TOWN OF LUDLOW PLANNING BOARD
MINUTES OF THE MEETING OF
September 28, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present) (7:05 p.m.)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

The meeting began at 7:00 p.m. in the Selectmen's Conference Room.

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PUBLIC HEARING – Site Plan – PREM, LLC – 21 Harding Avenue (Assessors' Map 12C, Parcel 70) (approval for an all-alcohol package store)

SEE ATTACHED MINUTES

Site Sketch – Rogerio Gianei – 135 East Street (Assessors' Map 14B, Parcel 81) (proposed restaurant / sandwich shop)

Scarlett Gianei and Simone Gianei were present for the appointment.

Mr. Phoenix read the waiver request for the full registered site plan in favor of a site sketch, and a waiver of the public hearing. He also read the comments from the various town departments (*see file*).

Scarlett Gianei said that the new business will be similar to the prior coffee shop business that was located there, but they will be adding seating which has been noted on the plan.

Mr. Carpenter: Mr. Chairman, I **MOVE** to waive the full site plan in favor of a sketch since there's already an existing approved site plan on file that is less than 25 years old and hasn't been modified more than twice, and in doing so is consistent with the intent of this bylaw.
SECOND Mr. Coelho.

Mr. Carpenter: And to waive the public hearing.

Mr. Phoenix: Ok, is the second also good with the motion is to also waive the public hearing?

Mr. Coelho: Aye.

Mr. Phoenix: Ok, so the motion as it stands is to waive both the full site plan and the public hearing. Is there any discussion on it? Hearing nothing, all those in favor?
5-0 in Favor.

Mr. Carpenter questioned that the plan shows 16 parking spaces when it requires 18. Mr. Stefancik commented that up to five parking spaces can be waived in the East Street Overlay District.

Mr. Coelho: Mr. Chairman, I make a **MOTION** to waive two parking spaces as requested by the applicant in the standard form and that it's in the best interest of moving forward on the property.
SECOND Mr. Carpenter.

Mr. Phoenix: I don't see a standard form, so I think it's just to approve the waiver of the two spaces as requested by the applicant.

Mr. Coelho: As amended by the Chairman.

Mr. Carpenter: Second the amendment.

Mr. Phoenix: Ok, with that said, waiving those two additional parking spaces due to this being in the East Street Corridor the uses and everything there and the nonconforming nature of pretty much all of the East Street Corridor. All those in favor?
5-0 in Favor.

Mr. Carpenter: I **MOVE** to approve and sign the site sketch for Rogerio Gianei at 135 East Street.
SECOND Mr. Coelho.
5-0 in Favor.

Documents included: Master application; Waiver request; Comments from town depts/boards; Site Plan – 135 East Street Ludlow, MA – owned by Manuel R. & Georgette C. Coelho (September 20, 2023)

Mr. Phoenix: I did get a request for a brief recess, I'm seeing, according to that clock, it looks like 8:45, I'm gonna ask for a MOTION to recess for five minutes and come back in session when that clock says 8:50.
Mr. Carpenter: **SO MOVED.**
SECOND Mr. Coelho.
5-0 in Favor.

The Board took a brief recess from 8:45 p.m. – 8:50 p.m.

CONSENT AGENDA:

The Board approved the Consent Agenda under unanimous consent.

- FILE Mail Item 53. - Legal Notices from surrounding communities
- APPROVE/SIGN Minutes of July 13, 2023

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Continued Discussion/Decision – Special Permit / Site Plan – 590-596 (0) Center Street (Assessors' Map 16B, Parcels 116 & 116A) JLL Real Estate, LLC (Redevelopment of site into a self-storage facility in an Agricultural Moderate Density Overlay District)

Town Counsel Attorney Matt Provencher was present for the discussion. Also in attendance was Attorney Tom Reidy, applicant Richard Kowalski, and abutters/attendees.

Mr. Phoenix explained that at the end of the last meeting on September 14, 2023 the Board found with a 3-2 vote that there were still four items from the checklists that were still found to be in contention:

Business in the Agriculture Moderate Density Overlay District Checklist

a. The proposal will be located near uses which are similar to the proposed use or, if not, the nearby uses will be ones likely to benefit from rather than be damaged by having the proposed activity nearby.

Special Permit Criteria

a. The proposal is suitably located in the neighborhood in which it is proposed and/or the total town, as deemed appropriate by the Special Permit Granting Authority;

d. The proposal would not be a substantial inconvenience or hazard to abutters, vehicles, or pedestrians;

l. The proposal is in general harmony with the general purpose and intent of this bylaw.

Mr. Phoenix explained that coming out of the last meeting, the Board had asked town counsel to come up with a draft of a decision assuming that they would be following that trajectory of finding that those four things are still an issue and drawing the conclusion that the Board would be denying 3-2. Mr. Phoenix remarked that the draft for the Notice of Decision was received from town counsel.

Mr. Phoenix read the email that was received overnight from Mr. Kowalski requesting that the public hearing be reopened, and also read the email from Thomas R. Reidy regarding an agreement to extend time for final action (*see file*). Mr. Phoenix said that he would like to state as strongly and clearly as he can that anything that was received overnight that was not part of the public hearing, cannot and should not be used in any decision that the Board makes, and that the only way new things can be considered is if they're introduced properly at a public hearing. He also commented that the Board should not look at the cost of litigation but instead look at what the right or wrong decision is and vote accordingly. Mr. Carpenter said that he doesn't think that an extension should be given to the applicant. The Board discussed whether the public hearing should be reopened or not.

Mr. Phoenix: I'd like to entertain a MOTION to find that the Board is agreeable to the extension and the reopening to review new information from the applicant and from the public. Is there anyone who wants to make that motion? Just on the finding, not to actually do it, just to find what we're interested in doing and then we can have a conversation about the details if that passes.
Mr. Coelho: **SO MOVED**.
SECOND Mr. Silva.
3-2 against.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – no; Mr. Coelho – yes; Mr. Queiroga – no; Mr. Phoenix – yes.

Mr. Phoenix said that the Board needs to agree to find a time and date when to reopen, if not, the Board needs to vote to not accept the extension.

Attorney Provencher advised the Board that they need to take a vote on whether the public hearing will be reopened before any further discussion.

Mr. Phoenix: I need a MOTION to take a five-minute recess because I need to clear my head.

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Mr. Coelho: **SO MOVED.**
SECOND Mr. Carpenter.
5-0 in Favor.

The Board took a recess from 9:25 p.m. – 9:32 p.m.

Mr. Phoenix: So I would entertain a MOTION at this time to reopen the public hearing on October 26th at 7:00 p.m. here in the Selectmen's Conference Room with all appropriate notification to abutters and publication in the newspaper at the expense of the applicant and on the condition that there's an understanding that the Board would have an extension of time to act in accordance with that and a new time to act based on the closing of that public hearing.
Mr. Coelho: **SO MOVED.**
No second, motion fails.

Mr. Coelho: I would like to propose a **MOTION** that assures complete transparency regarding the financial implications of our decision. This motion calls for tracking all costs incurred by the town due to the denial of this project, starting from the point at which we require legal assistance through the adjudication process and until a final resolution is reached. To maintain transparency, I **MOVE** that all costs exceeding those typically associated with site plan approval be itemized and publicly disclosed as a line item on the Planning Board's agenda throughout the duration of this matter's resolution. This approach will provide the constituents of our town with a clear understanding…

Mr. Phoenix: Pause, you said you move.

Mr. Coelho: I did.

Mr. Phoenix: Is that a motion?

Mr. Coelho: That is a motion. I will repeat it.

Mr. Phoenix: Thank you.

Mr. Coelho: I **MOVE** that all costs exceeding those typically associated with site plan approval be itemized and publicly disclosed as a line item on the Planning Board's agendas throughout the duration of the matter's resolution.
SECOND Mr. Silva.

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Mr. Phoenix: Is there any discussion?

Mr. Carpenter: So, you want the costs associated with it on our agenda?

Mr. Coelho: Yes. Can I explain why now? Are we still in discussion?

Mr. Phoenix: Yeah.

Mr. Coelho: This approach will provide the constituents of our town with a clear understanding of the implications of our decisions in a manner that we never fully realize and will uphold the principles of transparency and accountability.

Mr. Phoenix: Ok. Honestly, I don't see any harm in doing that. I don't see any interest of the town in trying to obscure that information. I don't think that's the goal of our…

Mr. Coelho: No. And furthermore, it doesn't get obscured purposely, but it always does get buried under procedure and it's never really realized, and I think these costs are real and they do affect everybody in the town.

Mr. Phoenix: And I think also the language that you used is not in any way accusatory of who's "at fault" for that, it's, this is the cost of this particular item being on our agenda and the process that it has undergone.

Mr. Coelho: Correct.

Mr. Phoenix: I think that's a fair way to represent that as well. I think that's well taken. Anything else from anybody before I call for a vote on it?

Mr. Carpenter: I'm all in favor of --- transparency.
5-0 in Favor.

