I. **Call to Order**

Chairman Gannuscio called the meeting to order at 7:09 pm.

II. **Roll Call**

Commission roll call was taken. Chairman Gannuscio stated that Doug Wilson is now a regular member of the commission and Alexa Brengi is now an alternate.

III. **Election of Officers**

It was **MOVED** (Cooper) and **SECONDED** (Szepanski) and **PASSED** (5-0; Gannuscio Abstaining) that the Planning and Zoning Commission nominates and elects Alan Gannuscio as Chairman of the Planning and Zoning Commission.

It was **MOVED** (Sayers) and **SECONDED** (Szepanski) and **PASSED** (5-0) that the Planning and Zoning Commission closes nominations for Chairman of the Planning and Zoning Commission.

It was **MOVED** (Gannuscio) and **SECONDED** (Cooper) and **PASSED** (5-0; Zimnoch Abstaining) that the Planning and Zoning Commission nominates and elects Vincent Zimnoch as Vice Chairman of the Planning and Zoning Commission.

Mr. Szepanski stated he has been secretary of this commission for 10 years and it is time to step away for a year and regroup. Ms. Sayers asked Mr. Wilson if he would be willing to take on this position. He asked for a concept on duties. Mr. Szepanski explained what is required of the position.

It was **MOVED** (Sayers) and **SECONDED** (Zimnoch) and **PASSED** (5-0; Wilson Abstaining) that the Planning and Zoning Commission nominates and elects Doug Wilson as Secretary of the Planning and Zoning Commission.
IV. Approval of Minutes from the October 15, 2019 and November 12, 2019 Regular Meetings

It was MOVED (Gannuscio) and SECONDED (Zimnoch) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission approves the October 15, 2019 minutes as published.

It was MOVED (Cooper) and SECONDED (Zimnoch) and PASSED (Unanimous, 5-0; Gannuscio Abstaining) that the Planning and Zoning Commission approves the November 12, 2019 minutes as published.

Chairman Gannuscio stated that he was asked to add to tonight’s agenda a discussion to make recommendations and provide input for the new Senior Center.

It was MOVED (Gannuscio) and SECONDED (Szepanski) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission adds to the agenda under Section IX.C, New Business, Informal Discussions, a new discussion item, “Senior Center.”

V. Public Hearings

Mr. Wilson read the rules for conducting a public hearing.

A. Special Use Permit with Site Plan Review for 177 Old County Road for Condos in the MFSD (property owner F&L Construction Limited)

The Recording Secretary read the legal notice that was published in the Journal Inquirer on November 27, 2019 and December 4, 2019.

Chairman Gannuscio stated that the public hearing would be opened tonight but there is a request by the applicant that it be continued to the February 10 meeting. If the applicant has anything he would like to state preliminarily at this point in time, he may do so.

TJ Barresi, Professional Engineer from Barresi Associates, LLC, 570 Hayden Station Road, Windsor, addressed the commission. He is representing F&L Construction Limited, the applicant, and explained that last month the commission accepted a site plan/special use application for a 54-unit MFSD residential development at 177 Old County Road. The applicant has requested that the public hearing be tabled until February. Last week they appeared before the Inland Wetlands and Watercourses Commission, and as a result of that meeting, the project is being delayed to allow that commission to do a site walk, to provide time for a soil scientist to do a site walk and provide his report, and for his office to respond to reports from the Town Planner, Town Engineer, and North Central Conservation Commission. They made an attempt to notify as many abutters as they could in person and by letter as to what is going on tonight.
At this time Chairman Gannuscio asked for comments from the public about this application. There were none.

Chairman Gannuscio made a motion to continue the public hearing for a special use permit with site plan review for 177 Old County Road in the MFSD property to February 10, 2020. Mr. Zimnoch seconded the motion. Mr. Wilson asked if commission members have comments or concerns about this application how would they get them to the applicant. Chairman Gannuscio withdrew his motion. Mr. Wilson commented that he has Planning and Zoning comments, and he believes that in addressing them, it will change what is in the Wetlands application.

The following bullets are items which Mr. Wilson discussed regarding this application.

(Section 404 MFSD regs)
- Density calculations and zoning compliance need to be improved because they don't match other things in the proposal. The Density Calculations on sheet 1 indicate that the 54 buildings are 2 bedroom units. However, the book of "Single Family Dwellings" indicates that all of the units are 3 or 4 bedroom. 54x3.5 (ave) = 189 bedrooms, which exceeds 20 per gross acre (max 173 bedrooms). There is a disparity and revisions are required. Indicate on plan model type and number of bedrooms.
- Zoning Compliance Table: Required should be updated to the revised MFSD regulations. (Update front yard to 40 feet.) Maximum density proposed should be based on the gross acreage (currently total acreage). In zoning compliance table, you're reporting that you're providing 3.5 units per acre, but that is based on 15.2 acres not gross acreage of 8.65, so actually 6.2 out of 8; still in compliance, but not correctly shown on the table.
- Zoning Compliance Table: Should include proposed building height (NA now).
- Density Calculations: Footnote f of 404 excludes utility easements from "gross acreage." Existing and proposed easements should be excluded.
- Parcel 100: Is the BOS aware of the 60’ ROW parcel and the 20’ grading easement? Creation of the parcel should be a condition of approval.
- Records of zone change are needed (Map Reference #1 - 5/14/17 approval). A more detailed map is needed, and it needs to be an illustration so it’s clear.

