wouldn't need to prove anything other than that they've really made the best use of this property with a permitted use and that not only did Mr. Staigar take proper accounts of the peak traffic issues and mitigate those issues to show that it would not be a significant impact that would be detrimental or at odds with the Town's Master Plan, but that the decision on where the traffic should go was made when T-5 was determined to permit a use such as this.

Mr. Marion stated: My motion stands. Mr. Hardmeyer seconded the motion.

Roll Call:

AYE: Flaherty, Marion, Hardmeyer, Flynn

NAY: Ricciardo, Le Frois, Diglio, Le Frois

Motion failed.

Mr. Soloway stated: I suggest a vote on approving the design with the conditions. Possible conditions: snow will be removed from the site, deliveries in the early morning hours and limited to 30' box trucks or an su30 truck because tractor trailers can't fit on the site, arborvitae on the area shown for the grass strip, any application for a change of use on the County Seat property is required to come back to the Board, during construction the County Seat restaurants will be provided 10 parking spaces to the rear easterly end of the property in a fenced off area until all construction is completed, all signage not to interfere with any sight lines, size of the restaurant limited to 30 seats, visually the restaurant would be substantially as depicted on exhibit A12 with siding substantially similar to the A14 chunk that was brought in, this was brought up by Mr. Marion adding a 2nd exit only door in the area of the restrooms, no site work to commence on the site or BP to be issued until a cessation of operations on the first floor of the County Seat building, directional signs in and out to the driveway to be internally illuminated, interior grease traps, crosswalks through the drive-thru lanes and the entrance driveway, no trees should be in any back up area from the parking spaces, record something to the satisfaction of the Town Engineer and the Board Attorney in the chain of title for the County Seat property alerting owners of that property the requirement that 8 parking spaces would be provided at this property, you'd have to record it on both chains of title actually, also notice of a resolution so that anybody buying that property would be aware of the possible impact on future site plans of that property based on the parking here, new lighting plan to be provided that would include ornamental fixtures in accordance with the Town's standard, height of light fixtures not to exceed the height of the first floor of the apartment building to the south, on the by-pass design

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an additional area of depressed or mountable curb near the dumpster access, you might want to consider as discussed by Mr. Marion separate entrances and exits, what's depicted as the single driveway now with an exit only you would have a separate entrance approximately 15-20' towards Water Street, and comply with the recommendations set forth in the report of Mr. Simmons.

Mr. Marion questioned: What about the dedicated 8 parking spots?

Mr. Soloway stated: They will provide 8 spots for that use. The question is will they be separately dedicated and signed.

Mr. Le Frois stated: And that would affect the shared parking calculation.

Ms. Caldwell stated: I did the calculation. With the by-pass the 23 is where they come if you take the shared access parking off the apartment units and keep that at 8 it adds up to 22.55 which is 23 spaces which is what they're proposing. You can assign these spaces without impacting or requiring a variance.

Mr. Le Frois stated: I think that would be appropriate to designate those spaces.

Mr. Ricciardo stated: I think Mr. Marion's suggestion about the two entrance/exits is very appropriate for this and I think it fits in well.

Mr. Ricciardo made a motion to approve preliminary site plan with by-pass and the previously described variances, design standard waivers and conditions. Seconded by Mrs. Le Frois.

Aye: Mr. Ricciardo, Mrs. Le Frois, Mrs. Diglio, Mr. Le Frois

Nay: Mr. Flaherty voted no based on the design being too large for a space that is too small and it presents a detrimental effect on the neighborhood because of the off-hour use, the design creating lighting issues with the neighbors as well as the traffic. I found the traffic study to be flawed because it severely underestimated the amount of traffic based on the sworn testimony of the applicant.

Mr. Marion voted no and agreed with Mr. Flaherty's comments.

Mr. Hardmeyer voted no and agreed with Mr. Flaherty's comments.

Mr. Flynn voted no.

Motion failed.

Mr. Soloway stated: I would recommend you vote on whether to approve the design without the by-pass. The variances would be slightly different. The front yard setback would be 64.43' on the Water Street side, 55.06' on the Hamilton Street side. You would have the same frontage deviation; you would have the same variance for parking in the first and second layers. The parking buffer would be 5' not 3' where 10' is required. You would also have a design waiver for the buffer between residential and non-residential. Essentially the same conditions except for any particular to the by-pass lane.

Mrs. Le Frois made a motion to approve preliminary site plan without by-pass. Mr. Ricciardo seconded it.

Aye: Mr. Ricciardo, Mrs. Le Frois

Nay: Mr. Flaherty voted no based on issues already raised and that the absence of the by-pass creates significant safety concerns.

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Mr. Marion voted no based on the safety issue presented without the second lane and with the flawed traffic study we don't have a true measure of the traffic going through that facility on a daily basis.

Mr. Hardmeyer voted no for the same reasons as stated above.

Mr. Flynn voted no based on safety concerns on Hamilton Street, the left turn out onto Water Street, and the denseness of the development.

Mrs. Diglio voted no. Would prefer the by-pass lane.

Mr. Le Frois voted no. Would prefer the by-pass lane and the potential traffic congestion with the return driveway coming back onto Hamilton Street.

Motion failed.

Mr. Soloway stated: The application is denied. In order to be approved you need a majority.

Mrs. Le Frois questioned: Does the applicant have the ability to refile?

Mr. Soloway stated: The application would have to be substantially different in some significant way. This denial is with prejudice.

NEW BUSINESS - None

DISCUSSION - None

CORRESPONDENCE -

- NJ PLANNER – JULY/AUGUST 2015 VOL. 76, NO. 4

EXECUTIVE SESSION - None

PUBLIC PORTION -

1st Public – Missy Muller, 3 Wood Run, Newton, Hampton Twp. I just wanted to thank everybody involved in taking the time out to really think about this and knowing that it is not the right thing for Newton.

Mr. Wallace stated: Thank you for your time.

2nd Public – Mike Bezney, One Bartek Lane, Wharton. Owns 7-7 ½ Hamilton. I know how difficult this was for the Board. But I think, in this room, you've restored our faith at the way the Board listens to the public and their concerns. Once again you reiterate in me as an investor in Newton that you're willing to listen to the people in this Town who are really trying to make improvements in this Town and work with you guys.

3rd Public – Earl Schick, 14 Kory Road, Newton. On behalf of everyone I've been working with over the past few months, we kind of found out late after the July meeting, there was some doubt, but we want to thank you from the bottom of our hearts for putting the Town of Newton first and not Taco Bell.

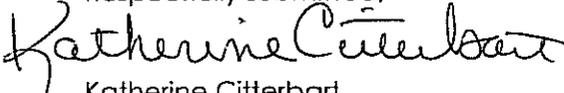
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No further public stepping forward, portion closed.

ADJOURNMENT

Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mr. Ricciardo. The meeting was adjourned at 10:45 PM with a unanimous "aye" vote. The next regularly scheduled meeting will be held on October 21, 2015 in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary