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Mr. Phoenix read Sections V. Findings and VI. Rationale from the drafted Notice of Decision (*see file*).

Mr. Phoenix: I'm going to entertain a MOTION that the Board adopt the language of this motion in its entirety and accordingly to deny the application as submitted based on all of the reasoning prepared therein as well as all of the public comment, as well as all of the other material that was part of the public hearing, all of the prepared documentation, everything that we had at our disposal to deny this project.
Mr. Carpenter: **SO MOVED**.
SECOND Mr. Queiroga.
3-2 in Favor.
Roll call vote: Mr. Silva – no; Mr. Carpenter – yes; Mr. Coelho – no; Mr. Queiroga – yes; Mr. Phoenix – yes.

Documents included: Email from Richard Kowalski (September 27, 2023) & response from Ray Phoenix to Richard Kowalski (September 28, 2023); Email from Thomas R. Reidy re: Agreement to extend time for final action (September 28, 2023); Notice of Decision (September 28, 2023)

Mr. Phoenix asked if going forward there could be a discussion for a provision in the bylaws for special permit along the Center Street corridor, given the nature of it.

Battery Storage Moratorium (possible postponement)

Mr. Phoenix commented that there was an email that stated that some additional people (towns) have had their stuff struck down by the Attorney General's office in reference to the Battery Storage Moratorium. He noted that the ask here is that the Planning Board instead go to town meeting and recommend postponement on the moratorium and then look at adopting a bylaw possibly at the May town meeting.

Mr. Phoenix: So, is there a MOTION not necessarily on the specific motion we're going to recommend at town meeting, but a motion to reconsider what we already did?
Mr. Carpenter: **SO MOVED**.
SECOND Mr. Queiroga.
4-1 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – no; Mr. Queiroga – yes; Mr. Phoenix – yes.

Mr. Phoenix: With that said, I would entertain a MOTION to instead recommend postponement on the moratorium article given that we believe we would be able to have an appropriate bylaw drafted in time for May town meeting.
Mr. Carpenter: **SO MOVED**.
SECOND Mr. Silva.
4-1 in Favor. (Mr. Coelho)

Mr. Carpenter: I make a **MOTION** to adjourn 10:02.
SECOND Mr. Queiroga.
4-1 in Favor. (Mr. Coelho)

Meeting adjourned at 10:02 p.m.

APPROVED:

Joseph Queiroga, Secretary

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(All related documents can be viewed at the Planning Board Office during regular business hours.)

TOWN OF LUDLOW PLANNING BOARD
PUBLIC HEARING – SITE PLAN
21 Harding Avenue (Assessors' Map 12C, Parcel 70)
PREM, LLC
(approval for an all-alcohol package store)
September 28, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present) (7:05 p.m.)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

The public hearing began at 7:01 p.m. in the Selectmen's Conference Room.

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In attendance: Attorney Josh Levine – Levine Law, Attorney Matthew Provencher – Town Counsel, attendees

Mr. Phoenix read the legal notice and advised the public that the cameras are recording. The legal notice included the description of: approval for an all-alcohol package store.

Mr. Phoenix: Beyond that in my packet here, this is email regarding proposed use of 21 Harding Avenue. *(Mr. Phoenix read the email from Christine Bray dated September 21, 2023 – see file)* Next, we have from Board of Health: If selling tobacco would need to apply for a permit. The Health Department. Department of Public Works, we have no comment. From our office --- the criteria that we have --- in the bylaw, I see a lot of checkmarks. I do see under additional requirements 1, 2, and 3; applicant signed the waiver request form which 1, 2, and 3 are the lighting plan with luminaire schedule prepared by an engineer, elevations showing the front, rear, and sides of the building design, and signage design with dimensions and locations. I would guess, and we can certainly ask the applicant, but I'm supposing that's because they're not changing the elevations of the building, and the lighting, and the signage design, etcetera, but we can certainly clarify that during the hearing. From Safety: Safety Committee asks the Planning Board not to waive the traffic study for this project. We also have from Brian Shameklis: I think the only concern I have about this area is the truck delivery to liquor store. Depending on the size of the truck and time of day it might be a problem with traffic and getting in and out of the location safely. Conservation Commission: No conservation issues. The building inspector/zoning enforcement officer *(Mr. Phoenix read the comments from Leslie Ward, Building Commissioner dated September 28, 2023 – see file)* Joe, I know you stepped in as I was reading the first letter. I'm gonna just pass that to you in case you want to review that so you don't feel left out. The next thing that's in here, it's a little bit awkward. This originally came in looking for a different type of review that doesn't involve the public hearing, etcetera. The Board at that time said that, no it needs to have a little bit more review. We need to have the public hearing. We need to take a look at this based on the changes from what was there to what's proposed. After that decision was made, I had someone reach out to me from my past who was trying to take me and my father out, buy us dinner. Found out that he was attached to

this project somehow. I'm still not clear how. I declined the dinner, contacted the ethics commission, they asked that I file a disclosure form which has been sent down to the clerk's office and there's a copy that's here in the file as well. According to what they told me, everything that I did was fine, but the bottom line is there could be an appearance of something, so it's better to have everything documented so that everyone's aware of what happened. So, I did not actually get any kind of free dinner out of it, nor did my father. Everything's clear. It is what it is. So, I said that is also on file. From the application itself, we have that the applicant is, and can you correct me? Is it P-R-E-M or PREM?

Atty. Levine: It's PREM.

Mr. Phoenix: It's confusing with all caps but no periods.

Atty. Levine: I agree. I didn't set it up. It's named after the owner's son.

Mr. Phoenix: Ok. And then we have, are you Joshua?

Atty. Levine: Yes.

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Mr. Phoenix: Ok, so you're the contact person that's listed on here. And then we also have the property owner is KMAC, Inc. for 21 Harding Street. And all of those have signed the application, and we do have the signed certification of ownership/authority etcetera, etcetera in the file along with the deed and whatnot. Have we already gotten the stuff for our legal notice taken care of Sue, Doug? Because I didn't see a...

Ms. Urban: From Turley? No, we didn't get the bill in yet.

Mr. Phoenix: Ok, but there will be a bill for Turley Publications for the legal notice. Once we get that we can communicate that over.

Atty. Levine: I have a check here. I can fill it out. If you want me to hold onto it, I'm happy to mail it out after.

Mr. Phoenix: I'm gonna leave that up to the office for their comfort level, but I would say probably wait until the dollar value before we take the check.

Atty. Levine: I would agree with that.

Mr. Phoenix: So, we're gonna just circle this one for now. That one's done, that one's done, that one's done. Ok, so that's kind of where we're at for the moment with this paperwork. I would ask what's going on with the project. What are we looking at?

Atty. Levine: Ok Mr. Chair. Thank you very much. And to the rest of the board, thank you for having me tonight. I'm Josh Levine of Levine Law in East Longmeadow. I have the pleasure tonight of representing the applicant PREM, LLC, intending to purchase 21 Harding Street and has done a lot of work preparing this application for this hearing. I'd like to thank everyone from the Planning Office, who have been very helpful and to get us here today. To give a broad overview of the project, a related corporation, another client, has an agreement to purchase the former Turnpike Liquors Package Store, the license from them as a former location, is not an option to run the business, they were looking for another location in town to run the store and

selected 21 Harding Street as a possible location. The lot, as you mentioned, is currently owned by KMAC, Inc. who also owns the flooring business that occupies most of the building not all of it. There used to be a beauty salon occupying part of the building that's currently vacant. So KMAC, Inc. has an agreement with my client to sell the building and has signed off on the application. --- 21 Harding is zoned in Business A and a retail store is allowed as of right. Per the bylaw calculations, 18 spots are required. This site does not have its own parking spots but has an easement agreement with the neighboring parcel that's owned by Colvest Ludlow LLC for the use of 21 spots. So, there's more than enough on the easement agreement and the deed granting the right, that's all within the application. That's the last few documents in there.

Mr. Phoenix: I just wanted to, is something, I may have missed something when I was reading it, but the 21 doesn't match my recollection of the document. You could very well be right, and I missed two somewhere, but I only saw 19. Which is still greater than the 18, so I don't know that it makes a substantial difference.

Atty. Levine: ---

Mr. Phoenix: There's a whole lot of clauses in here though about the dumpsters and everything else so it might take either one of us a moment to find.

Mr. Carpenter: Mr. Chairman.

Mr. Phoenix: Yes.

Atty. Levine: It does say 19 spaces but if you look at the plan there actually is 21.

Mr. Phoenix: Ok, well that's a discrepancy we'd need to resolve, I think but, ok let's just go forward. Like I said, if you're saying the requirement is 18, whether the provision is 19 or 21, the math kind of still works out the same either way so it's just a matter of keeping the facts straight.

