



**TOWN OF NEWTOWN**  
PLANNING & ZONING COMMISSION

MINUTES

**REGULAR MEETING**

Multipurpose Room, Senior Center  
8 Simpson Street, Newtown, CT 06470  
January 16, 2020 at 7:30 p.m.

**Present:** Don Mitchell, James Swift, Dennis Bloom, Corinne Cox, Barbara Manville, and Andrew Marone

**Absent:** Nick Cabral and David Rosen

**Also Present:** Rob Sibley, Deputy Director of Planning, Christine O'Neill, Clerk

Mr. Mitchell called the meeting to order at 7:31 p.m.

Mr. Mitchell noted that Application 19.28 and Application 19.29 by Grace Family Church, LLC would be heard at the next regular meeting, as requested by the application in a letter received 1/10/20.

**Public Hearing**

**(Continued) Application 19.31 by 13 Hawleyville Road, LLC, for a Special Exception, for a property located at 13 Hawleyville Road, so as to permit the development of a proposed convenience store and gas station with associated parking and utilities, as shown on a set of plans titled "13 Hawleyville Road LLC, 13 Hawleyville Road (Route 25), Newtown, Connecticut" dated 9/3/19 revised for new application 11/15/19, revised 1/10/20, and supporting documents submitted to the Land Use Agency 11/25/19, 12/12/19, and 1/10/20.**

David Bennett, Attorney at 69 Kenosha Avenue in Danbury, introduced himself as speaking on behalf of the applicant. On behalf of the applicant, he introduced Paul Scalzo, who is the applicant, Tony Lucera, who is the contractor, Michael Galante, who is the traffic engineer, and Dainius Virbickas, who is the engineer.

Atty. Bennett asked Mr. Mitchell if cross-examination of both his own witnesses and those who speak in opposition was permitted. Mr. Mitchell said he believed this was permitted. Atty. Bennett clarified that he would like to inquire of members of the public who come forward with evidence what their qualifications are so the Commission can properly weigh the evidence. Mr. Swift qualified if Atty. Bennett meant to interrupt the public to ask questions. Atty. Bennet explained that he would wait until they had finished to ask questions.

Mr. Virbickas of Artel Engineering, a professional civil engineer for 27 years who has worked for several engineering firms, was introduced by Atty. Bennett and displayed a PDF of the site plan. Since the last hearing, the scope of development had been reduced to result in traffic that is almost identical to the diner previously approved by the Commission. The dispenser islands have been reduced to three, with six fueling positions. As such, the fuel capacity on site has been reduced from 40,000 to 24,000 gallons, and the canopy size has been reduced from approximately 6,000 square feet to 2,000 square feet. Some catch basin grades were adjusted and a revision date was added to the plans. He reminded the Commission that the convenience store is 4,084 square feet. The stormwater management system and

water source remain unchanged. The landscape plan and lighting plan have been updated accordingly. Mr. Mitchell asked if there was a profile view of the canopy and pumps. Mr. Virbickas did not have one, but demonstrated on the site plan. He also showed where the parking is located in relation to the building. Ms. Cox asked how many charging stations were available, because the need will be changing from gasoline to electric. Mr. Virbickas said one is shown, but they are willing to do more. Mr. Mitchell asked if there was an expected traffic pattern within the parking lot. Atty. Bennett said that Mr. Galante, the traffic engineer, will answer questions of that nature. Mr. Mitchell confirmed with Mr. Virbickas that each dispenser island has a fueling station at each side, and some may have an extra hose for diesel. Mr. Mitchell asked if arrows would be painted on the blacktop to direct cars. Mr. Virbickas said there was no plan to have painted directional arrows.

Atty. Bennett asked Mr. Mitchell for permission to call Mr. Virbickas again for testimony, and to include the entire NEMCO application<sup>1</sup> as part of the file for this application. Mr. Mitchell stated Atty. Bennett may be getting ahead of himself, but said that Mr. Virbickas is welcome to speak later in the hearing.

Atty. Bennett introduced Mr. Galante of Frederick P. Clark Associates (Hardesty and Hanover) as a traffic expert – the Commission agreed to recognize him as such. Mr. Galante said those pulling into the parking area in front of the convenience store will likely park facing the convenience store. Mr. Mitchell pointed out that people coming into the site may have a conflict with those backing out of those parking spaces. Mr. Galante referred to Mr. Mitchell's former question about arrows, saying that some gas stations call for them and others don't.

