

ZONING BOARD OF APPEALS
APPLICATION

REFERRED TO TP&Z _____

Applicant **John Alan Sakon**
Street **82 Folly Brook Lane** Town **Manchester, CT**
Telephone **860-793-1000**
Legal Representative (if any) _____
Address _____

Date Filed & Fee Paid	_____
Date Hearing Scheduled	_____
Sign Deposit Paid On	_____
Will Post Own	<input type="checkbox"/>
Sign Taken On	_____
Sign Inspected on Site	_____

Exact Location of Property Involved **The Shoppes At Avalon (Map Attached)**
Assessor's Key # **41400008E; 27600131; 27600002B** **2980 Main Street; 131 Griswold Street; N2B Griswold Street Rear and E8A Main Street Rear**
Legal Property Owner **John Sakon**

Under the provisions of Section 8-7, Connecticut General Statutes, the undersigned hereby appeals:

- For relief (a variance) from the restrictions imposed in Section(s) 12.7 of the Glastonbury Zoning Regulations.
- For a special exception as provided in Section _____ of the Glastonbury Zoning Regulations.
- From an adverse ruling by _____ the Building Official, Glastonbury.
- For the approval required by the State of Connecticut agency named below.

Describe in detail (in space provided on page 2 or on a separate sheet) what it is you want to do. State why this violates the Section(s) of the Glastonbury Zoning Regulations cited above. If a variance is sought, what hardship related to your particular property is claimed? If a special exception is sought, explain how all requirements for this exception have been met. If this is an appeal from a ruling of the Building Official/ Zoning Enforcement Officer state why you feel the ruling is wrong. (Use back of this form, if necessary)

We/I hereby depose and say that all the above statements contained in any papers submitted herewith are true to the best of my knowledge and belief.

JOHN SAKON

Applicant

Owner, If Not Applicant
(Required)

1/14/2020

Date

Date

SEE PERTINENT INFORMATION ON NEXT PAGE

2

Include TEN (10) copies of everything submitted including the application and a map of the property involved. Locate all structures thereon and their relation to buildings on adjacent property and to the highway with approximate distances therefrom. Floor plans of buildings which you desire to erect or to alter must be provided in sufficient detail to make intelligent presentation of your plans. Also, include ten (10) copies of all supporting documentation.

FILING FEE OF \$185.00 tendered herewith. Applicants whose cases come under Section 14-55, 14-322, Connecticut General Statutes will be charged an additional fee to pay the cost of publication and the expenses of the public hearing.

DESCRIPTION IN DETAIL:

See Attached Statement

Ten copies of this Application and all supporting documentation are required

The subject properties have been active in the land use approval process for over 20 years. While approvals were granted to the property owner by the town (under pressure from the court), these approvals have carried conditions which have further prevented the development of the subject properties. Substantial evidence has come forth that the Town Plan and Zoning Commission has exercised unlawful discrimination in regard to the subject property in violation of the State and Connecticut Constitutions. In addition, the town of Glastonbury using its police power has recently taken overt actions against the owner of the property which further prevented development. The owner of the property claims several hardships and seeks a variance from Section 12.7 of the Regulations in regards to the March 17, 2015, April 4, 2017 and/or February 6, 2018 Special Permit Approvals so as to proceed with the development of the property pursuant to these approvals.

HARDSHIP #1

1. The property was granted a Special Permit by the Town Plan and Zoning Commission for use as *The Shoppes at Avalon* on March 6, 2013 with the following condition:

3. No Certificate of Occupancies shall be issued for buildings that increase the square footage of the entire development above 67,690 square feet until the House Street/Harris Street/Griswold Street intersection improvements as well as the Main Street corridor traffic signal coordination improvements between Welles Street and Putnam Boulevard are operational.

- a. This condition of approval was accepted by the property owner under the good faith representations of the Glastonbury administration voiced by Stewart Beckett III the Chairman of the Town Council in his letter to the Residents found in the 2012-2013 Annual Report that said intersection would be completed in 2014.

This will combine with the scheduled reconstruction in 2014 of the House/Harris/Griswold St. intersection to greatly decrease traffic congestion in our entire downtown corridor.

- a. However, the reconstruction of the intersection did not even begin until the year 2016, posing a unique hardship upon the property owner as he could not secure financing for the project until the intersection was completed.
4. CGS § 8-6 allows zoning boards of appeals to grant variances from zoning laws when conditions affecting a particular parcel would create an "exceptional difficulty or unusual hardship" in the absence of the variance. The condition that the House/Harris/Griswold Street intersection improvements be completed was a unique condition, only applied to the subject property, and was a condition outside of the property owner's control and not affecting generally the [zoning] district in which it is situated, a literal enforcement of such a condition resulted in an unusual hardship. The variance will not substantially affect the municipality's comprehensive zoning plan. *Dupont v. Zoning Board of Appeals of Town of Manchester*, 80 Conn. App. 327 (2003). *Stancuna v. Zoning Bd. of Appeals of Town of Wallingford*, 66 Conn App. 565 (2001). *Smith v. Zoning Bd. of Appeals of Town of Norwalk*, 174 Conn. 323 (1978).

5. Given that the property owner could not commence substantial construction under the terms of approval of the Special Permit due to a condition outside of the property owner's control, a hardship has been created by the town and the applicant is entitled to a variance of Section 12.7 of the regulations.

HARDSHIP #2

1. The property was granted a reapproval of a Special Permit by the Town Plan and Zoning Commission for use as *The Shoppes at Avalon* on April 4, 2017 with the following condition:

3. No Certificate of Occupancies shall be issued for buildings that increase the square footage of the entire development above 67,690 square feet until the House Street/Harris Street/Griswold Street intersection improvements as well as the Main Street corridor traffic signal coordination improvements between Welles Street and Putnam Boulevard are operational.

- a.
2. As of April 4, 2017, the intersection improvements and Main Street corridor traffic signal corridor traffic signal coordination improvements were not fully operational.
3. CGS § 8-6 allows zoning boards of appeals to grant variances from zoning laws when conditions affecting a particular parcel would create an "exceptional difficulty or unusual hardship" in the absence of the variance. The condition that the House/Harris/Griswold Street intersection improvements be completed was a unique condition, only applied to the subject property, and was a condition outside of the property owner's control and not affecting generally the [zoning] district in which it is situated, a literal enforcement of such a condition resulted in an unusual hardship. The variance will not substantially affect the municipality's comprehensive zoning plan. *Dupont v. Zoning Board of Appeals of Town of Manchester*, 80 Conn. App. 327 (2003). *Stancuna v. Zoning Bd. of Appeals of Town of Wallingford*, 66 Conn App. 565 (2001). *Smith v. Zoning Bd. of Appeals of Town of Norwalk*, 174 Conn. 323 (1978).
4. Given that the property owner could not commence substantial construction under the terms of approval of the Special Permit due to a condition outside of the property owner's control, a hardship has been created by the town and the applicant is entitled to a variance of Section 12.7 of the regulations.

HARDSHIP #3

1. On or about July of 2016, the property owner did commence substantial interim construction for the aforementioned project for the purpose of preserving his permits and did do commence substantial work as noted in applications before this commission.
2. In August of 2016, the property owner did secure interim financing to continue substantial construction from Century Capital Partners LLC of Rochelle Park, New Jersey. See Attached Letter of Commitment.
3. Between 8/10/2016 and 5/28/2018, the town of Glastonbury falsely arrested the property owner 5 times for 10 felonies and 3 misdemeanors including a false larceny arrest.

- a. As a direct result of these arrests, the property owner was incarcerated at Northern Correctional Institute while awaiting trial.
 - b. The property owner has prevailed on all criminal counts falsely brought by town authorities.
 - c. However, the property owner could not continue the construction of the project from prison.
 - d. In addition, the 10 felonies and 3 misdemeanors, which carried a total potential prison time of 106.75 years in prison, prevented the property owner from securing additional financing.
 - e. A spreadsheet of the false arrests of the property owner by the Town of Glastonbury is attached hereto.
4. CGS § 8-6 allows zoning boards of appeals to grant variances from zoning laws when conditions affecting a particular parcel would create an "exceptional difficulty or unusual hardship" in the absence of the variance. The false arrests made by the Town of Glastonbury applied only to the property owner, was a unique condition outside the property owner's control, only prevented the development of the subject property, and was a condition not affecting generally the [zoning] district in which it is situated, therefore the strict enforcement of the aforementioned condition that the property owner was required to commence substantial construction while he was incarcerated and facing false criminal charges resulted in an unusual hardship. The variance will not substantially affect the municipality's comprehensive zoning plan. The variance should be granted. *Dupont v. Zoning Board of Appeals of Town of Manchester*, 80 Conn. App. 327 (2003). *Stancuna v. Zoning Bd. of Appeals of Town of Wallingford*, 66 Conn App. 565 (2001). *Smith v. Zoning Bd. of Appeals of Town of Norwalk*, 174 Conn. 323 (1978).
5. Given that the property owner could not commence substantial construction under the terms of approval of the Special Permit due to his false arrest and unlawful incarceration is a condition outside of the property owner's control, a hardship has been created by the town authorities in the unlawful use of their police power and the applicant is entitled to a variance of Section 12.7 of the regulations.