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Atty. Levine: We can certainly get that cleared up. Also included in the application is a traffic evaluation done by VHB in Springfield, an engineering firm. As part of that evaluation VHB considered the traffic for current occupancy of the building which only has the flooring store as well as the traffic for the building if it was fully occupied, so that space for the beauty salon was also filled. Under VHB's calculations with the current conditions, the redevelopment would generate an additional 88 trips per hour during the evening peak, and 28 during the weekend peak hours. If the building was fully rented out it would be an additional 73 trips per hour during the weekday peak and 13 on Saturday peak. So, if we take into account, this is VHB's in their report, if you take into account the adjacent roadway network which is the Harding Center Street intersection, and Harding and Center nearby, VHB concluded that the redevelopment will have a negligible impact in engineering terms, that the existing roadways and driveways can handle the negligible increase without impact. So, that's the project. And if the board would allow me, I'd like to address some questions that you read before. The Board of Health stated that the store owner, which is not the applicant, would need a tobacco license for tobacco sales that are intended, and if they are intended, the store owner will follow all local, state, and federal government guideline of course. The family owns a number of other package stores in the area and convenience stores. In fact, I just saw them at the former O'Connell's on Center Street today. So, they will certainly do whatever they need to, to make sure they're fully permitted as they need. Mr. Shameklis, I don't know, Officer Shameklis asked about delivery trucks. Only

one truck will deliver at a time. And there is a loading dock behind the building as you can see on the site plan. There's a loading dock back there. And the trucks generally deliver once in the morning. So, that has not been an issue at the flooring store and it's, hopefully there's a space for it, hopefully that will be not an issue as well. And then for the resident concerns, generally a lot of the concern is about a liquor store going into the space, respectfully that's not before the board today. Retail use is as of right. And the other, a lot of the other comments touch on the CVS parking lot. Again, the CVS parking lot is not in front of this board tonight. The applicant does not own the CVS parking lot and can't do anything about that. What the applicant will own is the right to use the parking spaces that are delineated on the map and that are an easement right allowing them to have the adequate parking to run the type of operation that they're looking for. So, safety in general of the lot, that's covered by the traffic report, I believe. The traffic report looked at the flow and how that will be handled within the parking lot and deemed it adequate for our purposes today. I'm happy to answer any other questions and thank you again for having me today.

Mr. Phoenix: I've got some comments, questions, concerns, thoughts, etcetera. But before we get into my own random things out of my brain, does anybody else from the board have anything that they would like to add or ask at this time?

Mr. Carpenter: Mr. Chairman.

Mr. Phoenix: Mr. Carpenter.

Mr. Carpenter: Do you have any idea what time those deliveries will happen in the morning?

Atty. Levine: I spoke with the applicant today, and he said generally between 8:00 and 9:00 in the morning is the typical time.

Mr. Carpenter: I know if you try to go there between 6:00 and 8:00 you can't get in there.

Atty. Levine: Ok.

Mr. Carpenter: There's no way because Dunkin is backing up traffic all the way down to that driveway.

Atty. Levine: So, I know that he has, he doesn't have complete control of when the distributor shows up, but the distributor's not gonna come if they can't get in.

Mr. Silva: --- not valid at all then, the delivery times, you cannot, --- afternoon, morning?

Atty. Levine: I said typically. That's what time ---.

Mr. Silva: It's whatever the --- is available to delivery if it is an issue, they have to come different times, right?

Atty. Levine: He can talk to the distributer, but…

Mr. Silva: But it's a possibility that it will happen, correct?

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Atty Levine: They won't come when it's backed up. They wouldn't because it holds up their traffic.

Mr. Phoenix: But he's only gonna be working with one distributor?

Atty. Levine: No, that would be my guess, but he'd, only one comes at a time. I know that. He mentioned that today. So, this is a conversation I can certainly have with him.

Mr. Phoenix: And running the business, there's a certain, you know, give and take I think as far as deliveries go. There's logistics in planning those routes and everything. And everybody's gonna want to have their deliveries in off hours when they're not busy taking care of customers. They're also not necessarily gonna want their deliveries when it's hard getting in and out of their lot. Not everybody can get that, and they certainly can't get that all the time. So, I think we do have some legitimate concerns about how many deliveries, when, how are those gonna be regulated. If the distributor says, you know, your delivery window is between this hour and that hour, but we're gonna show up at 5:00 on a Friday afternoon, is the store owner gonna say no I'm not gonna take that shipment or are they gonna say you can't come because that's not safe? I think that's a legitimate concern that we would have on the town's behalf.

Atty. Levine: Understood and…

Mr. Phoenix: Is that kind of what you were thinking or?

Mr. Silva: Yes. Also, I have a concern, it's about the one thing you can control. You can say, like you said, you only have using 21 parking spots, but you can't control where people come from, right, most likely they'll be using the parking from CVS to get there.

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Atty. Levine: They are connected, right.

Mr. Silva: Correct, so that parking lot is already, but if you know the area, it's already catastrophic already the way it is, and they will be using that as a road to get to the package store. And I have a concern with that, and I have a concern with the other street as well because Dunkin Donuts is around down the street, intersection over there, well traffic's, we have a good example over on Center Street that they are, they fail. They're not correct. Center Street is horrible. So that traffic study that says that this is not gonna create a negative impact, I have very, I don't believe it at all. These are all residential. This will back up, people will come in and out. Usually people spend what, five minutes inside a package store? So many, 88 trips a day. How do they come up with that number? 88 trips a day, is it 88 clients?

Mr. Phoenix: Well, it's not 88 per day, it's 88 in the peak hour on a weekday.

Mr. Silva: Ok.

Atty. Levine: And I can answer how they come up with that number. There's engineering standards that they use. So, they have a code that they put in based on the square footage and the type of use, and they come up with that number. So, it's …

Mr. Silva: Imagine if the store sells a hot item, and the traffic increase because everyone wants what they sell.

Mr. Phoenix: Well, and also, does that formula take into account that it's right near a turnpike exit?

Atty. Levine: It does. That's why they…

Mr. Phoenix: It takes that, that's in the formula?

Atty. Levine: They have, they've done studies on this area. They have the information for that exact intersection. I know they've done work for Ludlow, so.

Mr. Phoenix: And does any of that take into account that that's additional trips that are going to be going through that lot which has a direct across the street access between that lot and Starbucks? So, people that are trying to get on their way home, they're trying to grab a cup of coffee and grab something from the liquor store, they can cut across Center Street in the middle of rush hour because that's the way that this is all configured? Is that part of the analysis that's in that traffic study?

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Atty. Levine: It's not written in the traffic study, so they can only use information that is up to engineering standards.

Mr. Phoenix: And the existing site plan, as I'm seeing right here, for Colvest, does not have anything that I'm seeing, calling out which spots would or would not be used for CVS. So, the plan that we have in front of us that calls out where those parking spots are gonna be on a Colvest property is not something that's been approved by the Planning Board. Is that correct?

Atty. Levine: I don't, I have no knowledge of the Colvest.

Mr. Phoenix: So, at no time has the Planning Board said that those 21 spots that are near where most people park at CVS aren't gonna be used for CVS anymore? Because I can tell you right now sir, that it would be nearly impossible to enforce that because people don't park for the most part, over by the abandoned ATM. People aren't gonna park over at the back end of the building and go in. They park near where the door is and I think much like the people that want to use that business, they're going to want to park in the spaces that are easy to get in and out of. So, for us to say that we're going to allow those spots to be called out on another property owners plan that isn't in front of us tonight, to be reserved for use for this building, I think is asking a bit much.

Atty. Levine: I did not represent Colvest. For that site plan, if it wasn't called out ---.

Mr. Phoenix: Well, that's fine, but I'm saying you don't have a legitimate claim to those spots. You have a claim to some spots based on your agreement with Colvest, but you don't have approval from the Town of Ludlow, and Colvest doesn't have approval from the Town of Ludlow to call those spots out as for that dedicated usage unless you can provide something I'm not aware of.

Mr. Silva: In case if CVS is packed and all the spots are taken, where are the customers gonna park? On the side street or block in cars?

Atty. Levine: I can't answer on behalf of CVS, and it's not in front of this board tonight.

Mr. Phoenix: No, but your parking is, you don't have any onsite parking, so we have to judge whether that parking is valid or not. Just because it's adjacent, that's fine. But you could also provide us an agreement that says you have access to use parking that's on the other side of town over by the Mills.

Atty. Levine: I gave you an easement agreement that shows parking adjacent to…

Mr. Phoenix: Right, but you can have an agreement with Westmass Development Corporation, but it happens to be adjacent, which is certainly more convenient for the customers for this business, but the fact that you have an agreement with another party based on information that is not approved by the Town of Ludlow is something that we absolutely can and should consider when we're evaluating whether that parking is real or a loser-y. And I would argue that that parking is not really called out for you. It's based off of this plan which is available? It's in the Registry of Deeds. It was available in this office for review.

Atty. Levine: If this was approved, it was missed if there has been an easement agreement for years.