Mr. Galante detailed how the traffic report was created and went through the collection of vehicle counts in May of 2019. This established traffic rates during peak hours, and was combined with data from Connecticut Department of Transportation (DOT). Mr. Galante displayed graphic summaries of volumes that were obtained both on the site and from the surrounding areas, such as the Interstate-84 ramps. Mr. Mitchell asked if the hourly traffic volumes were from the DOT, and if so when they were obtained. Mr. Galante said yes they were from the DOT, and that they were from 2016 which is the most recent data available. He then went over the accident statistics which show this is not a high-accident location. Those numbers have been reviewed and confirmed by the State. Next, Mr. Galante presented a comparative chart which put the total trip-ends generated for the proposed gas station/convenience store next to the previously-approved restaurant's trip-ends (Table 5 in the traffic report). Mr. Galante reaffirmed that these numbers from the Institute of Transportation Engineers (ITE) are accurate. The chart separates pass-by vehicle trip-ends, which accounts for drivers who are already on the road and simply stop at the gas station on their way to somewhere else, from primary vehicle trip-ends, in which a trip is made exclusively to the gas station. The net increase or decrease was listed for each column. Mr. Galante went over development projects happening nearby and confirmed that the build-condition traffic from those projects was taken into account when generating traffic volumes. Another chart showed levels of service at nearby areas, such as the I-84 ramps and intersections. Mr. Galante said the levels of service with the proposed gas station would be comparable to those of the previously-approved diner.

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<sup>1</sup> Application 18.28 by NEMCO Limited Partnership, for a Special Exception and Site Development Plan Application for a property located at 26 Hawleyville Road, to construct a new gas station or filling station within a single structure as a retail convenience store and café and/or restaurant, as shown in a set of plans titled, "Site Development Plans NEMCO Limited Partnership 26 Hawleyville Road prepared for NEMCO Limited Partnership dated December 26, 2018 revised February 5, 2019 and all supporting documents dated and received December 26, 2018, supporting documents received January 8, 2019, and supporting documents received February 7, 2019 – APPROVED 2/7/19 by Newtown Planning and Zoning Commission.

He also reminded the Commission that although the applicant would have liked to put a traffic signal at the intersection, certain criteria and thresholds set by the State were not met.

Ms. Manville asked where in the traffic calculations the Covered Bridge Apartments are taken into account. Mr. Galante said they start in the no-build conditions and continue into the build-conditions, and he referred her to specific sections in the traffic report. Mr. Mitchell said he had the same question. Mr. Galante confirmed all 210 units of the apartments are accounted for. Mr. Mitchell asked about the passby credit, and Mr. Galante confirmed that a passby trip is not an additional trip on Route 25, but is an additional trip onto the site.

Ms. Manville said she didn't understand how reducing the number of pumps from 16 to 6 would result in fewer patrons, since they won't necessarily know how many pumps are available when they head to the station. Mr. Galante explained that the data from ITE is based on the number of pumps, and that data is very accurate. Mr. Swift said that it's atypical to have so few pumps with this amount of traffic, and he thought more traffic would be drawn in than what the charts display. Mr. Galante pointed out that there is another gas station being built nearby, and some consumers will choose that location. Ultimately the trip generation data is based on the number of pumps.

Mr. Mitchell said these numbers ignore the traffic that might be generated just from the convenience store. He detailed that the ITE land use designation chosen by Mr. Galante for the traffic report (code 945) is for more than ten pumps, while another similar land use designation (code 853) is for less than ten pumps and does take into account the square footage of the convenience store. These codes are important because they correlate to formulas used for traffic calculation. Mr. Galante responded that they stuck with the same land use designation for the sake of consistency, even when the number of pumps was reduced. Mr. Mitchell said that he ran the numbers for code 853, and found that the trip generation numbers were about four times what the traffic report shows. He reiterated that he does not feel this is a single-variable analysis. Mr. Galante said it is just unrealistic for a gas station to generate as much traffic as Mr. Mitchell is talking about, and no one in the traffic world uses code 853. Mr. Mitchell said he cannot understand how a six-pump gas station with a 500 square foot convenience store would generate the same amount of traffic as a six-pump gas station with a 10,000 square foot convenience store. Mr. Galante restated that the numbers generated from code 853 are simply unrealistic. Mr. Mitchell pointed out that Mr. Galante is saying that certain algorithms from ITE are realistic and reliable, while others are not. Mr. Galante pointed out that the data for code 945 is backed up by Fredrick P. Clark Associates' own counts, which is why he considers it reliable.