(Section 409)
- Per 409.D.2 the max length of a cul-de-sac road is 1200 feet (~2000 feet on the plan). (Mr. Barresi noted that a waiver was granted from PZC last time in 2004 and applicant will again request a waiver from PZC.)
- Per 409.D.2 major roads should be 30 feet wide (26 feet on the plan). (Mr. Barresi noted that PZC approved a 26-foot private road last time. Wetlands would like it to be 24-foot, but it’s the PZC’s call.)
• Per 409.F.4 two canopy trees in the FY of each dwelling unit (not adequate on plan).
• Per 409.I.1 recreation space needs to be provided (not shown on the drawings).
• Per 409.I.2 open space must be calculated (can be the conservation easements, but must be calculated to be more than 20% of the total parcel area).
• Per 1102.A.3 significant man-made features must be on the Area Map.

(Plan comments)
• Layout plans (Sheets 7 & 8) should indicate acreage of the conservation areas.
• The driveway for unit 1 is too close to the front yard line.
• Decks shouldn’t be in the yards, but patio areas could be? Note 2 of Sheets 7 & 8 should indicate that the patios cannot be in conservation areas (yards either?). (Mr. Steele noted that patios are allowable because they’re considered landscaping.)
• Sheet 8: The 50 foot buffer should not overlap the 20 foot grading easement - future grading would destroy the buffer.
• Sheets 9 & 10: Retaining walls along the north and south property line need TW (top of wall) elevations (missing for south wall) and detail of the wall is needed to ensure that ground support for the wall can be built on the site (not crossing the property line).
• Sheet 10: Is the fill across the watercourse a dam? It might need permitting from DEEP; what is the impoundment area; the low point is not at the 60" diameter culvert - shifts east to the low point between houses #50 & #54; the depth from the invert to the road surface is 19 feet (see Sheet 20).
• Check endwall condition to determine if wing walls are needed to support grade.
• How is WQV (water quality volume) handled? Stormwater from impervious areas should go through water quality structures prior to an outfall. (Mr. Barresi noted that they have added water quality units.)
• Sheets 15 & 16 (utility plans) need to show proposed trees to coordinate: It looks like trees are located on top of utility lines and street lights. (The utilities should be shown on the landscaping plan.)
• How can one infiltrator collect all of the roof runoff from a building: Probably need multiple units for each downspout (Sheet 23).
• The infiltration systems should not be located at the base of the retaining walls.
• What work is proposed for the outlet of Lukas Pond? Not clear on the drawing (Sheet 16).
• Sloped areas (2:1 slopes) should not be planted with wetland buffer planting: Show the grading on the plans. (Show the slopes and utilities when showing the plantings.)
• Wetlands buffer planting that consists of deciduous or evergreen trees should be shown on the drawings (Sheets 17 & 18): shrubs can be shown by a shaded area, but a count should be shown. Need to mix in more variety of trees and maintain as many existing trees as possible.
• Photometrics should be provided (See 705.F.4) including building mounted lighting; lights should not shine into wetlands or conservation areas.
• Street lights should be on the north side of the road, where the sidewalk is proposed.
• Trees should not be located at street lights.
• The buffer at the NE corner should also include deciduous trees; the buffer may need to be extended west along the balance of the 175 Old County Road proper.
• The facility sign must be located on the property and not in the ROW for Old County Road (will help with site line).
• Is garbage pickup by the Town or the Association?
• Many plans: Upland review areas not shown.

Chairman Gannuscio thanked Mr. Wilson for all the work he put in to doing this.

It was MOVED (Gannuscio) and SECONDED (Szepanski) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission continues the public hearing on the special use permit and site plan review for 177 Old County Road for condos in the MFSD to February 10, 2020.

B. Special Use Permit with Site Plan Review and Site Plan Modification for 60 Main Street, Unit 70, for a bakery café restaurant (property owner RAWB, LLC)

The Recording Secretary read the legal notice that was published in the Journal Inquirer on November 27, 2019 and December 4, 2019.