Mr. Phoenix: There may have been an easement agreement, but there were no specifically called out spaces. And the businesses that were there, Deanna's Day Spa and Ludlow Linoleum, were not putting 88 or even 70-something cars through at peak flow. That wasn't the case. It simply wasn't. So, when we approved the updated site plan for Colvest, that wasn't a concern that we had about parking for some other people. Quite frankly, if there's a problem with the agreement that you have with Colvest, that's a disagreement that you can take up with Colvest, but when we're looking at your plan, we have to look at does your plan actually give us protection for the Town of Ludlow. Does it provide for safety on this site and around it? And I don't know that it does. And I think you've got a valid point that some of this is Colvest issue, but if Colvest is not approved for calling out those spots, I don't believe, and maybe Town Counsel can correct me if I'm wrong, but if Colvest isn't approved to call those out, I don't think we should be considering on this plan that those are called out for it.

Atty. Provencher: So, the question as I understand it, is whether the town has to approve an easement arrangement between two private parties.

Mr. Phoenix: No, I think the question is can we say that those 19 or 21, which is in dispute already, parking spaces, 21 that somebody arbitrarily drew a line on, on the plan, or 19 according to the agreement, should we take as part of this that those are the parking spaces for this business, whether they're gonna be able to enforce that or not, or should we go by the existing approved site plan for that parking lot?

Atty. Provencher: So, for the first point, the number of parking spaces would be determined by the regulations of the zoning bylaws enacted by the town. I think that's a technical detail that you should consult the planner on as to whether it's 19 or 20 based on minimum requirements.

Mr. Phoenix: No, no, no, I'm saying they require 18, but they're saying 21 available, but the lease agreement says 19 that's…

Atty. Provencher: I understand that. I looked at the easement agreement that we have on file and what is says is that there's a reference to the PREM will have control of spaces that are designated as 19 spaces. It may be that at the time, according to the parking standard in effect at the time, there were only 19 legal spaces there. Those might have changed. They may have 21 now. They may have been able to find additional space and there is now 21 spaces within the area that the applicant has rights to under the easement. I think the question for the Board is, has the applicant demonstrated that they have site control over this parking area and if they can demonstrate via the terms of an easement and a map that shows what the area they have parking rights in is, that's a question for the Board to consider in terms of does the applicant have the right to access and use this area?

Mr. Phoenix: I would suggest that if, in a different version of reality, if instead of these parking spaces being called out, given that this is the existing plan, somebody could've equally arbitrarily, in terms, in my terms, but in terms of an agreement between Colvest and this property owner, called out the parking spaces surrounding the entrance to CVS and said no, those are the ones that we're taking control of. That would, I think we can all agree that would be ridiculous.

Atty. Levine: I understand ---

Mr. Phoenix: And I don't think this is much less ridiculous.

Atty. Levine: There is a plan on record that I've asked Doug to pull up. It's recorded. It will show the easement plan. It will show the spaces that are called out.

Mr. Phoenix: Ok.

Mr. Silva: So, CVS customers will not be allowed to use that then because if they use them, where are the customers for this building will be parking?

Atty. Levine: Right.

Mr. Silva: Where will they, on the street?

Atty. Levine: I cannot control the CVS customers.

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Mr. Silva: That's the reason why we can't control anything. We can't control where people come, we're just gonna create a big hazardous area here with the increase of traffic flow. That's my understanding of all this because we can't control it.

Mr. Phoenix: And conversely, how are we gonna make sure that the parking for this business isn't gonna be blocking the spaces over here for CVS?

Mr. Silva: And people will park, they'll go in for five minutes, they'll probably block a car and come out in just five minutes. In and out. It's not a dedicated parking lot for a business.

Atty. Levine: So, you can control to a certain extent. You can put on reasonable restrictions.

Mr. Phoenix: With all due respect, we've got striped lines over on Center Street right across. They're saying you're not supposed to be going down the right-hand lane when you're approaching the Turnpike. Watch it any day. People don't pay attention to that. We have a

dedicated turning lane in the middle of Center Street right there. Watch it. People go down that thing from Big Y all the way down to the intersection. You can put whatever stripes you want on the ground, people are still gonna do what they're gonna do, and it's still gonna have a real-world impact. Five dollars' worth of paint doesn't erase the problem. It might make people sleep a little bit better at night, but it's still gonna end up resulting in fender benders at best. That's why this needs to be spelled out. It needs to be done correctly, because those kinds of solutions, and we said that when we were dealing with that problem, we knew that that wasn't gonna really work, but we were told Mass Highway wouldn't let us do anything different. This isn't Mass Highway.

Mr. Coelho: I think additionally another problem with the delivery area. I mean, there's a right angle coming into the building. I don't see how you're gonna back a 25-foot box truck into a 13-foot-wide paved delivery area…

Mr. Silva: You'd be blocking the street.

Mr. Carpenter: It's tight, definitely.

Mr. Coelho: …without really blocking Harding Street for a significant amount of time. I mean, I'm not a professional driver nor am I an engineer, but I would just be looking at some engineering on backing up just a regular car. To back a car in, you need a turning radius of five meters, approximately 16 feet. That's a regular car. You're not gonna get a, let's say even a 25-foot radius into here.

Mr. Phoenix: And I would ask…

Mr. Coelho: And that is something that is in control of this site plan, I mean on this site.

Mr. Phoenix: Now, I started by saying that I think 18 is less than 19 or 21 so I didn't want to nit-pick that, but if we're looking at simple and easy math 2018, 1999, what's the superseding plan?

Atty. Levine: I have no control over that plan. That plan and this easement agreement give right to the owner of 21 Harding Street to use those parking spaces. If Ludlow approved a plan without being made aware of that, I can't speak to that.

Mr. Phoenix: When this plan was submitted and approved by the Planning Board in 2018, would we expect that if we go back in the records, we're gonna see that the neighboring properties were made aware that there was stuff going on with this piece of property?

Atty. Levine: 21 Harding Street?

Mr. Phoenix: Yeah. As an immediate abutter.

Atty. Levine: There wasn't anything going on in 2018.

Mr. Stefancik: In 2018 they added that big giant wall in the back and they added the parcel. That's why they updated the plan.

Mr. Phoenix: Was there a public hearing with this?

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Mr. Stefancik: I think it was a site sketch.

Mr. Phoenix: It doesn't say, it does say addendum. I missed it 'cause it's half faded.

Mr. Queiroga: That's not a parking area.

Mr. Stefancik: Yeah, you waived the full registered site plan to a site sketch and a public hearing. The 1999 plan is right here.

Mr. Phoenix: Ok. I stand corrected because, now that it's kind of coming back to me more, I didn't want to waive it on that one, but I was in the minority.

Mr. Stefancik: The 1999 plan, it looks like both used the square footage of both the two properties they built to add in for the parking which they call out as 78 ---, 78 spaces but needing 70.

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Mr. Coelho: So, does taking these spots away from CVS leave them in violation of parking?

Mr. Stefancik: No, I think they account for all the parking for both ---.

Mr. Phoenix: --- parking by the ATM and all the way up the side of the building.

Mr. Stefancik: But they call it out under the retail. If they were to change it to a restaurant then it would change the whole parking configuration, the number. Or if they had a bank or an office, but everything's considered retail over there for both buildings.

Atty. Provencher: Mr. Chairman, one point that may be relevant to the Board if you would.

Mr. Phoenix: Sure.

Atty. Provencher: Under the terms of an easement just so that the Board is aware. There's typically an implied covenant that the property is burdened by having an easement, in this case the adjacent property owned by Colvest, you can't unreasonably interfere with the party benefitting from the easement's use of the easement. So, to the extent that there's a concern that other people will use that property, it's also a matter for the private parties to be able to address as part of the arrangement between them as an easement. I only say that because I think it's relevant for context for the Board. I don't know whether that's likely or how that would shake out one way or the other.

Mr. Coelho: Can you translate that for me?

Atty. Provencher: So, if I get the right to, let's say I get the use to go over your driveway. You have an easement and I get to cross it to go to the back. You can't park your truck across it and block me from using it.

Mr. Coelho: Nope. So, you have to provide them reasonable access to.

Atty. Provencher: You can't act to prevent me from getting the benefit of the easement that I have. So, if there's a situation where CVS is directing all their customers to go park there, there

is a remedy for a private party to be able to bring in action to say you're interfering with the rights I have and you're preventing me from getting something that I have under the law.

Mr. Coelho: It's a tough site.

Mr. Phoenix: Well, it's tough, and I'm interested in either party explaining to me how they're going to prevent cars from going where they're not supposed to when it's not even a straight rectangle. It's a weird shape, and it's places that people have been parking for years and years and years. I'm interested in knowing how that's going to be reasonably accomplished from anyone's perspective.

Atty. Levine: Put up signs, Ludlow Liquors parking only. They can put up signs asking to exit via Harding Street. There's ---.

Mr. Phoenix: Well, we definitely don't want them exiting via Harding Street unless necessary because that's, you're also encouraging more traffic through the residential neighborhood which is gonna be more impacted. I mean, 88 vehicles at rush hour, the fact that there's a lot of cars through there, we all know that. But 88 cars is still a lot of cars. That's more than one car a minute. That's, you know, that's a lot of cars at an intersection that's already packed, that already has a hard time.