Mr. Mitchell said the traffic report is intended to highlight the difference between the previously-approved diner and the proposed gas station/convenience store; however, he does not feel the uses are similar enough (specifically with peak hours) to be simplified to a single-line comparison. Mr. Galante said that peak volumes do consider respective peak hours, even if they are different. Mr. Mitchell was also worried about drivers trying to make a left turn out of the site with long queuing times. Mr. Galante replied that the solution was to make a "no left turn" situation, but the State wouldn't approve that and it would result in drivers making turn-arounds in random driveways. Mr. Mitchell also pointed out that having, in effect, two lanes of exiting traffic (it is technically one lane, but the apron is wide enough that two lines can form for right and left turns) mean someone trying to make a right turn can't look past the car to their left to see an upcoming gap. This will either result in longer wait-times or riskier turns.

Atty. Bennett shared that he had instructed Mr. Galante to make a comparison between the previously-approved diner and the proposed gas station to show "apples to apples - you approved a diner, you can

approve gas station” as long as the traffic numbers are similar. Mr. Mitchell explained that traffic engineering is much more nuanced than that. Atty. Bennett reminded the Commission that a gas station requires three approvals - Zoning Board of Appeals (ZBA) (already obtained), this Commission, and the DOT.

Atty. Bennett asked if Mr. Galante had examined the traffic study for the NEMCO application. Mr. Galante said he did not believe that one had been completed for that application. Atty. Bennett asked Mr. Galante if he felt this project would meet the requirements set forth in Newtown Zoning Regulations 11.01.427. Mr. Galante said that based on his analysis, yes.

Atty. Bennett distributed a printout of Connecticut General Statute 14-320 (CGS) and specified that even if the ZBA and Commission approve a gas station’s location, the State can still strike it down. He then distributed a printout of CGS 14-321 and distributed the Certificate of Location Approval that the ZBA granted for this site in March 2019.

A recess began at 8:51 p.m. and lasted until 8:58 p.m.

Atty. Bennett distributed copies of NEMCO’s application and approval. He quoted from the application, “The applicant has not prepared a traffic impact analysis for this proposal because the proposed uses do not meet the threshold requirements of the regulations.” Atty. Bennett pointed out that very little consideration was given to traffic in the NEMCO project, which did not even require a traffic study, when this application appears to be receiving very different treatment. Atty. Bennett said all he is asking for is the same standard of review that was given to NEMCO. When the Commission approved that project, Atty. Bennett asserted, the Commission made a finding of fact that Route 25 was adequate to service that gas station.

Atty. Bennet referenced the case, Daughters of St. Paul, Inc. v. the Zoning Board of Appeals of the Town of Trumbull. The case’s result was that based on the expert testimony of a traffic engineer saying that no detrimental traffic conditions would result from the site, the application could not be denied.

Mr. Swift said he thought that the volume of traffic at the NEMCO site was less than the traffic at this site, which is why the Commission asked for a traffic study for this site only. Mr. Galante presented Table 1 in the traffic study, which showed north of I-84 westbound ramp and south of I-84 westbound ramps have almost identical vehicle counts; this supports the position that both sites have equitable traffic. Mr. Swift felt his question was answered. Atty. Bennett added that having gas stations on the opposite sides of the off-ramp will attract drivers heading in different directions.

Atty. Bennett asked if Mr. Virbickas if he felt the application met the criteria laid out in Newtown Zoning Regulations 11.01.420-500. Mr. Mitchell interjected to say that Mr. Virbickas is not an expert on the Newtown Zoning Regulations. Atty. Bennett pointed out that Atty. Olson, the legal counsel for the NEMCO application, gave his testimony about sections of the Zoning Regulations. Mr. Mitchell said it seemed to be Atty. Olson’s opinions or arguments, not expert testimony. Atty. Bennett rephrased his question to ask if Mr. Virbickas could say, as an engineer speaking on behalf of the applicant, if he felt that this project met those regulations. Mr. Virbickas said yes.

Atty. Bennett asked for a continuation of the public hearing. Mr. Mitchell and Mr. Sibley said that Atty. Bennett should submit a letter to the Land Use Agency asking for an extension, as per CGS requirements. Atty. Bennett asked if the Commissioners had further questions.

Ms. Manville had a question about the maps in the traffic study, which Mr. Galante addressed. Ms. Cox asked what revenue this gas station would bring in. Atty. Bennett said he was frankly concerned that this project would not make money given how much it had been reduced. Ms. Cox said that she cannot support an application that did not help Newtown. Mr. Sibley reminded Ms. Cox to stay within the jurisdiction granted to the Planning and Zoning Commission. Ms. Cox wanted to know the economic benefits. Atty. Bennett said he would have those answers for her at the next meeting.

Mr. Mitchell invited public comment.