Eduardo Nezbe introduced himself and his wife, Kate Gichuki. He is an accomplished aircraft mechanic as well as a US Army Veteran, having served in three wars. He still does deployments with the military with aircraft. She has her Master’s Degree in Hospitality and has been the director of hotels with a 300 and 500 room capacity. They were looking to open their business in the Waterbury mall but came across an advertisement for space in Windsor Locks, and after reading about the revitalization of Main Street, they fell in love with our small town and decided they wanted to be a part of this effort. Shamba Kwa Meza, the name of their café, means
“Farm to Table” in Swahili, and they will be offering teas, herbs, spices, sweet breads, roasted coffee, and porridge. They have a farm in Kenya. Ms. Gichuki is originally from Kenya and came to the US about eight years ago. Besides hospitality, they have also owned other businesses in Montana and Kansas. She worked in Glacier Park as a dining manager and in Grand Canyon as a front office manager and as a director of hotel operations. She also studied wines and hospitality management in administration in Dubai. She received her original degree of Masters in Hospitality Management in Switzerland. She would like to use her skills in hospitality to welcome everyone, and they are looking forward to working in this community.

Mr. Szepanski asked if they could walk the commission through their proposal, explaining the layouts and dimensions. Mr. Nezbeth stated that the drawing on page two was originally drawn up for the larger space in the mall, but this has now been modified for the space on Main Street for an area that is a little under 1500 square feet. There are 13 tables in the proposed space which combines two spaces. The existing space right now has three offices as you walk in, and they will modify it to open up the space. There will be half walls for privacy, and you will be able to see from front to back. The sheet marked “existing plan” is the measurement of the property as it is now, the dimensions of the existing space right now.

Mr. Szepanski asked what the hours would be. They will serve a variety of porridges and bakes in the early morning (6:00-7:00); between 11:30 and 3:00 they will offer a steam table with entrees, cold salad, and soups; they will close from 3:30 to 5:30, and in their later plan, when they scale up, they will open for dinner in the evening around 5:30. Mr. Szepanski asked if they would be open 7 days. At this time they are still doing the research, so their client base will determine the hours. Mr. Nezbeth added that with the teas, herbs, and spices, they do “Edumication,” where they offer assistance and advice for people for lifestyle options, finding which herbs and teas are best for certain symptoms and conditions.

Mr. Nezbeth asked about the timeline for the plans for the revitalization of the Main Street Overlay Zone. Ms. Rodriguez explained that Phase I (from the Y intersection at Suffield Street/North Main down to Oak Street) is a town engineered plan and is waiting for DOT approval, and south of that to the bottom of Church Street is being engineered and conducted by the DOT and is part of a large transportation package, which they hope to send out to bid in 2020. Mr. Steele noted that they are trying again with the DOT for a curbcut for this property.

Jennifer Rodriguez, Town Planner, discussed her report dated December 9, 2019. She does not have comments from the Fire Marshall regarding site access; however, the Fire Marshall at the time of the site changes did approve of that. WPCA comments were received on December 9, 2019, and there were no issues. Police Chief comments were received on December 9, 2019, and he had no concerns.
Mr. Nezbeth commented that they have networked with their neighbors and have an intent and verbal agreement to work with Camp Simon in support of their events. They also do not see any conflict with their neighbors with parking. Ms. Rodriguez said it is quite common in a plaza like that for someone to occupy one space but go to more than one vendor. She added that there is also public parking behind CVS. There was a brief discussion about whether this is marked with a sign “Public Parking” and if this was ever designated as public parking. Ms. Sayers believes there is a written lease or agreement. Ms. Rodriguez stated she will look into the language. Mr. Wilson asked if all the parking in the back of the building is assigned to the residents of the condos. Chairman Gannuscio replied that there may be one or two that are marked for visitors. Mr. Nezbeth commented that there are five visitor spaces on the end over by the Chinese restaurant and there are five above. Mr. Wilson said the five spaces on the south side of the building gives you 25 spaces, and in his opinion the parking is adequate. Mr. Steele asked Mr. Nezbeth if he has had any conversations with the WPCA about whether a grease trap is required. Mr. Nezbeth replied that they do have a grease trap in their plan.

At this time Chairman Gannuscio opened up the public hearing for comments from the public in support of this application. Gary Merrigan, 560 Halfway House Road, spoke in favor of this application. The floor was then opened up for comments in opposition. There were none.

Chairman Gannuscio remarked that there are not a lot of unanswered questions at this point and asked the applicant if he would like to say one last thing. Mr. Nezbeth said that they see all their guests as family and they are looking to provide a healthy and valuable space.

It was MOVED (Szepanski) and SECONDED (Cooper) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission closes the public hearing on the special use permit with site plan review and site plan modification for 60 Main Street, Unit 70, for a bakery café restaurant.

Chairman Gannuscio stated that this is the first real application to come forward under this long running effort to revitalize and reconstitute our Main Street, and it appears to be a plan that is well thought out. It definitely fits into the overall plans that we have for this Main Street revitalization and MSOZ and offers a commercial enterprise that is needed--something other than a chain. One of the ideas that was part of this MSOZ was to encourage businesses that do not require a drive-thru window, which this business will not have. The parking for this business will not require parking beyond what is provided, and this is certainly something that fits with what we’re looking to do downtown. When our revised POCD is finalized this will offer an example of what we are hoping for downtown and in this particular site as well. Ms. Cooper commented that she appreciates that the applicants have similar businesses already and know what they’re getting into and know how to develop it. Ms. Sayers likes the focus on Wellness and thinks the young people will be interested in this. (And she likes porridge!)
Ms. Rodriguez suggested getting the closing time on the record. Mr. Nezbeth replied that under their graduated plan, dinner would be between 5:00/5:30 and 10:00 pm, and closing at 10:00 pm. However, this may vary on Saturdays.