HARDSHIP #4

In civil proceedings before the Connecticut Superior Court between John Sakon and the Town of Glastonbury (CV05-4006620 S and CV05-4003783 S), some revelations came forth as to the History of the Planned Travel Zone. Mr. Mark Branse Esq.¹ was called as an expert

¹ Mark Branse, Esq., was recognized as an expert witness in zoning law by the court without objection by the defendants. Mr. Branse testified that he was the former Assistant Town Manager for Planning and Community Development for the Town of Glastonbury; the former Town Planner for the Town of Glastonbury; and the former Director of Community Development for the Town of Glastonbury. Mr. Branse then testified that he left the employ of the town to become a practicing attorney and served

witness to testify as to zoning law. In direct questioning, Mr. Branse provided the following testimony:²

- *He (Branse) was a part of the committee that drafted the zoning regulations for the town of Glastonbury (T.p.17) ;*
- *the subject properties are located in the Planned Travel (PT) Zone (T. p.15);*
- *there are no permitted uses as of right in the Planned Travel Zone and any use of the subject properties would require a "special permit" under CGS § 8-2 of the statutes (T.p.33);*

12	Q	Mr. Branse, what can you do with this property, under
13		the regulations, without a special permit?
14	A	Nothing.
15	Q	Nothing?
16	A	Nothing.

9	Q	Okay. And in your expert opinion, is it possible that
10		the commission may deem it appropriate not to approve any use
11		on this property requiring a special permit in the foreseeable
12		future?
13	A	It is possible.
14	Q	And they certainly would have the legal authority to do
15		that?
16	A	Yes, they would.

as counsel to the Glastonbury Redevelopment Agency; served as a member of the Glastonbury Redevelopment Agency; and served on the Glastonbury Town Plan and Zoning Commission as a commissioner for seven years. In his law practice, Mr. Branse testified he has represented the towns of Andover, Cromwell, Middlefield, Westbrook, Old Saybrook, Old Lyme, East Haddam, Enfield, Oxford, Willington, Eastford, Bolton, and Scotland in the areas of land use law; and was also past Chairman of the Planning and Zoning Section of the Connecticut Bar Association; and regularly teaches courses in Land Use Law for the Connecticut Bar Association.

² See Transcript, Testimony Mark Branse; Sakon v. Town of Glastonbury. Full Transcript to be provided at the hearing.

9 Q Is there any other of those 20 municipalities that have
10 such restrictive zoning regulations as this one?

11 A I've never seen -- I've never seen one where arguably
12 there are no special, no uses permitted as of right or at best
13 a farm and a park as permitted as of right. All the
14 regulations allow something as of right.

15 Q What can a landowner do with this property?

16 A Keep applying for special permits.

17 Q And hope the town changes its mind?

18 A Hope that you can present something that they will --
19 are willing to approve.

- CGS § 8-6 allows zoning boards of appeals to grant variances from zoning laws when conditions affecting a particular parcel would create an "exceptional difficulty or unusual hardship" in the absence of the variance. When the use of the subject property is at the pleasure of the municipality and not as of right, the property owner bears an unusual hardship for which a variance will grant relief.
- This applicant has shown not only he cannot use the property the way he desires, but that he is being completely or almost completely deprived of the land's value.
- This hardship is imposed by conditions outside of the property owner's control.
- At great expense, the applicant has received approvals (sic) from the Town Plan and Zoning Commission in 2013, 2014, 2015, 2016, 2017 and 2018 only to be prevented from the development of the property by unreasonable conditions of approval, false representations by municipal authorities and by other police power actions of the municipal authority.
- The unlawful use of the Special Permit process which denies the property owner any use of his property as of right was a condition outside of the property owner's control and a literal enforcement of such a condition results in an unusual hardship. However a variance Section 12.7 will not substantially affect the municipality's comprehensive zoning plan. *Dupont v. Zoning Board of Appeals of Town of Manchester*, 80 Conn. App. 327 (2003). *Stancuna v. Zoning Bd. of Appeals of Town of Wallingford*, 66 Conn App. 565 (2001). *Smith v. Zoning Bd. of Appeals of Town of Norwalk*, 174 Conn. 323 (1978).
- Given that the property owner could not commence substantial construction under the terms of approval of the Special Permit due to a condition outside of the property owner's control, a hardship has been created by the town and the applicant is entitled to a variance of Section 12.7 of the regulations.

HARDSHIP #5

In civil proceedings before the Connecticut Superior Court between John Sakon and the Town of Glastonbury (CV05-4006620 S and CV05-4003783 S), some revelations came forth as to the History of the Planned Travel Zone. Mr. Mark Branse Esq.³ was called as an expert witness to testify as to zoning law. In direct questioning, Mr. Branse provided the following testimony:⁴

- *He (Branse) was a part of the committee that drafted the zoning regulations for the town of Glastonbury (T.p.17) ;*
- *the subject properties are located in the Planned Travel (PT) Zone (T. p.15);*
- *The Plan and Zoning Commission's intention was to prevent development on the subject properties to allow the Glastonbury Town Center (Redevelopment District) to proceed without competition from the north part of town.*

3 Mark Branse, Esq., was recognized as an expert witness in zoning law by the court without objection by the defendants. Mr. Branse testified that he was the former Assistant Town Manager for Planning and Community Development for the Town of Glastonbury; the former Town Planner for the Town of Glastonbury; and the former Director of Community Development for the Town of Glastonbury. Mr. Branse then testified that he left the employ of the town to become a practicing attorney and served as counsel to the Glastonbury Redevelopment Agency; served as a member of the Glastonbury Redevelopment Agency; and served on the Glastonbury Town Plan and Zoning Commission as a commissioner for seven years. In his law practice, Mr. Branse testified he has represented the towns of Andover, Cromwell, Middlefield, Westbrook, Old Saybrook, Old Lyme, East Haddam, Enfield, Oxford, Willington, Eastford, Bolton, and Scotland in the areas of land use law; and was also past Chairman of the Planning and Zoning Section of the Connecticut Bar Association; and regularly teaches courses in Land Use Law for the Connecticut Bar Association.

⁴ See Transcript, Testimony Mark Branse; Sakon v. Town of Glastonbury. Full Transcript to be provided at the hearing.

8 Q Okay. Now you've testified that you had worked on the
9 development of the regulations --

10 A That's correct.

11 Q -- that now include the Plan Travel Zone. And what was,
12 do you recall what the Plan and Zoning Commission's
13 intention -- well, was with respect to those regulations?

14 A With respect to the Plan Travel Zone regulations?

15 Q Yes.

16 A Yes, I do.

17 Q And what was its intention?

18 A Its intention was to effectively prevent development in
19 the entire Plan Travel Zone area in order to allow the
20 Glastonbury Redevelopment Project, which was approved in 1969,
21 to proceed without competition from the north part of the
22 town. That is, I fear, the truthful answer to your question.
--

13 THE COURT: Well, let me just ask a follow-up.
14 Mr. Branse, did I understand you that the -- understand
15 you to say that the planned travel regulation was
16 designed to prevent a development of property that
17 would be in competition with some other planned
18 development?

19 THE WITNESS: Yes, Your Honor, you understood me
20 correctly. That's the truthful answer, I'm afraid.

21 THE COURT: It sounds like some constitutional
22 issues involved, but apparently nobody raised them.

23 THE WITNESS: No, they didn't.

- CGS § 8-6 allows zoning boards of appeals to grant variances from zoning laws when conditions affecting a particular parcel would create an "exceptional difficulty or unusual hardship" in the absence of the variance.
- This applicant has shown not only he cannot use the property the way he desires, but that he is being completely or almost completely deprived of the land's value.

- That the intent of the town was the practice of discrimination to prevent a development of the subject property so that other developments in the center of town could proceed without competition.
- This hardship is imposed by conditions outside of the property owner's control.
- At great expense, the applicant has received approvals (sic) from the Town Plan and Zoning Commission in 2013, 2014, 2015, 2016, 2017 and 2018 only to be prevented from the development of the property by unreasonable conditions of approval, false representations by municipal authorities and by other police power actions of the municipal authority.
- The unlawful use of the Special Permit process which denies the property owner any use of his property as of right was a condition outside of the property owner's control and a literal enforcement of such a condition results in an unusual hardship. However a variance Section 12.7 will not substantially affect the municipality's comprehensive zoning plan. *Dupont v. Zoning Board of Appeals of Town of Manchester*, 80 Conn. App. 327 (2003). *Stancuna v. Zoning Bd. of Appeals of Town of Wallingford*, 66 Conn App. 565 (2001). *Smith v. Zoning Bd. of Appeals of Town of Norwalk*, 174 Conn. 323 (1978).
- Given that the property owner was subject to discrimination in violation of his State and Federal constitutional rights under the terms of approval of the Special Permit due to a condition outside of the property owner's control, a hardship has been created by the town and the applicant is to a variance of Section 12.7 of the regulations.

Century Capital Partners LLC

336 W. Passaic St, Suite 310 Rochelle Park, NJ 07662 P: 201-880-7850 F: 201-368-0837

October 6, 2016

Mr. John Alan Sakon
Sakon, LLC
74 New London Turnpike
Glastonbury, CT 06033

Re: Loan Offer

Dear Mr. Sakon,

As agreed to in the Loan Commitment of August 26, 2016, Century Capital Partners (CCP) concluded its initial due diligence concerning the collateral for your proposed loan. Based on the terms and conditions agreed to in the loan commitment, CCP is prepared to proceed to a closing in the amount of \$3,400,000

Please confirm your acceptance in writing.