Atty. Levine: So, that trip is in and out, so it's 44 cars.

Mr. Phoenix: That's a lot.

Mr. Queiroga: Have the owners of the Colvest agreed, are they part to this?

Mr. Phoenix: Well, it looks like they were part of it back on this one Joe.

Atty. Levine: They didn't sign the application, but I've been in touch with them and have discussed, they had a right of first refusal over the property which they have waived, so they're aware of the plan and they're aware of who's buying it and so they're not on the application but they are aware of everything.

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Mr. Queiroga: Ok, 'cause anybody who's been going in and out of that space for the last four or five years understands that those spaces which now would be the liquor store, are about 60 to 70% full of parking which are people who are going to CVS, ok? I'm not saying that, I just know from, I know the owner of the CVS and the other one used to be a rug place which didn't have much action, speaking, obviously not like a liquor store. I'm even surprised that Colvest would even be a party to this because you go in there and sometimes you gotta wait for somebody to back out.

Atty. Levine: Colvest is already, they have no right to those parking spaces. They gave that up years ago. The current owner has not chosen to take any action because of his rights being infringed upon, but he certainly could. So, Colvest doesn't have any right to those parking spaces as of now.

(multiple people talking)

Mr. Stefancik: --- they would be aware of the public hearing too.

Mr. Silva: The biggest issue is the access to those parking spots. What are you creating in the parking lot? Because people are gonna come here. They're not gonna go to the intersection of Center Street because it's impossible to get there. You have to go through Dunkin Donuts, lights and all that. They will cross through this parking lot like they've been doing right now. People that want to go to Dunkin Donuts cross through this parking lot. People want to go Swan Ave cross through this parking lot. And just, I don't think it's the right location for a business that has so much traffic.

Atty. Levine: That's why it's a good location for a business and it's a desirable place.

Mr. Silva: I'm sure it is.

Atty. Levine: The owner of the flooring store is in his 80's. Something else is gonna go in there and…

Mr. Silva: Probably something that's similar to what's been there before. If it's a salon, what is the average of how much time a person spends inside the salon, one hour, two hours?

Atty. Levine: The salon's closed. Maybe they can't afford the rent there. It's an expensive place because it's a desirable place.

Mr. Silva: The cost of rents are not my concern, it's all this, what we're creating here to the residents and all that, that's my concern.

Atty. Levine: I understand. That's why we're here for site plan and so we, if you have restrictions you want to put on to help the traffic, then this is the process to do it.

Mr. Silva: But it's, we cannot control what people do. Like Ray said, Center Street is marked all throughout, signs, striping everywhere. People just go wherever they want to go. You can't control them, period.

Mr. Coelho: So, this building and the CVS were all approved at once.

Atty. Levine: They were split in the, I think in the 90's. There was a subdivision.

Mr. Stefancik: If you go to the last plan, it shows how the whole area looked before it was all developed.

Mr. Queiroga: You talking about this one?

Mr. Stefancik: 1999. That's it.

Mr. Coelho: Separate lot.

Mr. Queiroga: Is that the one you're talking about?

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Mr. Silva: Is it possible to get a police report of how many accidents happened in this area?

Mr. Phoenix: We should be able to. We've gotten similar for other things in the neighborhood before. I was just double checking. There's also, although it's a small detail, there's also an item missing out of the table as well. I thought I had picked it up before, but I wanted to double check.

Atty. Levine: The traffic study does list accidents. There's, if you, page two does a crash analysis and it's, those are reported accidents. So, there's very few on there, but that's the information that they can get from the database.

Mr. Phoenix: I mean, this is very few.

Atty. Levine: About 45 over five years at the Center Street Harding intersection.

Mr. Carpenter: Gotta report it though.

Mr. Silva: In an area like this with the traffic that's there already, you're going to increase it. In five years from now, we gonna see what, four sheets of this on the traffic study?

Mr. Phoenix: I mean this is, it's the problem we've been dealing with along Center Street for years and we keep getting these incremental-like cuts. And we're bleeding, we're bleeding bad down there. And it's not gonna get any easier or better. You know, the existing liquor store that's been there for years, has been empty now for a while. Eventually something's gonna pick up that piece of property, same thing with the property next door. I don't know how long it's gonna be before the residents next to that, or the one next to that or the apartments next to that end up turning to business as well. I think we've known for decades that that's the direction that that's going because it's, it is prime retail real estate.

Mr. Queiroga: Mr. Chairman?

Mr. Phoenix: And we just keep getting, whether it's the property that we had to deal with, with the Starbucks situation, whether it's when we dealt with the same parking lot and all of the situation over there where there's supposed to be a special permit for the drive thru but there isn't one yet, and there's all of that. Whether it's the stuff for some of the traffic issues that we had at Pride, whether it's some of the stuff that's going on over the various iterations of not being able to get enough curb cuts closed, especially next to the intersection where Friendly's used to be. We've got all of these things where the intensity of use keeps getting ramped up, the number of trips keeps getting ramped up, the amount of potential damage keeps getting ramped up. And because we have more trips that are existing, the next thing that comes in, it's a smaller percentage increase because there's more stuff there already and we just keep getting cut and bleeding. And I'm not, if we have to approve this because we don't have special permit control over it, while all we have is site plan approval, I'll be honest, if I have to approve it, I'm going to vote to approve if it meets everything that is has to, but if I have to approve it I'm going to, I'm not gonna be happy about it because this is not a good fit for that neighborhood. Whether it's a liquor store or anything else, a business of that intensity of any variety going in there under these conditions is not desirable. That is not what the town needs and is not what that neighborhood deserves. Liquor store, that's a whole separate question. I think we've got issues as far as the deliveries. I think we have issues about how the parking's gonna be controlled. I think there's a lot of little stuff here, but I'm just, I'm tired of this.

Mr. Queiroga: Mr. Chairman, I'd like to add a couple things to what you said, which I agree with. On top of it, what we're not seeing is that most of those people, the ones that park on this side, that have been parking on that side, with more cars there, more in and out, most of those people want to drive around and get on the light coming out. There've been sometimes when the traffic outflow from Dunkin Donuts, you have to sit there for minutes to get out because those people are blocking.

Mr. Phoenix: And that's not counting the fact that the people that are over on the street there. They don't have a stop sign, so they keep going because they have the legal right to, but the cars coming from the other street where Dunkin's are, are supposed to stop. And then you've got people trying to come out of CVS at the same time. You've got the Cumby's traffic right there. There's the old Budnick property that's being used as a parking lot that's just sitting empty at the moment. It's rough.

Mr. Queiroga: It's a bad situation and this project, for the kind of movement it's gonna have, is gonna make it a lot worse.

Mr. Phoenix: I mean, I'm seriously getting to the point outside of the scope of this public hearing, but touching it, the way that all of this has been going, I'm getting very close to starting to look at having the Center Street corridor have its own controls and have special permit required for pretty much anything there, so that we have the additional ability to look at whether there needs to be more controls around traffic and the way that that's handled because it is getting just too intense and site plan approval doesn't allow us to protect the neighborhood adequately. It just doesn't.

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Mr. Queiroga: So, what are our options? What do we have?

Mr. Phoenix: I think we still need to do public comment. I don't know if the board members have anything else on it. I think there's at least one item that I've seen that is missing off of the proposed plan. We can talk about that. And then I think, although Doug was kindly enough to go over the checklist. I think in the process of that we can get to what I saw that's missing, but whether I like it or not, whether the neighbors like it or not, I think if it meets what site plan approval says it needs to have, we're obligated to approve it and just all we can do is grumble about it. Is that fair?

Atty. Provencher: I think it's a fair statement to say that you're obviously --- with the criteria under the town bylaws, you know how to apply the site plan approval process. If you review the process and your only conclusion, you're only fair conclusion is that it meets the criteria laid out in the bylaw, then yes, I would recommend that you would vote to approve as a matter of law because you know that there are no facts. However, obviously, the public hearing is ongoing, you're perfectly entitled to make inquiry as to what the facts are to determine whether the proposal will meet the criteria on the site plan approval bylaw. So I can't say as a matter of law you're required to do anything. You need to establish what the facts on the ground are and how bear and relate to the criteria that you need to apply here.

Mr. Phoenix: Ok, thank you. Does anybody from the board have anything else before I open it up to the public?

Mr. Carpenter: I'm just real nit-picky that it's Harding Street.

Mr. Coelho: Does the discussion of past public hearings have any bearing moving forward?

Atty. Provencher: How do you mean?

Mr. Coelho: However was decided that this was going to be broken up and how that was justified or, you know, it's just gonna be a carpet business. They're not gonna have much cars going there, so we'll approve it because of that. Those little nuances that might get missed in an actual approval. Do you know what I mean? The discussion.