It was **MOVED** (Zimnoch) and **SECONDED** (Cooper) and **PASSED** (Unanimous, 5-0) that the Planning and Zoning Commission approves the special use permit and site plan modification for 60 Main Street, Unit 70, for a bakery café restaurant, property owner RAWB, LLC, with a waiver of the site plan review and one condition that prior to issuance of the final Certificate of Occupancy the applicant shall obtain plan approval by the Water Pollution Control Authority and the North Central District Health Department.

CHAIRMAN GANNUSCIO CALLED A SHORT BREAK FROM 8:54 TO 9:02 pm.

V. **Reviews** (none)

VI. **Action on Closed Public Hearing Items** (none)

VII. **Old Business**

A. **Discussion with Commission and Staff**

   i. **MFSD Amendment to Zoning Regulations**

Ms. Rodriguez stated that this regulation change is one that followed a regulation change on August 12, 2019. In making these changes the commission and staff realized that there were a few more things that needed to be addressed for various reasons. There is one particular proposal that would enhance the multi-family special development regulation by clarifying language. There are others that provide for more appropriate landscaping requirements. In one change it eliminates conflicting language, and there were also a number of discretionary waivers or modifications that were permitted by the commission without criteria attached to them that have been found in recent years to be unlawful. Ms. Rodriguez went on to discuss her report dated December 9, 2019 and the changes in Sections 404 g, 409 C.7, and 409 F.

Ms. Rodriguez stated that the commission has reviewed these changes for a number of months now and she recommends scheduling a public hearing. These have been forwarded to CRCOG, so the commission would be able to schedule a public hearing for the upcoming month. Chairman Gannuscio remarked that Ms. Rodriguez has spent a considerable amount of time on these changes. Mr. Wilson pointed out a formatting change and added that Ms. Rodriguez has articulated very precisely everything the commission has talked about, which he appreciates.
It was MOVED (Gannuscio) and SECONDED (Zimnoch) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission schedules a public hearing for January 13, 2020 on the proposed changes to the MFSD regulations; specifically, Sections 404 and 409.

ii. Chapman Chase—Pump Station Screening—Project Status

Attorney John Parks of Somers and Deborah Cauchon, President of the Chapman Chase Homeowners Association (CCHOA), addressed the commission, as well as a number of concerned residents of Chapman Chase. Attorney Parks explained that he was contacted recently by CCHOA regarding concerns they have with items from the Phase II project that are not in compliance. They prepared a handout with a narrative and many pictures/exhibits which was distributed to the commission and town staff. Copies were also distributed to the Town Attorney and the builder’s attorney. Attorney Parks stated he is here tonight not expecting this to be all resolved but hoping to open a line of communication regarding these issues with the help of town staff and the commission, in particular an outstanding bond for erosion and sediment control for $60,000. There are also some issues connected to the approval of a Certificate of Occupancy (CO) for one remaining unit. Chairman Gannuscio asked Attorney Joe Flynn if he has seen this handout. Attorney Flynn responded that he just received it this evening. Attorney Parks commented that he thinks some of this may be miscommunication. The bottom line is they are just asking for compliance with the plans that were approved before bonds are released and conditions related to the existing non approval of the CO are done.

Deborah Cauchon, President of CCHOA, proceeded to discuss the following ongoing issues that have been a problem for the last two or three years:

1. Storm Drains (road areas)
2. Wetlands Channel (Swale)/Sediment Basins/Drainage
   - Wetlands Channel (Swale)
   - Sediment Basins
   - Storm Drains to Wetland Channel (Swale)
   - House Gutter Drains
3. Erosion/Grading/Seeding
4. Pump Station Fence
5. Driveways/Roads/Sidewalks
   - Driveways
   - Roads & Sidewalks
6. Trees & Plantings
   - Trees
   - Wetlands Required Plantings
7. Streetlights
Ms. Cauchon stated that they are trying to be proactive and want to feel confident the builder will fix these issues (that were specifically approved in the site plan) properly before he gets his final CO and before he gets his bond money back.

Dana Steele, Town Engineer, proceeded to discuss the above issues that were highlighted by Ms. Cauchon and explained how the approval process works. He has received three as-builds in this process so far. The first as-built was not in compliance with the approved plans; he asked them to make changes and come up with a revised plan; they did that and came up with a second revision; he is now on the third revision and there are still issues with it, so they are still in the process of working with the developer to get the grades right. The condition of approval in this particular application said that that as-built was required prior to the final CO for this development, and this has not happened yet; therefore, the developer is not in violation of the conditions of approval because he hasn’t requested that final CO yet. If he came and requested the final CO, the position right now of staff is that they would not recommend or issue the CO until the developer submits an as-built that demonstrates that he has complied with all the requirements. They have not yet confirmed that all the requirements have been met.