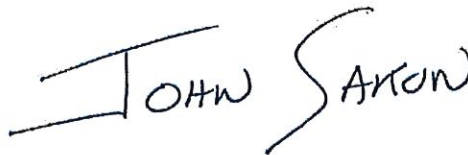
Sincerely,

David Hecht

David Hecht
Century Capital Partners, President

Agreed and Accepted this ___ November 12 2016

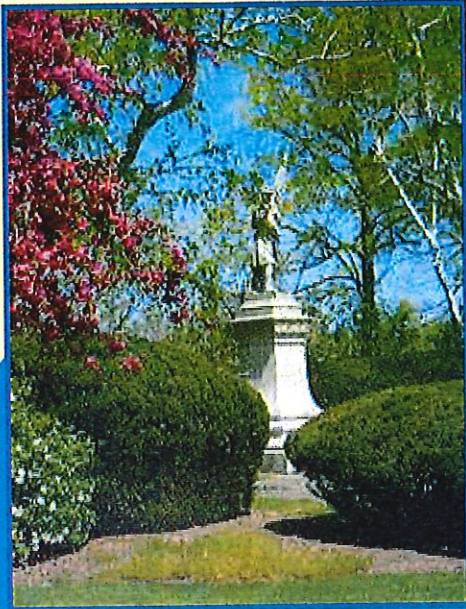
John Alan Sakon
Sakon, LLC



This acceptance is conditioned on:

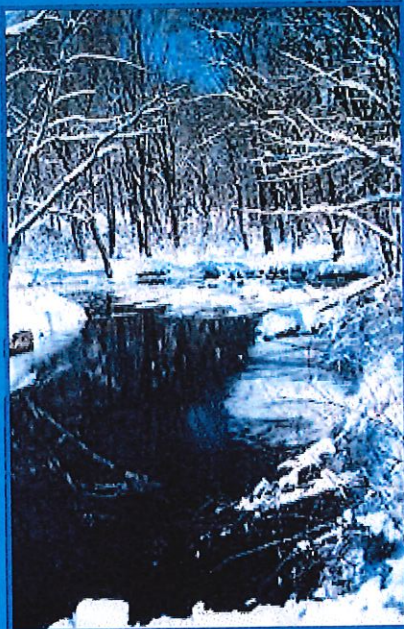
1. The refinancing of the Cyhani Mortgage pursuant to the document "2016-11-10 Sakon Avalon Bridge Loan Proposal" attached hereto.
2. The provision that Sakon's counsel reviews the Century Lending Documents and finds them to be in conformance with the Connecticut Statutory Form and/or otherwise agreeable to the borrower.

336 W. Passaic St, Suite 310 Rochelle Park, NJ 07662 P: 201-880-7850 F: 201-368-0837

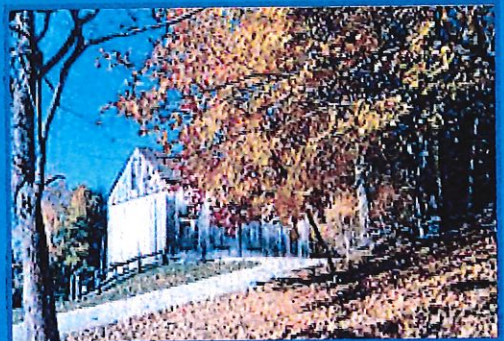


The Town Of

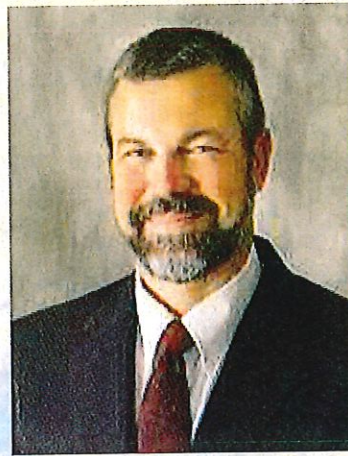
GLASTONBURY



ANNUAL REPORT
2012-2013



Message from the Chairman



Dear Residents:

Weather events were again a major topic for our town. We escaped severe damage from Hurricane Sandy but did have a severe microburst and a record snowfall. Fortunately, most of the town was not without power for these events, and so the disruption was minimal compared to past years. We have been 10 months now, so hopefully we have clear sailing from weather events for a while.

Glastonbury has had another successful year enhancing resident's quality of life while having a growing population of residents and businesses. The biggest project of all is the start of construction of the Riverfront Boathouse with the associated river access for personal water recreation as well as formal interscholastic competitions. The traffic on Welles St. has greatly increased with many observers all checking site progress regularly.

Main St. repaving and new traffic light systems are being installed to assist with a smoother entrance to town with an enhanced light system that should allow an easier ride through our main commercial area. The Federal Air Congestion Mitigation Funding is specifically to minimize idling at lights and seeks to make the roads handle

the traffic on them in the most efficient manner allowing improved air quality. This will combine with the scheduled reconstruction in 2014 of the House/Harris/Griswold St. intersection to greatly decrease traffic congestion in our entire downtown corridor.

Hearth Homes has started construction of their newest assisted living/Alzheimer's unit next to the Gateway medical complex. The lot next door was also sold for another medical service provider, largely completing the sale of available property in the Gateway Industrial Park area. We are all very pleased to have this property provide so much high quality medical service to both our residents and the surrounding east of the river region.

Zoning rules for our town center have been amended to enhance the economic vitality and personal interest of our center. We have had several excellent restaurants come into Glastonbury over the last several years. We hope to make that area our residents' favorite spot to not only dine, but shop and work too.

Glastonbury was reaffirmed in deserving its triple A bond rating from both Moody's and Standard and Poor. We all are very proud of the designation, but the real value is

the recognition the rating gives to the excellent and hard work our town staff does to operate the town in an efficient and effective manner. It really shows why Glastonbury was selected as the number 1 town in the region last year. We were again able to manage improvements in town infrastructure, maintenance of what we already had, and yet still maintain a budget in-line with the consumer price index of the area.

Finally, Glastonbury has long been a leader in energy efficiency and alternatives. This year saw the introduction of solar power cells on some major rooftops as well as ground mounted solar for the first time. The annual savings of these systems are projected to exceed \$110,000 annually with no capital cost to the Town while limiting carbon dioxide and other pollutants from our atmosphere.

Stewart (Chip) Beckett III
Chairman, Glastonbury Town Council

SPREADSHEET OF FALSE ARRESTS by Town of Glastonbury

Arrest #	Docket #	Date	Time	Location	Police Case #	Offense Codes	Penalty Years	Charge	Allegation	Result
1	H12M-CR16-0256989-S	8/10/2016	6:33 AM	Glastonbury	16-11122 GPD	1505 Family Violence	0.25	Disorderly Conduct Misdemeanor (90 Days) Violation of Protective Order	"The actions of grabbing the paper and ripping the paper up" "Luv to you and Odin. Please kiss him good night."	Nolled Prosecutor deems conviction unlikely Jury Finds Not-Guilty in 18 minutes
2	H12M-CR16-0257222-S	8/10/2016	9:12 PM	Glastonbury	16-11697 GPD	53a-223	10	Felony (10 years) Violation of Protective Order	"❤️" (heart emoticon)	Jury Finds Not-Guilty in 13 minutes
		8/12/2016	10:49 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"❤️" (heart emoticon)	Jury Finds Not-Guilty in 13 minutes
		8/13/2016	10:49 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"❤️" (heart emoticon)	Jury Finds Not-Guilty in 13 minutes
		8/14/2016	2:45 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"Netflix findingthepast@yahoo.com" "shivaparvati"	Jury Finds Not-Guilty in 18 minutes
		8/14/2016	10:54 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"❤️" (heart emoticon)	Jury Finds Not-Guilty in 13 minutes
		8/15/2016	10:58 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"❤️" (heart emoticon)	Jury Finds Not-Guilty in 13 minutes
		8/16/2016	6:03 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"Pain on pain on play, repeating with the backshift life in waiting"	Jury Finds Not-Guilty in 23 minutes
		8/19/2016	6:03 PM			53a-223	10	Felony (10 years) Violation of Protective Order	"Where do we go from here? How do we carry on? I can't get beyond the questions. Clambering for the scraps in the shatter of us collapsed. Everybody says that time heals everything. But what of the wretched hollow? The endless in between? Are we just going to wait it out?"	Jury Finds Not-Guilty in 13 minutes
4	H12M-CR16-0257732-S	10/17/2016	20:37 pm	Glastonbury	16-010814 GPD	53a-122	20	Violation of Protective Order Felony (10 years) Larceny 1st degree	Where a third person, Pastor Eric Stillman, telephone FS sometime in the afternoon with a message from John Sakon	Nolled No Probable Cause Prosecutor states on record No Probable Cause
8	H12M-CR18-0264343-S	5/28/2018		Glastonbury	18-007082 GPD	53a-181	0.5	Breach of Peace 2nd	Allegedly Stole Money from Business (Defendant charged usual and customary fees) Plaintiff pays Defendant substantial civil settlement	Nolled Prosecutor states on record any conviction unlikely
9	H12M-CR18-0265434-O	10/22/2018		Glastonbury		53a-157	1	False Statement 2nd	Defendant (on bicycle) struck from nearby Truck driven by Police	Nolled Prosecutor states on record any conviction unlikely
						53a-122	20	Larceny 1st degree	Defendant (on bicycle) struck by Truck driven by G Police	Nolled Prosecutor states on record any conviction unlikely
									Defendant Arrested for removing Monies from his own bank account	Pending Prosecutor states on record any conviction unlikely
										Prosecutor states in court desire to nolle charges
										126.75