Atty. Provencher: I think you would be entitled to say, one, you would need to look at the standards that were in place during any previous reviews and if they are different, that may weigh upon how you evaluate it, but I think as part of your evaluation of this proposal under the site plan criteria, you would be entitled to look at whether there's a change, whether, you know, not withstanding the fact that it was previously approved, it was previously approved under a different standard or because the facts more closely met the criteria for a site plan approval. I don't think you're precluded from considering that kind of historical data, but that's part of the process of making inquiry and determination. Like, for instance, if you wanted to make a conclusion that it was going to unduly increase the amount of trips, to say that you would obviously need to know what the previous amount of trips were, to know that there's going to be an increase. So, I think it's part of the fact of development that you have to go through when you process an application like this.

Mr. Coelho: Ok.

Mr. Phoenix: Anything else from the board for now? Hearing nothing, I'm gonna ask for public comments, questions, or concerns at this time. If anybody has anything, I would ask that you state your name and address for the record so that we can keep all of that straight, and if we start having a lot of people I'll start looking at, you know, controlling it and making sure that we're not getting too out of control. And just everything, if you have any questions address them through myself and I'll do my best to get you any answers you need. I saw one hand go up already.

Ms. Mendes: --- myself. We live right on…

Mr. Phoenix: I just need your name and address first please.

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Ms. Mendes: My name is Conceicao Mendes and I live right across from CVS. Even my house is looking street --- front door is facing in CVS. So, I know everything you're talking about, nobody better than I do knows what's going on. 'Cause we had cops ringing my doorbell asking to see my cameras 'cause I been having cameras since Budnick. And they come to see fender benders a lot. And I have trouble with not just the parking, but the trailers 'cause there's some trailers going to CVS and the other. They go through my land all the time. We have trouble with traffic and sometimes, and one of you was saying about blocking the driveway, trailers do that all the time in my house, in front of the house. Sometimes I have to tell them to move 'cause I got to go to work. And I've been there 37 years. When I move, I never came to one of these hearings because I didn't think it was necessary but now it is necessary because there's too many cars. And the package store, maybe something else wouldn't be as bad. The package store, it's not something people go there once a week to buy a bottle of wine. It's people who drink every day. Some of my clients have package store it's like and they say it's the same clients over and over throughout the day 'cause they just don't go for a bottle they go for these

little, excuse my English 'cause I'm a little nervous. The thing is, the lighting, I have the light in the parking lot, we are in bed and the lights are on most of the night the lights are on. Sometimes it's hard to sleep 'cause we older. We're not like young kids who fall asleep right away. And then we have, what time is the package store open? What time opens, what time does it close? It's not an easy situation there. I, like I said, I have never been here to complain because at that time there was no need. CVS was just starting, it was just a half dozen cars. Now, I go to work around 9:30 – 10:00, ok, and I'm still working. I go to work, sometimes, if I go earlier for 9:00, 8:30, 9:00, I have to wait in my driveway forever because the line goes all the way down to the Mass Pike. And the same thing one of you mentioned, the cars coming from Dunkin Donuts, they cross. No one can comes this way and we can go 'cause they just. I live there and I'm sure some of these people too. It's not easy, not easy at all. A few years ago, I applied for open a salon in my house. --- many by myself. I was denied because it was too much traffic. --- some of you. This was, I don't remember exactly, maybe ten, fifteen years ago. I was told too much traffic. For one lady an hour it said by myself. Ok and now for a package store. Something else, ok, but not a package store. It's drugs who go there. It's not normal people every day.

Mr. Phoenix: And I understand that. I don't want to stop you from expressing yourself, however the site plan is for retail whether it's gonna be a package store ---.

Ms. Mendes: But it's worse because people go to package store every day. They drink too much. I'm not, you know what I'm saying?

Mr. Phoenix: I understand what you're saying.

Ms. Mendes: It's not easy. It will be not 80 cars an hour, there will be a lot more cars an hour. And where are they gonna park? Exactly what you guys were talking about, I go through it every day. I live there. I see it all. I'm not trying to be, like I said, I've never been here complaining, but now to me, I think it's time to speak out because yesterday, I don't work Mondays or Tuesdays, I watch my grandson, I was sitting on my front stairs from like 3:00 to 4:30, --- I miss all of that because I'm at work, I don't see what's going on. It's cars constantly. And a lot of elderly from the senior place there walking by and hazards like constantly. And I was like an hour sitting on my front steps. It is. People don't live there don't know half of what's going on. And accidents, a lot of accidents, fender benders. Like I said, the cops knock on my door a lot of times asking to see the ---. They go in and they can see the cameras because we have them. So that's my, and what time the store open, until 9:00, 11:00?

Mr. Phoenix: Well, we can't, without special permit approval, we can't put restrictions on hours of operation. We can ask questions, but special permit is where we're able to put conditions on things. Site plan approval basically, the way that it works out if they meet the criteria that are in the bylaw, we are saying it's allowable by right as long as it meets those criteria. So, it's a very specific list that we would review for this which is why I said I'm getting to the point where I think we might need to just look at doing special permit for that whole corridor because it is just getting too much.

Ms. Mendes: And then the traffic from Dunkin Donuts, they don't go to the light ---, they go through CVS. But this is every day. You know if some, one of you stays there an hour in the morning they can observe all of this.

Mr. Phoenix: Well, I've been there before like when Dunkin's was redoing their whole parking lot situation years ago, I stood out there at like 5:00 in the morning and watched everything. I've seen it all.

Mr. Queiroga: Mr. Chairman, do we have to approve or disapprove for this without taking more time on it?

Mr. Phoenix: Well, you're getting ahead of me Joe. You're getting ahead of me. Did...

Ms. Mendes: That's my concern. So, if anybody else says I have concern that. I've been living there a long time, so, and another thing, a few cars a few times before I came from work and cars were on my land and the cops were there. A few times happen the last few years 'cause they don't take the curve. They just, and they speed. You know, that's a lot of things. You have to be living there to see it. I understand it's part of the, it's business, but maybe a business with less, like a hairdresser, right? It never bother me. It was a hairdresser there because how many people can they take an hour?

Mr. Phoenix: Yeah.

Ms. Mendes: Just a few.

Mr. Phoenix: Thank you. I just need to move onto some other people to make sure everybody's had a chance to speak.

Ms. Mendes: Thank you.

Mr. Phoenix: I know I saw at least one hand up over here, sir.

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Mr. Fields: Dave Fields, 47 Harding. I live right next door to the loading area and correction, there's no loading dock there but that doesn't really matter. It's a pit. So, I've had a CDL since 1982 and used it. I also have transportation management experience. So, the whole conversation about deliveries, they don't have a good idea of how the logistics are gonna go. You're right, they have no control over that. There's be multiple distributors coming in at multiple times. If they're trying to control it, narrow it down to a certain hour the trucks are gonna line up, they're gonna have to go somewhere.

Mr. Silva: They're gonna park in the front.

Mr. Fields: They're gonna park wherever they can 'cause that's what I would do. Wherever I can. And I already spoke with Officer Shameklis Tuesday morning. While I was talking to him I was standing in the front yard looking at that corner of Loopley Street. This has been a big concern for a long time because I am pro-business. So, whatever you folks decide, I have faith in your decision and I'm totally pro-business. However, I'm pro-safety. And Loopley Street and Swan Avenue are dangerous. There's a lot of pedestrian traffic, the letter that you read in the beginning was very well written, it covered everything. Now you have a situation where those two streets are restricted for no commercial vehicles. Now, if I'm coming to make a delivery, I need to come up Loopley. I need to swing left toward Center, nose towards Center, and back parallel to the curb to the carpet shop. That's the delivery area that I'm gonna choose because --- CVS parking lot. But I gotta come up Loopley with either a tractor trailer or a straight truck. I don't know if you want that. That's up to you guys. I'm sure that the people that live on those

streets don't want that. The streets are narrow now. Kudos to the DPW. I called them. I said the brush is getting real tight, the streets are narrow, school is in play. Next morning, they were there, and they took the --- machine and they cleaned everything up. So, they did a great job. Sargeant Shameklis listened to those concerns. Some of those concerns we discussed on Tuesday morning. We were in agreement on that as well. I asked for a speed bump at the end of Loopley Street because what's happening is that a lot of people in town, from out of town as well, they're coming through Loopley, they're avoiding the nightmare on Swan and Center and Dunkin Donuts and that madness, and they're cutting through CVS parking lot, but they don't stop. When I was on the phone with the Sargeant, I want to say a 15 minute conversation and one out of every five cars attempted to stop. That's not a complete stop. Most of them just fly through there. My granddaughter now gets dropped off on Chapin Street and has to walk up Loopley because the bus cannot handle going through that intersection. It blows their timing, so they don't do that anymore because of the traffic, because of the congestion. So, my concern is safety. If the business can go there, by all means, let the business go there. That's up to you guys and I trust your judgement. The other thing that some of the neighbors mentioned too was, package store, all they can envision is scratch tickets, nip bottles, glass bottles on the side of the road. So, I hope that somebody can get PREM to make a commitment to be responsible for that because that stuff's not there now, you know, to that extent. Somebody's gotta take responsibility for that. It's gonna happen. I don't think anyone here can say it's not gonna happen. It's gonna happen. So, the neighbors are concerned about that. They knew I was coming here. They asked me to mention that so I am. But I'm here for safety and logistics. It hasn't been thought through, it just hasn't.