Mr. Steele then went through the specific items and provided some specific responses as to their status. #1, Storm drainage: The pipes are full of sediment. This is specifically a sediment and erosion issue, and that’s why they require a bond for those items prior to the start of construction. The $60,000 amount for the bond was set at the beginning of the construction. It has not been reduced, so they are still holding the full amount of the erosion bond, and he will not recommend release of that bond until he is satisfied that all of the sediment issues have been addressed. The developer has agreed to clean out all of the pipes and provide him with a receipt of that work. Mr. Steele is still waiting for that work. If there are issues of pipes failing, not backing up and flooding, then that suggests to him that there is perhaps a blockage in the pipe, and that warrants further investigation. He asked Ms. Cauchon for specifics so he can ask for additional information regarding those areas and to see what the developer comes back with. If there are problems with the pipes causing flooding into people’s homes, this is serious and needs to be addressed right away.

#2, Swale: The drainage swale that runs around the perimeter of the property does not have the slope that it’s intended to have and is not in conformance with the grading plan. The developer has not addressed this yet, and Mr. Steele has had discussions on how this will be addressed. Mr. Steele has asked the developer to have the engineer evaluate the as-built conditions and submit his calculations to him to prove that the swale works fine. Mr. Steele is still waiting for this information. The swale is not an erosion issue, it’s a plan conformance issue so if it doesn’t conform, that relates to the as-built, and the as-built relates to the final CO, and he won’t grant the issuance of the final CO until this issue is resolved. At some point in the process the swale was breeching in spots, but this
appears to be resolved now. He still wants calculations to prove that it’s going to work at all times. The question of whether the swale has some puddles in it or not is not a question for him to determine. As long as it doesn’t overtop and the water stays on the site, he is satisfied, but if the commission feels this is not acceptable, then he will make the developer give him an as-built with the proper slope. Mr. Steele commented that part of why they’re here tonight is to get some direction from the commission on how staff should enforce these requirements.

#3, Erosion: This is also a bond issue. The purpose of the erosion bond is to make sure there is no erosion, and that there is vegetation. If the vegetation is weeds, it’s still stable. They are only looking at the stability and if it’s going to erode. This is a gray area on evaluating if it conforms to the site plan. There are no specific requirements in the site plan for what the lawn is supposed to look like. Staff would need some direction from the commission as far as what standards to hold the developer to with regard to the commission’s condition of approval for this final CO. He has no criteria by which to determine whether it’s acceptable or not with regard to the lawns. Mr. Steele added that there is a specification for four inches of topsoil, but there is no inspection that’s done during the process to confirm that there’s four inches of topsoil, and all he receives at the end is the as-built, and it doesn’t tell him what the thickness of the topsoil is. There is no way to tell if it’s in conformance, so it’s typical in developments like this that the responsibility is on the developer and the association when they buy into the development. With regard to the steepness of the hill, the as-built does appear to indicate that it’s in conformance with the plan. All they can do at this point is to enforce what was approved.

#4, Pump Station: No permission was ever given to the developer to put in a vinyl fence. In the conversations they had with the developer this was a decision that he made on his own because he felt a vinyl fence looked better and considered it an upgrade. The plans did call for a chain link fence, and that’s not what is there, so that’s still a deficiency with this application, and a chain link is what they’re going to require. Ms. Cauchon asked for documentation that everything has met the requirements before the final CO. Mr. Steele stated they will look closely at the slope to be sure it’s stable prior to the release of the erosion bond.

#6, Trees: Ms. Cauchon stated there was never a specific plan with tree placement that was ever given. Ms. Rodriguez stated that prior to the final CO they would take a bond to complete this project, specifically the landscaping. They are not intending to give the CO before they have a bond to cover the trees. She has communicated that and she is communicating it again at tonight’s meeting. Ms. Rodriguez explained that there is currently a bond for erosion and sediment control which is for erosion issues. A landscaping bond is in addition to and separate from an erosion and sediment bond, which is what she has communicated prior to tonight’s meeting.
#7. Lighting: Mr. Steele pointed out that a bond works with some things, but not with lighting because you want the lighting to be done before the CO. They have been pressing the developer about the lighting, but until he requests the final CO, they don’t have a mechanism for enforcing it any sooner.

Regarding the pump station, Ms. Rodriguez clarified that at no point did they walk around with the developer and say he could put in whatever he wanted. That’s not what happened. They did let the developer know that was not what was required.