Pat Napolitano of 13 Whippoorwill Hill Road, Newtown, CT asked Mr. Mitchell if Atty. Bennett will be allowed to examine the public. Mr. Mitchell said that, just like in a court, the attorney has a right to cross-examine anyone on the basis of the information offered, to establish background and expertise. According to Mr. Mitchell, the State says anyone has a right to cross-examine anybody else. Mr. Napolitano said that the Town Attorney should then represent the citizens. Mr. Mitchell said the Town Attorney does not represent the citizens. Mr. Napolitano said he will not answer any questions from Atty. Bennett, and felt that he was being intimidated. Mr. Mitchell said usually what happens if someone refuses to answer questions about how they came upon that knowledge, is that person's testimony is stricken from the record. Mr. Napolitano said that the traffic report was drawn from State data and does not reflect the real conditions of Hawleyville. He added that children from Covered Bridge Apartments add a dangerous variable that does not exist on the NEMCO site.

Atty. Bennett asked if Mr. Napolitano has an educational background in traffic engineering. At first Mr. Napolitano refused to answer, but when Atty. Bennett asked for the testimony to be stricken from the record, Mr. Napolitano said he has lived in Hawleyville for over 30 years and had a driver's license for over 60. He said his testimony comes from first-hand experience. Mr. Napolitano confirmed that he is not a traffic engineer.

Mr. Mitchell and Mr. Swift did not feel that Mr. Napolitano's lack of a background in traffic engineering completely discounts his testimony, as they understand he is not presenting himself as a traffic expert and they will accept his opinion as such.

Mr. Napolitano went on to say that he thought Application 19.22 was denied because it did not serve the needs of Hawleyville, and nothing has changed in that regard. Mr. Napolitano also brought up the 130-acre property across the street that will be developed, which is partially zoned as residential. A few Commissioners questioned the zoning of the property. Mr. Bloom said that the Commission has no say in this, the State of Connecticut is the one that is going to approve the traffic study.

Mr. Napolitano added that the development of that 130-acre property will lead to increased traffic, and increased dangers. He shared that his friends almost lost their lives coming out of Newtown Woods with too much traffic. Mr. Mitchell said that it is generally understood that more development means more traffic.

Mr. Napolitano quoted that the Commission's duties include "orderly and coordinated development of the Town and the general prosperity and welfare of its residents." Mr. Mitchell said that all the Commissioners took an oath to uphold those duties. Mr. Napolitano said it is ludicrous that an attorney is able to cross-examine the public, while the public can't be expected to spend money on their own attorneys in return.

Vern Gaudet of 1 Hillcrest Drive, Newtown, CT, who is a programmer and machinist, stated that his concerns and layman opinions come from living in Hawleyville for 35 years. He shared that this gas station does not do anything for the people of Hawleyville - it only serves I-84. Accidents have happened in this area and will happen again.

Janet McKeown of 10 Hillcrest Drive, Newtown, CT said she does not understand why this application is under consideration again after the Commission unanimously denied the application on two points: traffic, and not serving the Hawleyville community. She said that traffic is very dangerous in the area and this project will exacerbate the congestion. She said that the applicant hiring a lawyer was a bullying tactic.

Atty. Bennett responded to the point that Hawleyville does not need two gas stations by saying that the Zoning Regulations allow it. He also said that the convenience store indeed provides a service to the people of Newtown.

Mr. Swift asked Atty. Bennett how the Hawleyville Center Design District (HCDD) plays into this. Mr. Swift wondered if the Commission should be concerned that the HCDD calls for a mix of businesses, and one of the only viable pieces of land left to develop might be used for a second gas station. Atty. Bennett said that this would have been a concern before the amendment to the Zoning Regulations allowing two gas stations in the area was approved. Mr. Swift brought up the fact that the HCDD says the businesses should primarily serve Hawleyville.

Mr. Napolitano said if you read HCDD regulations, it talks about small shops and regulates apartment size over shops. Mr. Napolitano wondered why that was even passed if there would be gas stations, not small shops.

Mr. Swift made a motion to continue the public hearing to Thursday, February 6, 2020 at 7:30 p.m. at the Multipurpose Room of the Newtown Senior Center. Ms. Manville seconded. All were in favor and the meeting was continued, pending a letter from the applicant requesting an extension.

### **Minutes**

Mr. Mitchell tabled the acceptance of the minutes from the meeting of December 19, 2019 until the next meeting.

### **Adjournment**

Mr. Marone made a motion to adjourn. Mr. Mitchell seconded. All members were in favor and the meeting was adjourned at 9:57 p.m.

*Respectfully submitted,  
Christine O'Neill, clerk*