Mr. Phoenix: Thank you. Does anybody else have anything on this particular issue? Hearing nothing from the public at this time. I'm gonna ask the board once more, then I've got a couple thoughts about where we can go from here. Ok, hearing nothing. Like I said, I think we can run the checklist and see where that shakes out. We still do have waiver requests that we need to take into account and decide whether we're gonna approve those waiver requests or deny those. I don't know that we're gonna continue this now. We're already at 8:10, 8:05 and we have another public hearing that was supposed to start 35 minutes ago. I would suggest in the interest of time, we do the checklist, maybe have a couple more minutes of conversation, then we move on to other business and continue this to another night, give us all an opportunity to do any additional research that we feel needs to be done, do any thinking about it that we think needs to be done, and then come back to it and not feel like we need to rush to a decision tonight. Does that work for everybody?

Mr. Carpenter: I think that seems fair.

Mr. Phoenix: Ok, I don't have the checklist itself available, but I do believe I have in the correspondence packet the version of it that Doug ran through. Engineer's stamp and land surveyors stamp and signature.

Mr. Coelho: Yup.

Mr. Phoenix: Scale of plan.

Mr. Coelho: Yup.

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Mr. Phoenix: Space for endorsement by the Planning Board. Can I actually have the regular checklist instead of reading the abridged version, Doug?

Mr. Stefancik: Yeah.

Mr. Phoenix: Well, that doesn't help me. It's good for other people to follow along with though, I suppose. Thank you, Doug. So, let's go back to the top. All site plans shall be prepared by a person or persons registered under the Massachusetts General Laws of the Commonwealth of Massachusetts to practice architecture and/or engineering, and land surveying and shall show the seals of the architect and/or engineer, and land surveyor. All site plans shall be on standard 24" X 36" sheets at a scale of 1-inch equals 40 feet, with additional narrative as necessary. Normally we're not too picky on the scale as long as it's one that's usable.

Mr. Coelho: One inch equals ten feet. It's usable but we have a land surveyors stamp.

Mr. Phoenix: And that is a surveyor? I would think it probably would be 'cause it's through Smith.

Mr. Coelho: Professional land surveyor.

Mr. Phoenix: Thank you. Space for endorsement by the Planning Board.

Mr. Coelho: Yes.

Mr. Phoenix: Provision for adequate drainage of surface water from paved areas. Use of landscaped areas to provide such drainage in order to relieve storm drainage systems is encouraged. The piping for the storm water drainage systems shall be designed using the ten (10) year storm curve for parking area drains and the twenty-five (25) year storm curve for culverts over existing natural waterways and retention areas. I don't know that they have a whole lot of parking areas. For paved areas, the ramp, is that actually paved or that not?

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Mr. Coelho: Concrete.

Mr. Phoenix: Because I'm just seeing the nook. I haven't really looked at the ground over there. Existing and proposed vegetation. Such vegetation shall be indicated by: Type and location (whether woods, brush, shrubs, etc.) and number of plants (if appropriate).

Mr. Coelho: Not on the building site, no. On the adjacent site, sure, you know, where their parking is, yeah there's a couple shrubs.

Mr. Phoenix: Existing natural features such as wetlands, rock outcroppings, slopes, hills, etc.

Mr. Coelho: Not applicable.

Mr. Phoenix: Pedestrian facilities, if any, including walks, plazas, benches, etc.

Mr. Coelho: Yes.

Mr. Phoenix: Parking spaces and circulation area for automobiles as well as the location of landscaped areas within them. Existing and proposed curb cuts shall be indicated together with approval for such cuts from the appropriate town or state agency. The number of spaces shall be in accordance with Section 6.4.2 of the bylaw. Can we hold off on that one for the moment? So,

that's E1 Sue, if you wanted to 'cause I don't know, I don't want to circle on this one. E2, All parking areas shall be paved and noted on the site plan as "to be paved," with the type of pavement to be used. I suppose that's kind of largely N/A on the site itself. Area where deliveries will be made on site. Yup. Existing and proposed fencing to be used to buffer abutting residential dwellings and/or districts from the intended development (if appropriate). Section 3.0.4 of this bylaw. On the little plan I can't see what the fencing is called out as on the plan. You see that on the bigger one?

Mr. Coelho: Just fence, but it's not even apparent on that side, and it's got a key for a fence.

Mr. Phoenix: And there's no fence showing on the residential abutting side?

Mr. Coelho: No, there's a fence on the back here, but nothing on abutting property or anything of that nature, no.

Mr. Phoenix: So, I guess we'll hang off on that one as well. That's F. Existing natural features and vegetation to be retained shall be so indicated. Due regard shall be shown for all existing vegetation and natural features which, if preserved, will add attractiveness and value to the development.

Mr. Coelho: Yeah, it's showing a couple shrubs that are there on paper.

Mr. Phoenix: The location and type of monumentation at all property corners shall be shown and maintained.

Mr. Coelho: Yeah, it says the monuments are there.

Mr. Phoenix: I. existing and proposed elevations and contours. The contour interval shall be two (2) feet or any interval which adequately depicts the grading. Aside from the area on the side there, that's pretty much flat.

Mr. Coelho: Yeah, it's not applicable.

Mr. Phoenix: All existing and proposed utilities, and to include utilities with easements.

Mr. Coelho: Yup.

Mr. Phoenix: All site plans required herein shall display names of all abutters.

Mr. Carpenter: Question on that.

Mr. Phoenix: Yes.

Mr. Carpenter: --- property.

Mr. Phoenix: What?

Mr. Carpenter: ---

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Mr. Phoenix: That's an abutter to Colvest. It's just this lot here. All existing and proposed sidewalks and curbings. Did that one, I think, right? That's when you mentioned, or did you do it with the abutters?

Mr. Carpenter: ---

Mr. Phoenix: Ok. All existing and proposed sidewalks and curbings.

Mr. Coelho: Yup, yup.

Mr. Phoenix: Landscaping Requirements: required landscaping shall be provided as set forth in Table 3, and buffer strips required by Table 3 shall be reserved exclusively for plantings, pedestrian facilities such as benches and walkways, required fences, necessary traffic control signs and those free-standing signs which conform to the requirements of Section 6.5.2e of this bylaw.

Mr. Coelho: Just to back up, it looks like there's some sort of sidewalk going into the street. I don't know what that is. It's probably existing I'm sure, but.

Mr. Phoenix: Is that like the ramp area in front of the building?

Mr. Coelho: Yeah, on the north side. I don't know if that's there or if that's to be added but it's off of the property bounds.

Mr. Carpenter: Right above the shrubs diagram.

Mr. Coelho: Ok, yeah.

Mr. Phoenix: On the north he's saying, yeah.

Mr. Coelho: And it's not on its property, you know?

Atty. Levine: All this is as-is. It's not.

Mr. Coelho: All this is as-is?

Mr. Phoenix: The plan shall…

Mr. Fields: You want help with that? I can tell you what that is.

Mr. Phoenix: Sure.

Mr. Fields: I know what it is. Walter does, I don't know why he's not saying anything.

Mr. Phoenix: What is it?

Mr. Fields: It's his property. That's a sidewalk on the street, on Harding.

Mr. Phoenix: Yup.

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Mr. Fields: On the left is the pit.

Mr. Kapinos: Handicap ramp.

Mr. Fields: No, on the left is the pit where you take your deliveries.

Mr. Kapinos: Correct.

Mr. Fields: And on the right is the handicap ramp that comes off the sidewalk and that's concrete.

Mr. Phoenix: Ok.

Mr. Carpenter: So, the ramp goes, slopes down towards the parking lot?

Mr. Fields: The ramp comes up level to the parking lot on the top right corner and if you go in from the parking lot, it goes down, you make a u turn and it goes down again to the doorway. Is that correct?

Mr. Kapinos: Correct.

Mr. Phoenix: Ok.

Mr. Silva: Thank you.

Mr. Phoenix: And the plan shall also include a chart showing the following information: (1) Area of lot.

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Mr. Coelho: Yes, or area of unit, yup, lot area.

Mr. Phoenix: Area and size of building.

Mr. Coelho: Unit area, 3,600 square feet.

Mr. Phoenix: See, and this is where I start having a problem and it doesn't get much better. It's supposed to be a chart showing these specific things and I don't know why that's always so difficult for people to seemingly stick with.

Mr. Phoenix: Maximum area of building to be used for selling, offices, business, industrial, or other uses, if applicable.

Mr. Coelho: Again, unit area, 3,600 square feet.

Mr. Phoenix: Maximum number of employees, where applicable.

Mr. Coelho: Yes.

Mr. Phoenix: Maximum seating capacity, where applicable.

Mr. Coelho: Yeah, not applicable.

Mr. Phoenix: It's on there, though saying n/a, correct?

Mr. Coelho: Correct.

Mr. Phoenix: Yes. Also, I believe it's the same for sleeping capacity, it's on there but says n/a?

Mr. Coelho: Right.