1

1 No. CV05-4006620 S and : STATE OF CONNECTICUT
 2 CV05-4003783 S : SUPERIOR COURT
 3 JOHN SAKON : JUDICIAL DISTRICT OF
 4 V. : NEW BRITAIN AT NEW BRITAIN
 5 TOWN OF GLASTONBURY : October 13, 2006
 6 _____:
 7
 8 B E F O R E:
 9 The Honorable Arnold W. Aronson, Judge Referee
 10
 11 A P P E A R A N C E S:
 12 On behalf of the Plaintiff:
 13 John A. Sakon, Pro Se
 14 126 Craigmere Circle
 15 Avon, CT 06001
 16 BY: John A. Sakon, Pro Se
 17
 18 On behalf of the Defendant:
 19 Shipman & Goodwin, LLP
 20 One Constitution Plaza
 21 Hartford, CT 06103- 1919
 22 BY: Beth Bryan Critton, Esquire
 23
 24 DONNA L. PELUSO
 25 COURT REPORTER/MONITOR
 26
 27

3

MARK BRANSE,

1 a witness called on behalf of the plaintiff, having been first
 2 duly sworn by the Court Officer, was examined and testified on
 3 his oath as follows:
 4
 5 THE WITNESS: My name is Mark, M-a-r-k. The last
 6 name is Branse, B-r-a-n-s-e. My office address is 148
 7 Eastern Boulevard, Glastonbury.
 8 THE COURT: Mr. Sakon, you may proceed.
 9 DIRECT EXAMINATION BY MR. SAKON:
 10 Q Mr. Branse --
 11 MR. SAKON: With permission of the Court, do you
 12 mind if I just move --
 13 THE COURT: Just turn the microphone. Be near a
 14 microphone so that you're picked up on the recording.
 15 MR. SAKON: Okay.
 16 Q (BY MR. SAKON) Mr. Branse, are you an attorney of law?
 17 A Yes, I am.
 18 Q Okay. And do you understand why you were called to
 19 testify today?
 20 A Yes.
 21 Q Okay. And what was your understanding of why you were
 22 going to be called to testify today?
 23 A I understand I've been called as an expert witness
 24 concerning zoning and specifically Glastonbury zoning.
 25 Q Okay. I'd like to delve into your qualifications in
 26 terms of identifying you as an expert.
 27 What is your age, Mr. Branse?

2

1 (In open court).
 2 * * * * *
 3 MR. SAKON: Your Honor, I'd like to call as my --
 4 Mr. Mark Branse to the stand.
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1 Initially, my title was administrative assistant for planning
 2 and community development of Glastonbury.
 3 Q If I may interrupt you.
 4 A Yes.
 5 Q You served the internship while you were at work?
 6 A I was in Danvers, Massachusetts, but it was a
 7 prerequisite to my, to my program. So I didn't actually get
 8 my Masters until 1971, after I had completed the six-month
 9 internship.
 10 Q Okay. And what do you after you completed -- did you
 11 graduate from Wharton after you got, completed that
 12 internship?
 13 A Yes.
 14 Q And what did you do after that?
 15 A So, thereafter, I was hired as -- initially, as an
 16 administrative assistant for planning and community
 17 development by the town of Glastonbury.
 18 My title changed in about 1973 to assistant town manager
 19 for planning and community development. And throughout the
 20 period of my employment, which was '71 through '76, I also
 21 held the title town planner and also the title director of
 22 community development. Excuse me. Director of economic
 23 development.
 24 Q Director of economic development. Okay. So you are,
 25 in the course, after you left your -- did you leave the
 26 position as town planner of the town of Glastonbury?
 27 A Yes, I did. It was in about May of 1976.

1 A Fifty-nine. I had to stop to think about that.

2 Q That was just curiosity. I did not know. Mr. Branse,

3 taking you back to your memories, I'd like to go through your

4 educational background. Would you -- did you graduate from

5 college?

6 A Yes. I have a Bachelors in Political Science from Duke

7 University.

8 Q Duke University. Since leaving Duke University, what

9 did you do?

10 A Thereafter, I went to the Fels Institute of Local and

11 State government of the Wharton Graduate School of the

12 University of Pennsylvania, and I have a Masters degree from

13 there in state and local government administration.

14 Q And we have a common bond there, do we not?

15 A Yes.

16 Q And what is that bond?

17 A We both went to work.

18 Q Thank you. And after you left of the Wharton School at

19 the University of Pennsylvania, what did you do?

20 A The program that I was engaged in required a six-month

21 internship in state and local government. So my internship

22 was done at Danvers, Massachusetts, where I was the town

23 planner, essentially.

24 They didn't have a planner in Danvers. So they used

25 interns to serve that function just as sort of an interim

26 basis.

27 Thereafter, in February of 1971, I was hired as --

1 Q Are you the managing partner?

2 A Yes.

3 Q Okay. So you practiced law from 1976 thereon?

4 A '79.

5 Q '79 --

6 A '79.

7 Q -- thereon. Okay. I'm going to come back to the

8 practice of law in a second.

9 Did you hold any public offices during that period of time?

10 A Various ones. When I was at Twachtman, Tillinghast &

11 Branse our firm and myself personally were counsel to the

12 Glastonbury Redevelopment Agency. When I left that firm,

13 redevelopment had about two years to go to wrap-up. So I was

14 appointed to be a member of the Redevelopment Agency to help

15 in that.

16 I was also chairman of what was called the Citizen's

17 Advisory Committee while I was in law school. And also

18 in-between the second and third years of law school, I was

19 hired back by the town of Glastonbury to basically do my old

20 job as, on a consultant basis.

21 My successor had resigned after only about two years. So I

22 was asked to fill in until a new replacement could be hired.

23 And then between 1992 and 1999, approximately, I was first

24 an alternate on the Glastonbury Town Plan and Zoning

25 Commission and then a full commissioner.

26 Q So you served on the commission how many years?

27 A About seven years.

1 Q And what did you do after that?

2 A I went to the -- I went full time to the University of

3 Connecticut School of Law, and graduated in 1979 cum laude.

4 Q Cum laude. Okay. Did you have a major concentration

5 while you went to the University Connecticut School of Law?

6 A Well, I had gone -- I had gone to the law school

7 specifically to expand my abilities in land use and planning.

8 So I took all the courses that the school had in land use,

9 real estate and related topics.

10 Q Okay. And after you graduated cum laude from the

11 University of Connecticut, what did you do?

12 A I was hired in 1979 by the law firm then known as

13 Twachtman & Tillinghast. And then in 19, I think '81, the

14 firm name then changed to Twachtman, Tillinghast & Branse.

15 Q So you became a partner in the firm in 1981?

16 A Correct.

17 Q Okay. And since -- are you still with that firm?

18 A No.

19 Q And since leaving that firm, what did you do?

20 A For a period I was in solo practice. Actually, I was

21 the firm Branse & Croll for about two years. And then in

22 1983, I went into solo practice. We have grown over the

23 years. We, now there are now four attorneys. And the name of

24 the firm is Branse, Willis & Knapp.

25 Q Okay. I happen to notice that the, first, name of that

26 firm is Branse. Are you the founding partner?

27 A Yes.

1 Q Seven years. Okay. If I were to describe one single

2 area that you do most of your practice of law, what would that

3 be?

4 A Land use.

5 Q And in land use what -- what do you describe as "land

6 use" in that definition?

7 A Municipal planning, zoning, wetlands and general

8 municipal law.

9 Q General municipal law --

10 A But applied more to the land use areas, for me

11 personally.

12 Q Do you represent any municipal clients?

13 A Many, yes.

14 Q Would you give me an idea of how many "many" is?

15 A I'm former town attorney of Andover, Cromwell and

16 Middlefield. And I'm currently town attorney of Griswold and

17 Middlefield. I represent one or more land use agencies in

18 Westbrook, Old Saybrook, Old Lyme, Middlefield, East Haddam,

19 Enfield, Oxford, Willington, Eastford, Andover, Bolton. I'm

20 leaving someone out.

21 Q I don't want to stretch your memory. I think, I think

22 that's --

23 A I think I mentioned Scotland.

24 Q Scotland. And for all these municipalities, you are

25 representing them in areas of land use law?

26 A At least, yes --

27 Q Okay.

1 A -- if not other areas.

2 Q Okay. And that includes representing them in defending
3 zoning appeals or advising their zoning commissions?

4 A Absolutely.

5 Q Okay. In your practice of law, have you become -- are
6 you member, I presume you're a member of the bar?

7 A I am a member of the Connecticut Bar Association.

8 Q Okay. Are you active in that organization?

9 A Yes, I am.

10 Q Do you participate in any committees in that
11 organization?

12 A I'm a member of the executive committees of both the
13 environment section and the planning and zoning section. I
14 just this June completed my three-year term as chairman of the
15 planning and zoning section.

16 Q What is the planning and zoning section of the bar
17 association?

18 A It's that section of the Bar Association that focuses
19 principally on land use. We call it the planning and zoning
20 section, but we also do focus on wetlands, at least at the
21 municipal level.