Ms. Caucho n brought up one other experience they had. When the developer initially presented the style of homes he was putting in there they noticed that ranches were included in Phase II. Phase I homes included ranches, colonials, and capes, so it was supposed to be similar design, size, style, and quality in Phase II. There are now two raised ranches that do not have full basements. It’s an above grade basement. They went to the town and voiced their concern because a raised ranch does not have the same value as the homes they thought were going in and that were approved. She talked to a board member at that time, and their understanding was that the developer could not put those raised ranches in unless it was approved. For six months she called the Town and asked what was on the PZC agenda, and it was never put on the agenda, and the raised ranches went up, and they had no say. These things are important when they affect the value of your home. They thought they were going to have the opportunity to voice their concerns about the raised ranches before he broke ground, but the opportunity never came. Chairman Gannuscio and Mr. Szepanski both commented that they did not recall this. Mr. Steele said he recalls reviewing it because the developer was concerned about the steep slope and proposed a different configuration to make it work better with the slope, so he did review it from a grading standpoint to make sure the grading worked, but he’s not sure about the rest of it.

Attorney Flynn commented that it is important that this is discussed within the proper legal framework. Mr. Steele is right to the extent that the builder has an obligation to, in good faith, comply with the terms of the site improvement, and there are two issues that would fall under the jurisdiction of the E&S bond. It’s really a legal and technical issue, not a political one. It’s what was approved, what is legally on the record. At this point he is representing that his client will comply with the landscaping issues, the trees, and the slope, but this may not be known until the spring time. You can’t deviate or mix and match—you either comply with the site approval or you don’t. He is fully aware that the final CO won’t be issued unless the town is happy, but that would be in regards to the legal issues and not the issues of what the Association may deem to be something that is deficient in the plans. The plans were approved in Phase I, so it would not be fair to have to redesign what was already approved.
Carl Landolina, Town Attorney, spoke about the changes to the statutes with respect to bonding that occurred about 12 years ago. He brought up the possibility of increasing the application fees so there is some level of funding to send Mr. Steele out several times a year. There is certainly a site plan as far as Chapman Chase is concerned, so it’s a reasonable expectation to give them what is on the plan. Until the plan has been satisfied substantially, the last CO won’t be issued, and hopefully this will give the developer an incentive to finish. He is going to be required to comply with the site plan, which is the job of Ms. Rodriguez and Mr. Steele. There are some items that are warranty items that are not necessarily the responsibility of the town (for instance, the driveways). His position at this point is that it is not permitted under the regulations to withhold a bond for driveways. The title to the common elements in this planned community (not condos), under the law, must be transferred to the association sometime in the future. This hasn’t been done yet. There is no transfer until delivery takes place. There has to be a component of delivery, so he doesn’t know what will happen if the Association refuses to take delivery of title to the common elements because they don’t meet their approval. Attorney Landolina stated that the Homeowner’s Association is created right at the beginning. You have to do a declaration that creates the Association, and the title to the first unit can’t transfer to a unit owner until that’s on file. Mr. Wilson commented that as a future owner, the Homeowner’s Association really needs to have a priority interest in making sure that those common elements are being put in appropriately, because the as-built only goes so far, and unless records are kept at that time, you won’t have good records of what was actually done. Attorney Landolina pointed out that the developers usually control the Homeowner’s Association until a certain time in the future when they are required to turn it over.

A lengthy discussion took place regarding limited common elements and Homeowner’s Associations. Attorney Landolina said, “From my perspective, I don’t think our position has changed at all in terms of what we thought, and this goes back four or five months ago, what our position was going to be as far as what we could control and what we couldn’t control, what we could make the developer do going forward and what we couldn’t. So unless someone else is able to convince me that fixing cracks in driveways in front of homes is something that is part and parcel of an as-built, I’m not convinced yet. But there are certain items that are certainly going to be addressed….The plan is what the plan is, and if the developer is required to put in 100 trees six feet high, that’s what he’s going to do.”

Mr. Steele commented on Attorney Landolina’s statement about Mr. Steele going out and doing inspections a couple of times a year: “In order to confirm the construction, I would have to be out there full time, and that would be quite expensive.”
Another lengthy discussion took place about driveways. An unidentified man stated that when you purchase a home at Chapman Chase and sign the paperwork at the closing, you are taking title to the home and the footprint. The footprint is not included. The driveway is not included in the footprint, so therefore the driveway is a limited common element. The only difference between a limited common element and a common element is the fact that a limited common element allows you exclusive use. The community is responsible for maintenance and repair. Attorney Landolina agreed that is an accurate statement, but he added, “We don’t have 100% control over all common elements in terms of their construction.” A discussion then took place about who is responsible for ensuring that building codes are met. Attorney Landolina stated that before issuance of a CO the Building Inspector ensures that the structure is in substantial compliance with the building code, not the driveway. The building code does not talk about the driveway. A second unidentified man asked, “When you come out to my house and inspect my house to issue the CO so I can close on my house, you say that my driveway is fine, but six months later my driveway is crumbling apart in pieces, does that meet inspector code?” Mr. Steele responded, “I’m not sure who you’re addressing the question to. You’re looking at me.” Man: “I’m looking at all of you. Everybody is talking about all these different things, and I understand where we’re going with this, but it seems like the driveway is just being thrown out the door. Is there a code for a driveway?” Mr. Steele replied, “I’m not aware of any, no.” Mr. Szepanski added, “How about for thickness?” Mr. Steele replied, “The site plan has a cross section, a specification that is required for the driveway which is 2 inches of asphalt and 8 inches of gravel or processed material underneath.” However, he went on to explain, there is no way for him to verify whether it meets that or not.