Mr. Phoenix: Number of parking spaces required for the intended use, based on Section 6.4.

Mr. Coelho: Yes.

Mr. Phoenix: Pay close attention to the next one on the chart. Number of parking spaces existing at the site (including street parking adjacent to site). Is that called out on the chart?

Mr. Coelho: No.

Mr. Phoenix: Number of trees and/or shrubs.

Mr. Carpenter: Yes.

Mr. Coelho: Yes.

Mr. Phoenix: Number of trees and/or shrubs shown on plan.

Mr. Carpenter: Yes.

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Mr. Phoenix: So, I believe we have questions in the chart on 2, 3, and 8 is completely missing. Then under o. Additional Requirements: All site plans need to have the following information unless waived by the Planning Board, and this is where we start getting to where the waiver request comes in. (1.) Lighting Plan with Luminaire Schedule which has been requested to be waived. (2.) Elevations showing the front, rear and sides of the building design, which is requested to be waived. (3.) Signage design with dimensions and locations which is requested to be waived. (4.) Area where snow will be stored. Is that, I mean they don't have a parking lot, but they do have the walkways which need snow removal, correct?

Mr. Coelho: Correct.

Mr. Phoenix: Is there an area indicated on the plan?

Mr. Coelho: Snow storage is allocated along the perimeter of the site. Building tenants are responsible for snow removal if needed.

Mr. Phoenix: Ok. And Traffic Study, we have a traffic study. So, we have…

Mr. Stefancik: The parking spaces are just right above the chart. The spaces…

Mr. Phoenix: Right, but Doug, we've been through this like a gazillion times with a gazillion people. What does the bylaw say?

Mr. Stefancik: In the chart.

Mr. Phoenix: It says it's supposed to be a chart that has this information. It doesn't say it's supposed to be above it. It doesn't say it's three pages later or somewhere else or in invisible ink. It's supposed to be on the chart.

Mr. Stefancik: Yeah. They do have required 18. It's in the chart too.

Mr. Phoenix: Right. That's a different thing, right? That's like number seven is the required, but number eight's missing. Ok, it's just not in the chart. Sleeping capacity and seating capacity aren't required but those are on the chart listed as n/a but something that is much more relevant to this proposal is not listed there because it's zero unless you count some arguably not real parking on the street. So, it's not on the chart. It got missed, got ignored, got skipped, got something. It's not there. It's not there. So, that's I think where we're at on that. We do have those three that are up for discussion for waiver request. We want to talk about those tonight or do we want to put that onto another session of the hearing?

Mr. Coelho: We're almost an hour over.

Mr. Carpenter: Yeah, Mr. Chairman, I would wait for another hearing.

Mr. Phoenix: So, I think I have one last question for town counsel and then I think I'm gonna be looking for a motion to continue. With this in mind but not necessarily relevant specifically to approving or denying this as a question, if the planning board reaches a point where we feel that the parking as provided at the Colvest lot, where this parking is currently located, it reaches a point where it is no longer appropriate for those businesses which, one of which includes CVS which has a drive-thru which should kind of have a special permit, but didn't get enforced when they came in for some other approvals, it's a situation, if we feel that they're no longer meeting what they need to for that lot and the Planning Board were to take action to revoke site plan approval for the Colvest lot until that comes into compliance in a way that's safe for the neighborhood and for the total town, what if any impact would that have on this project if they've got an agreement with Colvest? Does the town have any interest in that or is that just between Colvest and they figure that out as private parties?

Atty. Provencher: So, without having specifically reviewed it, what I can say you in general would be this, if the specific terms of the easement are such that the area delineated on these plans and parking spaces contained therein are reserved to the right of the owner of this parcel and the applicant, and they are not for use by the Colvest, the CVS, then changing the number of spots required for the CVS wouldn't alter anything because these spots would still be available and the only question would be whether they meet the standard for the parking required at this location. If there are, if there's a change in the easement or there's some provision that the easement might be terminated under normal operations, that's a different question. I haven't specifically reviewed it. It would depend upon what sites the applicant has control of and what parking spots they have a right to.

Mr. Phoenix: So…

Atty. Provencher: For instance, let me put it this way.

Mr. Phoenix: Ok.

Atty. Provencher: I don't mean to cut you off Mr. Chair, let me put it this way. If the situation were reversed and an applicant came to you and said I have 50 parking spots here, but you know, the abutting property owner came in and said they actually deeded to me via easement the rights to 40 of those parking spots, they only actually have ten. Then you would look at this at say but you don't actually have 50 parking spots. You've given away 40. You only have ten. And so, I think you would look for that kind of scenario. Is there something that's going to affect the amount of spots that they actually effectively have control over? And it's on the applicant I think to come forward before you and show this is the amount of spaces we have the rights to, it's not in question. As to hypothetical potential action against CVS it's hard to assess. We would need to know what the basis for any action like that would be. But I can't say sitting here definitively one way the other that it would have a direct ---.

Mr. Phoenix: Well, my concern is not in so much whether there would be something between them and CVS, my concern is whether, if there were an issue where that site plan were to be revoked, then these parking spaces are then on a revoked site plan, are they still valid parking spaces for this third party at that point? And if that becomes the big old legal quagmire, I can accept that as an answer right now.

Atty. Provencher: I think for the purposes of our discussion right now, it would require a non-trivial amount of investigation review, but ultimately what you're being asked to approve here is the site plan that's before you.

Mr. Phoenix: That's beyond the scope of this approval.

Atty. Provencher: I understand, and I just want to make a point by distinction.

Mr. Phoenix: Ok.

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Atty. Provencher: The site plan in front of you, the applicant is presenting that they have control over this property by way of an easement. So, if you have the easement before you, we're happy to review it. You can look at it and say, the easement actually does give you the rights that you're claiming to have. You could look at it and form a different conclusion. All I'm saying is that assuming that you revoked a different site plan, the one before you is this one. And so, the question is whether they have the rights to control the area that they have said they do. And if you approve that, let's say for sake of argument, if there's an approval on this plan based on what they've put in front of you, if you revoke a different site plan, it's not necessarily, it doesn't have to have an effect. It would, if for instance, the evidence they put in front of you says you don't have control of this site, you don't have rights to use these parking spots and you only have permission rather than a legal durable right that transfers with the land like an easement.

Mr. Phoenix: No, I get that. I think we both understand each other and it's just the different seats that we're in are having an issue at the moment. I know it's difficult with hypotheticals and you already said non-trivial, so I don't want to push too hard, but I guess the type of scenario that I'm looking at if we're were kind of to go --- here. If Colvest were to decide that they wanted to take all of their other parking spaces, tear it up, and turn it into a flower garden, and we said you can't still run CVS out of there by doing that, we need to revoke that site plan, you no longer have a valid one, what if any implication would that have on this provided, let's say, that we approve

this tonight, what would that have on this down the road? That's kind of where my mind is at, and I think you understand where I'm coming from, but it's just a weird situation.

Atty. Provencher: What I would say then is that you can't, I don't think there's anything before you which shows that you need to assess the existence of the CVS parking as part of this application. The applicant's drawing a line between the two and saying this is ours, that is theirs. And so I think that what they're asking you to do is say whether what we have here meets the criteria and if there's a reason for you under the bylaw to consider the impact of adjacent parking structures, their effects on traffic, that's a separate question, I think, from are there enough parking spaces under the bylaw but in site plan approval and review for this proposal.

Mr. Phoenix: Yeah, ok. I'm really starting to like the idea of special permit up and down the whole damn thing because this is getting out of hand. Anyhow, I said one thing, that was one extended thing. Looking at the calendar, I know I'm gonna need some time to digest this. I know we still have to talk about the waivers. I know there's some items that are still arguable I think in the checklist, and there are a couple things that are specifically not correct on the plan as submitted. With that in mind, looking at the schedule, I was thinking November 23rd but that's not gonna be a good choice. Quite frankly, looking at the next week, that's my birthday. I don't want to deal with this on my birthday, and then the next meeting after that would be normally cancelled because it's between Christmas and New Years and that puts us into January. So, I don't know that I want to push it that far out either, so I would suggest either November 9th or alternatively, if we did want to go into January, looks like that would be January 11th. Do we have anything on the agenda for either of those meetings Sue?

Ms. Urban: Nothing.

Mr. Phoenix: Can I get a motion from the board to continue to 7:00 here in this room on one of those evenings?

Mr. Carpenter: Mr. Chairman, I make a **MOTION** to continue this public hearing on November 9th at 7:00 p.m. in the Selectmen's Conference Room.
SECOND Mr. Queiroga.
5-0 in Favor.

The public hearing was continued until November 9, 2023, at 7:00 p.m.

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APPROVED:

Joseph Queiroga, Secretary

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Documents: Master application; Comments from Town Departments/Boards; Email from Christine Bray re: Proposed use of 21 Harding Ave. (September 21, 2023); Existing Conditions Site Plan – 21 Harding Street Ludlow, MA – Owned by KMAC, Inc. (8/16/2023)

(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).