22 Q Okay. And that committee of the Bar Association
23 advises the legislature on a regular basis --

24 A Periodically --

25 Q -- as to land use law?

26 A -- yes. I wouldn't say a regular basis. When we have
27 an interest that is primarily procedural, we avoid policy

1 A Yes, it does.

2 Q Do you teach those courses?

3 A Some of them, yes.

4 Q Okay. And you help organize those courses?

5 A Yes, I do.

6 Q Okay.

7 MR. SAKON: Your Honor, I would offer this witness
8 as an expert in land use law in the state of
9 Connecticut.

10 MS. CRITTON: I have no objection.

11 THE COURT: All right. Proceed, Mr. Sakon.

12 MR. SAKON: Okay.

13 Q (BY MR. SAKON) Mr. Branse, how long have you known John
14 Sakon?

15 A It's at least 15 years.

16 Q Okay.

17 A Twenty.

18 Q Are you familiar with -- you were in the room while
19 these properties were identified, were you?

20 A Yes, I was.

21 Q You were able to follow the identification of the
22 properties?

23 A Yes.

24 Q Are you familiar with these properties?

25 A Yes.

26 Q Has your law firm represented John Sakon in reference
27 to these properties?

1 issues.

2 Q Okay. Certainly state legislatures make a habit of
3 consulting the bar in reference to issues that --

4 A Yes. For that matter, actually, just this year, the
5 Connecticut Supreme Court invited our section to submit an
6 amicus brief. That's the first time in my memory that's ever
7 happened.

8 Q Okay. Talking about the Connecticut Supreme Court.
9 You have extensive practice in the Connecticut courts in
10 reference to land use law?

11 A That is correct.

12 Q Probably too many cases to note. Correct?

13 A Yes.

14 Q Okay. Have you appeared before the appellate court?

15 A Yes.

16 Q Have you appeared before the supreme court?

17 A Yes.

18 Q Have you appeared as an expert witness before?

19 A I think so, but I'm not sure.

20 Q Okay. Over many years, you've done many things in
21 reference to land use law?

22 A Yes.

23 Q Okay.

24 A I know I've been identified as an expert witness. I'm
25 trying to remember if any of them reached trial.

26 Q As a matter of fact, the Bar Association gives courses
27 in land use laws to practicing attorneys, do they not?

1 A Yes.

2 Q Okay. That would be representation in terms of the
3 acquisition of the properties?

4 A There's a couple of them.

5 Q Okay. You're aware that John Sakon has used several
6 attorneys in reference to these properties --

7 A Yes.

8 Q -- as convenience would allow?

9 A Correct.

10 Q And your firm is -- as a matter of fact, did your firm
11 represent these properties in reference to a wetlands
12 application before the town of Glastonbury?

13 A Yes.

14 Q Okay. Did your firm represent these properties in
15 reference to a zoning application in the town of Glastonbury?

16 A No.

17 Q Why?

18 A Those applications were beginning in about 2000 and
19 2001. As I mentioned, I had served of the planning and zoning
20 Commission up until 1999. I never served on the Conservation
21 Commission, which is the wetlands agency. And so I
22 had indicated to you early on that I would represent you at
23 the Conservation Commission, but I would not represent you
24 before the planning and zoning Commission, because I felt it
25 was simply too short a period of time since I had been a
26 member of that agency myself.

27 Q And you wanted no appearance of impropriety?

1 A That is correct.
 2 Q Or influence?
 3 A Correct. So I never appeared for you before any, any
 4 meeting of that commission.
 5 Q Okay.
 6 MR. SAKON: Just a second, Your Honor. I just
 7 went through a long line of examining, and I need to
 8 collect myself for just a second.
 9 THE COURT: We'll go off the record so that you
 10 can discuss --
 11 MR. SAKON: I'm sorry, Your Honor. I violated
 12 procedure.
 13 THE COURT: No problem. No problem.
 14 (Off record).
 15 MR. SAKON: Your Honor, without objection from
 16 the --
 17 THE COURT: Are we back on the record?
 18 THE COURT MONITOR: Yes, we are, Your Honor.
 19 MR. SAKON: Your Honor, without objection from
 20 opposing counsel, Defendant's Exhibit F, which is the
 21 zoning regulations of the town of Glastonbury are going
 22 to be admitted as a full exhibit with the understanding
 23 that there is accompanying zoning map in the town of
 24 Glastonbury, which is not part of this and not attached
 25 to this, which counsel would like to submit at a later
 26 point in time.
 27 MS. CRITTON: It is actually part of the zoning

1 regulations, and we will have it this afternoon.
 2 THE COURT: Will the zoning map come in as a
 3 separate exhibit?
 4 MS. CRITTON: Whatever the Court's preference is.
 5 THE COURT: But it's a part --
 6 MS. CRITTON: It is a part of the zoning
 7 regulations of the town of Glastonbury.
 8 THE COURT: Well, do you want to make that a part
 9 of it now, or do you want to introduce it at a later
 10 time?
 11 MS. CRITTON: Let's make it a part of this now
 12 with the understanding that I will --
 13 THE COURT: All right. But why don't you do that.
 14 MS. CRITTON: -- physically produce it, and then
 15 we'll have the same --
 16 MR. SAKON: I don't think she has it with her,
 17 Your Honor.
 18 MS. CRITTON: I do not physically have it with me.
 19 THE COURT: All right. But when you get it,
 20 you'll make it a part of this --
 21 MS. CRITTON: Correct.
 22 THE COURT: -- exhibit. So that Defendant's
 23 Exhibit F will be a full exhibit of the zoning
 24 regulations with the zoning map attached to it.
 25 MS. CRITTON: Thank you, Your Honor.
 26 THE COURT: Is that correct?
 27 MR. SAKON: Correct, Your Honor.

1 THE COURT: All right.
 2 (Defendant's Exhibit F, full exhibit).
 3 Q (BY MR. SAKON) Mr. Branse, I'd like you to take a look
 4 at this document, and you've heard the discussion before you
 5 right now. Do you need the zoning map in order to testify as
 6 to that document?
 7 A No. Not, not -- not as far as I understand the scope
 8 of my testimony, no.
 9 Q Okay. I'm sorry. That was an open-ended question.
 10 And I realized after it came out of my mouth, it was an
 11 open-ended question. But, okay.
 12 You understand -- you have, in fact, consulted the zoning
 13 map before you came here. What is the zoning of these
 14 properties?
 15 A Planned travel.
 16 THE COURT: It's what?
 17 THE WITNESS: Planned travel is what it's called.
 18 Planned travel.
 19 THE COURT: That's a zoning term?
 20 THE WITNESS: It's the title. It's what the zone
 21 is called. All right. The zones in Glastonbury, all
 22 the nonresidential zones begin with the word
 23 "planned": Planned industrial, planned business and
 24 development, planned travel.
 25 THE COURT: T-r-a-v-e-l?
 26 THE WITNESS: Exactly. "Travel". Because of the
 27 highway network that it joins with Routes 2 and 3.

1 Route, route -- I think Mr. Sakon already
 2 testified the Route 2, 3 connectors to the north of
 3 this property. So this whole area around the highway
 4 interchange was zoned planned travel.
 5 THE COURT: Is the term "planned travel," as a
 6 zoning term, a recognized term?
 7 THE WITNESS: No. I don't know of a town other
 8 than Glastonbury that has a zone called "planned
 9 travel".
 10 THE COURT: All right.
 11 THE WITNESS: It's a type of commercial zone. It
 12 was intended to describe the orientation of this area
 13 to the highway network.
 14 Q (BY MR. SAKON) Okay. Is this zoning classification
 15 also referred to as the "PT Zone"?
 16 A Yes, it is.
 17 Q Okay.
 18 MR. SAKON: And without objection of opposing
 19 counsel, we will refer to it as the PT zone
 20 thereafter. "PT" being planned travel.
 21 THE COURT: Well, we understand what you're
 22 talking about.
 23 MR. SAKON: Okay.
 24 THE COURT: Why don't you proceed.
 25 MS. CRITTON: No objection then.
 26 Q (BY MR. SAKON) Mr. Branse, are you familiar with those
 27 regulations?

1 A Yes, I am.

2 Q In fact, when were those regulations initially adopted?

3 A October 22nd of 1973.

4 Q Were you in the employment of the town of Glastonbury
5 when those regulations were adopted?

6 A Yes, I was.

7 Q Did you have -- were you part of the drafting and
8 writing of those regulations?

9 A Yes, I was one of the committee of six that did the
10 drafting.

11 Q Okay. And so, therefore, a lot of those regulations
12 are you handiwork?

13 A Yes.

14 Q Okay.

15 THE WITNESS: If I may, Your Honor, I brought my
16 own copy. So I can provide the exhibit to the Court,
17 because I have my own here. It's the same as that one
18 that I can refer to.

19 THE COURT: And your copy is exactly the same as
20 Plaintiff's (sic) Exhibit F?

21 THE WITNESS: Yes.

22 MS. CRITTON: I believe Mr. Branse's
23 representation that it is -- ours is a certified copy.

24 THE WITNESS: I figured then I'll have one and His
25 Honor will have one.

26 THE COURT: All right.

27 Q (BY MR. SAKON) Okay. So actually you're not only an

1 Q Who is -- so if the town council is the zoning
2 authority in Glastonbury, they are the legislative body that
3 adopted those regulations?