Attorney Parks clarified that the Association cannot hold the town responsible for everything with the limited common areas, and Attorney Landolina had a point with the warranty issue. There may be issues relative to the builder and warranties, but when a condo is being developed, the first thing that goes in is the infrastructure, then all the utilities and roadways go in, and then the units get added after that. It’s not like the homeowners or Association are negligent in not ensuring that the roadway is put in properly because that’s already in before the units are sold and the contracts are signed. He agrees that it’s a limited area, and he is not suggesting that this is a responsibility of the town, but there is a transfer of responsibilities which is gradual. They can hope for help from the town on the bonding issues, but this Association may also be forced to raise some type of issue versus the builder if things were done negligently or not according to the plan and this can be verified. Mr. Wilson pointed out: “But inherently the system has a conflict of interest for that builder because they can cut corners in the beginning when no one is watching them, and an as-built will show that the road is at the grade it’s supposed to be. There is a significant conflict in that system. That’s one of the major problems with condominium developments, and that’s something we can’t solve.”
Chairman Gannuscio commented that it’s all been laid out. Mr. Steele asked if the commission is comfortable with the approval process that he and Ms. Rodriguez have described about how they’re approaching this. Chairman Gannuscio replied, “Yes, why would we change it now?” He said he’s been on this board for almost 24 years and this is the first time he’s had to get involved multiple times on this. Ms. Rodriguez stated that she is hoping there is a little bit of direction for staff. She said, “When developments are constructed, there are times when there are trees that are not planted eight feet from the house but are planted six feet from the house. At this point, I feel compelled to measure exactly where every tree is in relation to the house. There are utilities that are in there, and I’m not saying what’s in there now is acceptable. I’ve never said that. If the last CO is requested and every other thing is complete but the trees but there happens to be one tree that is four feet from the house instead of five, normally I would think that is reasonable. At this point, I fear that it’s going to come down to every single location of every single tree. The minor amount for reasonableness for small changes is no longer there. In my position, I’m feeling very hesitant to move forward without a little bit more guidance from the commission on what is considered reasonable and what is not. I’m hoping for a little bit of direction there maybe from the Town Attorney or from commission members. I hope you understand that hesitance, given the nature of what’s been happening.” Ms. Sayers responded that they discussed this and they said that Ms. Rodriguez should have the ability to make that decision. Chairman Gannuscio stated, “Reasonableness and common sense need to control at some point.” Mr. Wilson added, “On civil engineered plans, if something is specifically dimensioned to be at an exact location, it’s supposed to be there. If it’s supposed to be at a set elevation, it’s supposed to be there. There’s no building code for it, it’s conformance with the plans, which is why Mr. Steele is doing an as-built check. When you look at trees on a landscaping plan, there are no dimensions saying it has to be four feet, three inches from a building wall, so there is no exactness to it. Is it approximately in the area it’s supposed to be? Are the numbers of trees and caliper and type of trees what is supposed to be there? Don’t get too hung up on the exact location. The exact location is not fixed; it can be shifted to account for the real conditions of what the utilities are that were installed.”

An unidentified man asked again about the four inches of topsoil that was supposed to be applied that was never applied. Who set the standard for the topsoil? Did the Association say they wanted that, or did the town say four inches of topsoil is to be applied? Attorney Flynn said he believes it is one of the terms of approval on the site plan. Mr. Steele stated he doesn’t recall if it’s a specific regulation, but it doesn’t matter because it’s on the site plan, and it is a requirement. Ms. Cauchon confirmed it is on the site plan. The man continued: “As a final note, four inches of topsoil is adequate for lawn growth, but right now there is gravel and nothing holding it at all, and that’s why erosion is occurring. There happens to be a couple hundred square feet of two-foot high weeds that is holding the soil, but is that appropriate to have a lawn with two-foot high weeds
or four inches of topsoil with a decent root base to hold everything in place over the course of time? From my understanding, the town set the standard of four inches of topsoil.” Mr. Steele replied, “Four inches of topsoil is what the commission required, but it is the developer’s responsibility to meet that requirement, and we don’t have a mechanism in place to confirm whether it meets it or not. That’s the issue. If the Association feels they don’t have four inches of topsoil, they can talk to the developer about it. Another consideration with the topsoil is, what is the definition of a topsoil? We don’t have a specific specification on it, so it may meet the technical definition of topsoil. We don’t typically get into that type of detail in requiring written specifications for every material that goes into these developments.” If he were to go out to the site and see that there was clearly no topsoil, that’s an issue he could address through the erosion bond, but if he sees vegetation established, then he’s not looking further than that because he sees that it is stable. Whether it has four inches or not, if it’s stabilized, it’s met the intent. He does not dig holes to figure out whether there is four inches or not.