4 A That is correct.

5 Q And they did so under section 8-8 of the Connecticut
6 General Statutes?

7 A 8-2.

8 Q 8-2. Thank you. Okay. And the -- so the organization
9 of the town is you have a Wetlands and Conservation
10 Commission?

11 A Yes. It's just called the Conservation Commission, but
12 it has wetland's powers.

13 Q Okay. And the wetlands agency is -- what is their
14 authority?

15 A They serve two separate roles: They serve the
16 advisory role of a Conservation Commission as authorized by
17 statute, which is planning for open space and making
18 recommendations to any other town agency.

19 And, second, the authority of the wetlands agency to adopt
20 wetlands regulations, to issue permits, and to entertain the
21 delineation of wetlands of specific properties.

22 Q Okay. You also mentioned a commission, the Town
23 Planning and Zoning commission, I think it's called, upon
24 which you were a member. Is that correct?

25 A That's correct.

26 Q It is referred to as the Town Planning and Zoning --

27 A It's the Town Plan and Zoning --

1 expert witness, you're one the authors of the very document
2 that we're testifying to today?

3 A Yes.

4 Q And you were also a key member of the -- a member of
5 the zoning commission that enforced these documents for a
6 seven-year period of time?

7 A Administered these --

8 Q Administer these documents. Good. I mean that's --
9 I'd like to ask you a question: What is the usual procedure
10 and process in Glastonbury to make an application?

11 A The usual process is to begin with what's called an
12 "informal discussion" or "informal presentation".
13 Glastonbury favors those as a way to avoid delay and expense
14 for both the applicant and the commission and staff. I think
15 Glastonbury makes greater use of that process than many towns
16 do.

17 Then, of course, it depends on the type of application.
18 Glastonbury generally requires that you go to the, to our
19 wetlands agency, which is the Conservation Commission. They
20 are the designated wetlands agency in Glastonbury.

21 To go there first and address their permit requirements or
22 other requirements, and then to proceed to the planning, to
23 the Town Plan and Zoning Commission itself. Some forms of
24 development are done under what's called a "planned area
25 development," PAD. In those cases, the final decision is made
26 by the town council, which by special act is the final zoning
27 authority in Glastonbury.

1 Q -- and Zoning Commission.

2 Q What is their?

3 A -- technically --

4 Q -- what is their authority?

5 A They're authorized by the zoning regulations to approve
6 subdivisions, special permits and to serve in an advisory role
7 for planned area developments to the town council. Similarly,
8 for amendments to the zoning map or zoning regulations, they
9 serve in an advisory capacity to the town council, much like
10 the, as is the case with separate planning and zoning
11 commissions by statute, a negative recommendation for a zoning
12 map or text change to the council requires a two-thirds vote
13 to override.

14 Q Okay. So they are the administrator of the regulations
15 in turn of special permit applications?

16 A Yes.

17 Q And what is the role of the -- how are members of the
18 board elected or nominated?

19 MS. CRITTON: I object on the grounds of
20 relevancy. This is a tax appeal trial.

21 MR. SAKON: Your Honor, we're going to get into
22 that very quickly, but I need to define the process
23 here because it is very relevant in terms of tax
24 appeals.

25 As on offer of proof, I'm going to show that the
26 process is a great lengthy one. It can take years to
27 complete in terms of -- and that they don't exactly

1 Follow the Connecticut General Statutes in the
2 application.

3 Obviously, if it takes two, three, four, five,
4 ten, twenty years to get an approval on a property, it
5 would have an impact upon value of that property.

6 I offer that as proof.

7 THE COURT: What's the -- your offer of proof is
8 that it takes a long period of time to develop
9 property. And, therefore, you have to -- you're
10 offering to show that the proposed -- that the proposed
11 use of the property took place over a long period of
12 time and that, in some way, affected the value of the
13 property?

14 MR. SAKON: What I'm saying, Your Honor, is that
15 if a recent property owner in Glastonbury in, for
16 example, the plan travel zone wanted to develop his
17 property, that the -- and this is an offer of proof,
18 which I'll clarify through Mr. Branse -- it may take
19 upwards a year, two, three years in order to get
20 approvals for that application.

21 And as an appraiser, any appraiser will tell you
22 that that time delay would have a significant impact
23 upon the value of that property. Because, obviously,
24 during that period of time, when you are going through
25 the application process, the property is not in a
26 productive use. It develops no income streams, and
27 therefore it goes --

1 development of the property?

2 MR. SAKON: I'm going to introduce -- yes, I'm
3 going to introduce an expert to that effect.

4 THE COURT: I'll overrule the objection. Why
5 don't you proceed, Mr. Sakon.

6 MR. SAKON: Okay.

7 Q (BY MR. SAKON) Mr. Branse -- I forgot where I was at.

8 THE COURT: You were at the authority of the
9 Planning and Zoning Commission.

10 MR. SAKON: Okay.

11 Q (BY MR. SAKON) And how are those members -- are those
12 members elected or nominated?

13 A They are appointed by the town council.

14 Q And the town council is also the zoning authority?

15 A They're the final zoning authority, yes.

16 Q So they're the ones who adopt the regulations, and they
17 appoint the members to the commission to administer?

18 A Correct.

19 Q Okay.

20 THE COURT: Let me ask: Mr. Branse, are you
21 saying that the Town Planning and Zoning Commission is
22 made up of the town council?

23 THE WITNESS: No. No, the town council appoints
24 members of the Town Plan and Zoning Commission. It's
25 not an elected commission. It's an appointed
26 commission.

27 THE COURT: So the town council is not a zoning

1 MS. CRITTON: Now I'm going to have to object. He
2 hasn't been qualified as an expert. He's now
3 representing --

4 THE COURT: No, but he's --

5 MS. CRITTON: All right.

6 THE COURT: -- he's responding to the Court's
7 question --

8 MS. CRITTON: All right. Okay.

9 THE COURT: -- of the relevancy of it. You raised
10 the relevance of it, Ms. Critton --

11 MS. CRITTON: Okay.

12 MR. SAKON: And so, therefore --

13 THE COURT: -- and I want to find out the relevancy
14 of this.

15 MR. SAKON: -- from an appraisal standpoint, time
16 is very critical.

17 Obviously, if you can walk down to town hall and
18 pull an application that day, that is going to impact
19 the value of that property. If it's going to take
20 years to get that application, it's going to impact the
21 value of that property. Because it's the timing of how
22 long it takes to put that property to the use intended
23 and, therefore, develop an income stream.

24 THE COURT: Are you going to introduce an
25 appraiser who is going to testify that the valuation of
26 the property -- that the valuation of the property is
27 affected by the length of the application for

1 authority?

2 THE WITNESS: Yes, it is. The town council, by
3 special act in Glastonbury, is the final zoning
4 authority. They don't review permits. They only amend
5 the regulations or the zoning map.

6 THE COURT: Let me be clear. Your testimony is
7 that the town council amends the zoning regulations?

8 THE WITNESS: Correct.

9 THE COURT: And what else?

10 THE WITNESS: Or the zoning map.

11 THE COURT: Or the zoning map. So it's an
12 authority that amends?

13 THE WITNESS: Or adopts or amends, yes.

14 THE COURT: Or adopts or amends.

15 THE WITNESS: The same pattern in West Hartford,
16 by the way.

17 THE COURT: Then what function does the town plan
18 and zoning -- is there a separate town plan and zoning
19 commission independent --

20 THE WITNESS: Yes.

21 THE COURT: -- of the town council?

22 THE WITNESS: Yes, it is a separate agency with
23 separate members.

24 THE COURT: Then what does the Town Plan and
25 Zoning Commission of the town of Glastonbury do?

26 THE WITNESS: It approves subdivisions, special
27 permit applications, and serves as advisory to the town

council on text or regulation amendments.

THE COURT: All right. So that an owner of a property does not need to go to the town council to get an approval of the development of the property to because that's within the function of the Town Planning and Zoning Commission --

THE WITNESS: That is correct.

THE COURT: -- is that correct?

MR. BRANSE: Unless you're seeking a text change or a map change. If you're simply applying under the existing regulations, you will go only to the Town Plan & Zoning Commission and not the council.

THE COURT: All right. Proceed, Mr. Sakon just to clarify that.

Q (BY MR. SAKON) Is there a circumstance where an applicant would go direct to the town council for a planned area development?

A Not really, no. No, it's not directly.

Q Okay. For a planned area development -- what is a planned area development?

A A planned area development is a floating zone. It's called a "floating zone".

The applicant seeks to have an area designated as planned area development. And we need not get into the process, because I don't think a PAD was ever sought for this property.

Q Okay. Thank you. But in that particular case, the town council would be the final authority in ruling on a

commission's jurisdiction. So any activity within 100 feet of a wetland or watercourse, would be reviewed in connection with the wetlands permit application.

Q As a matter of fact, on this map, that hundred foot boundary is marked, is it not?

A It appears to be the dotted line.

Q Okay. And so that uplands review area, if I just may direct your attention in the court's direction, follows this very large portion of the map, does it not?

Actually, encompasses the greater portion of Main Street Rear?

THE COURT: Mr. Sakon is pointing to the center part of the green parcel, or the orange parcel. Is that correct? Is it shown on -- is the inland/wetland, is the wetland area shown on that Plaintiff's Exhibit -- what is that 4?

MR. SAKON: 3.

THE COURT: 3. Plaintiff's Exhibit 3.

MR. SAKON: The wetland area is shown on Plaintiff's Exhibit 3 and 2, Your Honor.

THE WITNESS: It's a crosshatched area on 3, Your Honor.

THE COURT: All right.

A And I'm just looking at the wetlands line. I can see it, I can see the hundred foot here. It appears to occupy a fairly large area of the green area.

Q (BY MR. SAKON) Okay. Did that impact the development

planned area development?

A Yes, because it's a zone change.

Q Okay. And that is part of the -- that is incorporated in the regulations?

A It is.

Q But we're not going there today. I just wanted to make sure that we fully understood the authority of the power, sir. Okay.

Mr. Branse, you testified that this property is in the planned travel zone?

A Correct.

Q Okay. And you've testified that you represented the applicant in terms of a wetlands permit of the property?

A Correct.

Q Okay. The green property, which we referred to as "Main Street rear," does that have wetlands on it?

A It does, yes.

Q Do those wetlands impact the developability of that property?

A Well, they bisect the property. So I suppose they would have to.

Q In the town of Glastonbury Conservation Commission, is there a conservation buffer around these wetlands?

A I prefer not to call it a "buffer," although many people do.

The wetlands regulations provide for a 100 foot upland review area. That is an area that defines that the

potential of this green property known as "Main Street Rear"?

A Well, certainly. I mean wetlands are regulated areas, and any activity within a wetland or the upland review area requires a permit from the commission.

Q Okay. And that permit would be unique to each and every application?

A Yes.

Q Okay. Does the property in orange, known as "2980 Main Street," does that show designated wetlands here?

A It does.

Q Does that property have a very large upland review area?

A Well. It's shown on the map. It's a significant area.

Q Okay. And whether the wetland's agency grants approval towards activities in those areas, is that at the discretion of the wetlands agency?

A It's governed by their regulations, which do have -- which have a measure of discretion, yes.

Q Do they have any obligation to grant wetlands permits in the regulated areas?

A I'm not sure how to answer that, Mr. Sakon. All wetland agencies in Connecticut are governed by their regulations. Their regulations have a level of discretion. Whether they're obligated to grant a permit or not depends on the nature of the application and the nature of the wetland itself.

So I don't think your question can be answered that way.

1 Q Okay. Fair enough. I'm going to refer you to the
2 property in orange, 2980 Main Street, that property is long
3 and narrow, is it not?
4 A Yes.
5 Q I have measured that property. It's about 150 feet in
6 width and well over a thousand foot in length.
7 It is bisected by large pond and wetlands area?
8 A Yes, that's correct. And I know that from my own
9 knowledge, and it's on the map.
10 Q Okay. Because you represented the wetlands
11 application?
12 A Correct.
13 Q And in representing that wetlands application, is there
14 any crossing from the front of the property to the rear
15 property that's approved by the wetland's agency?
16 A There is now, yes.
17 Q On the orange property or on the green property?
18 A Oh, I'm sorry. I think it is on the green property.
19 It's close to the line. I think it's on the green property.
20 Q On the orange property, is there any crossing enjoyed
21 by 2980 Main Street from the front of the property to the rear
22 of the property?
23 A Come to think -- I think not. There's only one
24 approved crossing. And I believe it is on the green parcel --
25 Q Okay.
26 A -- not the, not the orange one.
27 Q Okay. So there's no approved crossing to -- now a

1 person can walk from there to there within the regulations.
2 Correct?
3 A Under the regulations, you could.
4 Q Okay. Physically can you walk from there to there
5 without getting wet?
6 A Only if you can walk on water.
7 Q Okay. And within the regulations, can I move or build
8 a road or move equipment from one side of the property to the
9 other without a permit?
10 A That would require the construction of some sort of
11 road or crossing, which would require a permit.
12 Q Okay. And to your knowledge, no permit exists?
13 A Correct.
14 Q Okay. And in reference to the green property, it is
15 also bisected by wetlands?
16 A Yes.
17 Q And that impacts its development potential?
18 A I would say in terms of linking the two halves.
19 Q And I'm asking wetlands questions now. And there is a
20 crossing that was approved by the wetlands commission to
21 access one side of the property to the other?
22 A That's correct.
23 Q And you can move trucks and vehicles and the like
24 across that crossing?
25 A Yes, you could. It was designed for that.
26 Q Okay. And to your knowledge, are there any wetlands on
27 the red property known as "Griswold Street Rear"?

1 A I don't think so.
2 Q Okay. Mr. Branse, I'd like to refer you to the --
3 come back. You did represent these properties in reference to
4 a wetland's application. Was that application for all four
5 properties or was that application for an individual property?
6 A You know, I heard this in direct -- I mean
7 cross-examination by Attorney Critton, and I'm not sure I
8 understand either of your questions.
9 The wetland's agency does not review property lines. The
10 wetlands review has nothing to do with who owns the property.
11 As long as you have authority to file the application, it's
12 the activity and resource that they evaluate. So the wetlands
13 permit runs to an activity.
14 Q Okay.
15 A It does not run to a parcel or parcels. The Wetlands
16 Commission wouldn't have cared how many parcels you owned.
17 The only thing the wetlands agency was looking at was what was
18 the activity you were proposing.
19 Q Okay. I'd like to refer you to the Glastonbury zoning
20 regulations.
21 THE COURT: Before we get into that, Mr. Sakon,
22 let's take a 15-minute recess, and then we'll continue
23 on with the zoning regulations.
24 MR. SAKON: Okay. Thank you.
25 THE COURT: You may stop, Mr. Branse.
26 THE WITNESS: Thank you, Your Honor.
27 (Recess.)

1 THE COURT: The record will note that counsel and
2 pro se parties are present in court. And, Mr. Branse,
3 you recall you're still under oath?
4 THE WITNESS: Thank you. Yes, Your Honor.
5 THE COURT: All right. Proceed.
6 MR. SAKON: Your Honor, first of all, I'd like to
7 apologize. I confess, I've been a little long-winded.
8 I am a pro se. I'm not use to this. And so,
9 therefore, I get -- covering all my bases, and I'll try
10 to be more direct to the point.
11 THE COURT: Well, you seem to be handling yourself
12 very well, Mr. Sakon. So why don't you proceed.
13 MR. SAKON: I am extremely nervous, Your Honor.
14 THE COURT: Don't be. This is your courtroom as
15 well as anyone else's. So --
16 MR. SAKON: Thank you.
17 THE COURT: -- do not be nervous.
18 Q (BY MR. SAKON) Mr. Branse, I'd like to direct you to
19 the Glastonbury zoning regulations, which has been admitted in
20 evidence.
21 A Yes.
22 Q And I'd like you to turn to the section that is labeled
23 the "Plan Travel Zone".
24 A Yes.
25 Q Would you identify that section for the record, please?
26 A Yes, its Section 4.7, and it's on page 31.
27 THE COURT: That's Plaintiff's (sic) Exhibit F?

1 MR. SAKON: Yes.

2 THE COURT: And that's page what?

3 THE WITNESS: Page 31, Your Honor.

4 THE COURT: Thirty-one. All right..

5 THE WITNESS: That's where Section 4.7 begins.

6 Q (BY MR. SAKON) Okay. Does that section identify the
7 uses permitted in the plan travel zone?

8 A Yes, it does. 4.7.1. The first section of 4.7
9 identifies the permitted uses.

10 Q Okay. And they are permitted uses as of right, and
11 they're permitted uses as of special permit in the Glastonbury
12 zoning regulations. Is that correct?

13 A Generally, in the regulations. That is correct.

14 Q Okay. Are there many permitted uses in this zone?

15 A In this zone, there are none.

16 Q Okay.

17 THE COURT: There are none?

18 THE WITNESS: There are none that are permitted as
19 of right.

20 Q (BY MR. SAKON) There are no permitted uses as of right
21 in the zone?

22 A Right. There are none permitted, and there are also
23 none that would be applicable to your property.

24 Q Okay. Let's take a close look at those zoning
25 regulations, if you would, Mr. Branse.

26 Is there a list of the permitted uses in the regulations?

27 A Yes, that's Section 4.7.1. And indicates the uses

1 A A special permit is created by 8-2 of the statutes. It
2 states that specific uses in a zone, identified uses may be
3 allowed in a zone but only if they comply with conditions,
4 criteria and specifications that are contained in the
5 regulations themselves. In the case of Glastonbury, Section
6 12 contains those criteria and guidelines and so on.

7 The level of discretion for a commission in special permits
8 is much higher than site plan. For permitted uses, the
9 commission is supposed to approve them if they comply, deny if
10 they don't. Nondiscretionary.

11 Special permits accords a discretion, in this case, to the
12 Town Plan and Zoning Commission to apply the standards that
13 are discretionary as to whether to approve or deny.

14 Q I noticed you used the word they may approve. Do they
15 have any obligation to approve, if it does not meet those
16 standards?

17 A No, they really don't. The court cases over the past
18 20 years have been according a higher and higher level of
19 discretion for special permit reviews, probably the highwater
20 mark of this was a case called Whisper Wind v. Middlefield
21 ZBA, where the regulations contained, as their only criteria,
22 that granting the special permit would be in conformance with
23 public health, safety and welfare. That was the sum total of
24 the standards.

25 And our supreme court upheld that as an adequate standard
26 and upheld the denial of the application.

27 Q Okay. Is this commonly referred to as zoning by

1 listed below require a special permit with design review.