An unidentified man asked a question of Mr. Steele: “What if I hired a professional engineer and had boring samples done on the driveways and the roads, and the report said the boring showed two inches instead of the eight inches. What would you do with that report?” Mr. Steele replied that he would talk to the Town Attorney and ask what legal authority they have. They would look at it, they would not ignore it, and figure out where their authority to confirm compliance with the plan starts and ends, and if they came to the conclusion based on the report that it was not in compliance with the approved plans, then that would be a cause to….Unidentified man: “Well you’re an engineer, it’s a black and white issue, why would you have to consult the attorney?” Mr. Wilson replied, “Because the standard of the regulations is an as-built confirmation. It’s not materials confirmation, it’s not test pits, it’s not thicknesses, it’s not cores, it’s not sending things out to testing labs, it’s an as-built confirmation.” Mr. Steele added, “You are correct that it’s a number, and I can look at the number and tell you if the number meets the specifications. What is done by that from that point is the question, and that is where I would talk to the Town Attorney.” Ms. Cauchon commented, “I don’t understand why you can’t hold the developer responsible if he’s not holding up his end of the bargain, not meeting the site plan. We can ask him, and we’ve tried, but he’s not going to listen to us. That’s why we’re coming to you.” Attorney Landolina replied, “Our responsibility is to follow the regulations and confirm under the as-built standard as set forth in our regulations and in the approval substantial compliance with the site plan as approved by this board. To the extent that there might be some additional responsibility based upon other information, I don’t know if that’s the case or not.” Ms. Cauchon stated, “As an approved plan that was approved by this commission, we, as homeowners and taxpayers of this town, look to you and your advice. If you’ve approved this plan with a developer, I think it would be either
Chairman Gannuscio asked Attorney Landolina if it says somewhere in the statute that they have an enforcement...Attorney Landolina replied, “In the zoning regulations.” Ms. Cauchon asked, “Then why do we approve something that we can’t enforce a builder to do?” Chairman Gannuscio replied, “We were figuring that what we approved would be done.” Ms. Cauchon said, “Right, and most builders would do that, but we have a builder that doesn’t comply and does his own thing. I would think that when the CO’s are issued this erosion would be seen. We would expect that when a development is approved that the town is overseeing the development. We are just asking for what we were promised and we are asking the town for help with that.” Unidentified man: “How about if the commission looks at the regulations to see if there is a better way to do things? Make us the test case. Start with us.” Ms. Sayers commented, “We have to follow the law in what we do, so we have to follow what the current zoning regulations are, and when that was approved it was approved based on the current regulations.” Attorney Landolina said, “I believe I heard Mr. Steele say almost all those items were items over which we have control. To the extent we have control, we will exercise that control under the terms and conditions of the approval, and the approval says we have a bond for control measures which we will keep in place until such time as Mr. Steele is satisfied that he is in compliance. All the other issues over which we have control, the developer will not be able to get that CO for the last unit until he is in compliance. So that’s what is going to occur going forward.” Ms. Cauchon asked, “And then any other items, if there is no control, like the driveways that aren’t built to what the site plan says, and the board doesn’t have the right to enforce that, is our only option at that point to try to have the board do something to go after the developer for what is needed at that point?” Attorney Landolina responded, “That’s always an option, but if someone does some research that says there is a case that talks about driveways, then I’ll look at it and maybe our position will change with respect to some of those items. If you think we’re wrong because there’s a case that says we are, by all means bring it to my attention and I will advise the commission appropriately.”

B. **Action Items** (none)

VIII. **New Business**

A. **Public Input** (none)

B. **Receive New Applications** (none)
C. Informal Discussions

i. Senior Center

Gary Merrigan was asked to be on a three-person committee with Bob Crochetiere and Ann Marie Claffey to evaluate the Flanders property abutting the Town Hall as a potential site for a Senior Center. They looked at it quickly and had a couple of renderings done by Fuss & O’Neil. They’re trying to determine if it’s even feasible to put a building there. The question came up as to what Planning and Zoning’s role would be, so Selectman Kervick wanted to get input from this commission. Chairman Gannuscio said his first thought is that this is the town’s application, and the PZC doesn’t have a role in this. Attorney Landolina commented that other than an 8-24 role, the PZC wouldn’t have a role, since the Town of Windsor Locks is exempt from the zoning regulations. Ms. Sayers asked what the square footage was of the current Senior Center. Mr. Merrigan replied that it’s about 11,000 total, give or take. He thinks they could get close to what the current footage is, and possibly with another design, they could pick up some additional footage. He shared the renderings with commission members, and a brief discussion was held.

D. Action Items (none)

IX. Communications and Bills

It was MOVED (Gannuscio) and SECONDED (Zimnoch) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission approves the expenditure of $234 for a new minutes binder.

X. Adjournment

It was MOVED (Gannuscio) and SECONDED (Zimnoch) and PASSED (Unanimous, 5-0) that the Planning and Zoning Commission adjourns the December 9, 2019 meeting at 11:35 pm.

Respectfully submitted,

Debbie Seymour
Recording Secretary