2 And the distinction is in most other zones and in most
3 zones throughout the State of Connecticut, some uses are
4 permitted as of right. Some uses are permitted following the
5 discretionary review of the special permit process. This list
6 is a list of uses. And all of them are special permit. And
7 then there are two of them, where it says no special permit
8 required. However, a later amendment to this regulation from
9 1981, that's Section 4.7.3 on page 33. It says no use. No
10 use shall be established, expanded or altered without a
11 special permit.

12 Q Would you please read that section into the record,
13 please?

14 A Yes. For the purpose of assuring orderly and
15 integrated development in the planned travel zone, no
16 building, structure, use or other form of development shall be
17 established or constructed and no existing building, structure
18 or use, other than existing single and two-family dwellings,
19 shall be enlarged or altered until a Plan of Development have
20 been approved as part of the special permit with design review
21 approval of the Town Plan and Zoning Commission and shall have
22 been filed with the Town Clerk. Such plans shall be in
23 accordance, and consistent with the provisions of Section 12 of
24 these Regulations. That concludes the quote. And Section 12
25 is the section on special permit with design review.

26 Q Mr. Branse, would you please explain to me exactly what
27 a special permit is?

1 contract?

2 A No, it is not. That is not contract zoning.

3 Q Okay. Would you please refer to those regulations. I
4 noticed that it says in the regulations that there are two
5 uses that do not require special permit, but, obviously, you
6 pointed out there was a later amendment to the regulations.
7 That actually would cover those uses too.

8 But what were the two uses listed in the regulations
9 that did not require special permit?

10 A The first one is farm, which is defined at 2.17 in the
11 regulations. And the other is parks, which are defined at
12 2.37 in the regulations.

13 Q Would you please read the definition of parks in the
14 regulations?

15 A I can. That's 2.37. Let me find that. I'm sorry.
16 It's now 2.38. They've changed it. And that's on page 7 of
17 the regulations.

18 Land and/or water primarily in its natural state except for
19 manmade recreation facilities and dedicated and used for
20 recreation, scenic, leisure, conservation, historic or
21 ornamental purposes.

22 Q Okay. That includes manmade recreational facilities.
23 But as amended by the later section that was adopted in 1983,
24 you could not make or institute any manmade facilities on that
25 property without a special permit. Is that correct?

26 A That is correct.

27 Q And so, therefore, in reference --

1 A It says no building structure or use or other form of
2 development shall be established or constructed. So whether
3 structural or not, whether it involved manmade structures or
4 not, it says no use or other form of development. It's quite,
5 it's quite broad.

6 Q Okay. So could you use this land as a park?

7 A Not without a special permit.

8 Q Okay. Let's turn to the regulations in reference to
9 farm. Would you please --

10 A The definition of farm is at section 2.17 on page 4 of
11 the regulations.

12 A tract of land containing five acres or more, used wholly
13 or in part for agricultural purposes, but excluding commercial
14 greenhouses and commercial nurseries involving the retail sale
15 of flowers, shrubs, trees and other plants from buildings or
16 structures on the premises rather than exclusively from the
17 ground, and commercial pig farms. A farm may include a
18 dwelling unit and premises used for the keeping of livestock,
19 poultry and other domestic animals when permitted by these
20 regulations.

21 Q Mr. Branse, you're familiar with these properties --
22 and if I can read from the map, because I'm at an advantage to
23 you, I'm closer -- 2980 Main Street is, acreage shown on the
24 map is 2.5597 acres. Does that qualify under that five acre
25 use of farm -- I mean is that more than five acres?

26 A No. And you could not, therefore, establish a farm,
27 even without 4.7.3, because you can't have a farm on less than

1 Q Correct me, if I'm wrong, you testified earlier, in
2 1973 you were the town planner in Glastonbury?

3 A Yes.

4 Q And when you were the town planner in Glastonbury, to
5 your memory, was there an active farm on these properties in
6 1973, when you were drafting these regulations?

7 A I remember no evidence of it. There was no fences
8 cattle, barns, crop -- plowed crop lands. I mean it was just
9 vacant land. Because at the time, it was owned by an
10 investment company called "Regional Properties". And I don't
11 remember them doing any farming of it at that time.

12 Q How do you know -- strike that. I presume in Colonial
13 times it might have been used as a farm?

14 A Probably, almost certainly was.

15 Q Okay. And so, therefore, to establish any use on this
16 property, a special permit is required?

17 A That's correct.

18 Q Okay.

19 A The regulation implies at one point that you could have
20 a farm or park without one. And then the '81 amendments, it
21 says that you couldn't. That's an ambiguity in the
22 regulation, I suppose.

23 Q But does the regulations deal with ambiguities within
24 themselves?

25 What happens when you have two regulations that are
26 competing one with each other, how is the regulation
27 interpreted: Is it interpreted to the less strict

1 five acres.

2 Q Okay. The property known as Main Street Rear, defined
3 in the green property, is 4.9493 acres as shown on the map.
4 That also is less than that five-acre requirement?

5 A Assuming that survey is correct, yes.

6 Q And the red property is shown as 1.8576 acres. That is
7 also less than the five-acre requirement?

8 A Correct.

9 Q And so technically you couldn't even use this property
10 as a farm?

11 A That's correct.

12 Q Mr. Branse, what can you do with this property, under
13 the regulations, without a special permit?

14 A Nothing.

15 Q Nothing?

16 A Nothing.

17 Q Can the property be -- can you put a field in there and
18 plant corn and do agriculture on the property?

19 A That's a farm. The regulation allows an existing
20 single or two-family dwelling, but there are none on this
21 property.

22 The regulation allows the continuation of nonconforming
23 uses. So if there had been a farm on this property in 1973,
24 on any portion of these parcels, it could continue. But I
25 don't recall ever seeing any active agriculture on these
26 properties. Maybe it was there, but I don't ever remembering
27 seeing it.

1 interpretation or the more strict interpretation?

2 A Generally, the more strict. And also it is the
3 commission that has the authority to construe ambiguities in
4 the regulation. So you'd be back to discretionary decision by
5 the commission.

6 Q Okay. Mr. Branse, were you aware that special permit
7 applications were made on this property by John Sakon?

8 A Yes.

9 Q Okay. In fact, several special permit applications
10 have been made on this property. Is that correct?

11 A I know there was more than one. I know there is one
12 pending now. There was a prior one for Victoria Square.
13 There was one back in 1971 or '72, or thereabouts, for a motel
14 by the previous owner. There may have been others that you
15 filed, that I just don't remember.

16 Q Okay. And those special permit applications were for
17 the 2980 Main Street, Main Street Rear, which is the green
18 property, Griswold Street Rear, which is the red property.
19 But they also included 131 Griswold Street?

20 A That is my recollection. But as you pointed out, I did
21 not represent you in those special permit applications. So I,
22 I don't have a direct, intimate knowledge of those
23 applications I just know -- I generally know what they were.

24 Q Okay. And you're familiar with that application called
25 "Victoria Square". Did the Planning and Zoning Commission
26 approve or deny an application for, entitled "Victoria
27 Square"?

1 THE COURT: What are you offering, Mr. Sakon?

2 MR. SAKON: We're going to offer -- he just
3 referred to a decision made by Judge Shortall that was
4 issued in a memorandum of decision.

5 We're going to offer that memorandum of decision
6 to the record with no objection by opposing counsel.
7 And we're going to call it Plaintiff's Exhibit 11, and
8 it's going to be admitted as a full exhibit to the
9 record.

10 THE COURT: All right. There's no objection,
11 we'll mark this Plaintiff's Exhibit 11 as a full
12 exhibit.

13 (Plaintiff's Exhibit 11, full exhibit).

14 THE COURT: May I see the exhibit?

15 MR. SAKON: It's in front of you, Your Honor.

16 THE COURT: Thank you.

17 MR. SAKON: Mr. Branse has his copy, Attorney
18 Critton has her copy, and I have a copy of my own; so,,
19 hopefully, we'll all can get on the same page.

20 THE COURT: This is a memorandum of decision dated
21 June 14, 2006.

22 MR. SAKON: And my apologies, Your Honor, I could
23 not get the staple to go through those papers. So I
24 paperclipped in addition.

25 THE COURT: All right. Proceed.

26 MR. SAKON: Just one second, Your Honor.

27 THE COURT: Do you have a question pending, Mr.

1 preserve the character of, and is incompatible with adjoining
2 neighborhood; additionally, the overall scale of the proposed
3 building does not mirror the scale of adjacent residential and
4 commercial buildings.

5 THE COURT: Mr. Sakon, does the property in this
6 memorandum of decision of Victoria Square involve the
7 subject properties?

8 MR. SAKON: Yes, Your Honor. As we said, and Mr.
9 Branse just testified, Victoria Square involved the
10 three subject properties in addition, 131 Griswold
11 Street.

12 Just as an offer of proof, I will go through items
13 number one and show how they apply to the subject
14 property specifically.

15 THE COURT: Why don't you proceed.

16 MR. SAKON: Okay.

17 Q (BY MR. SAKON) Mr. Branse, let's go through item --
18 just to do it chronologically, and then I'll get to the
19 judge's question.

20 Item number one, uncertainty of specific retail tenants.
21 Therefore, they want to know who the tenant is before they
22 approve anything there. Correct? How would you interpret
23 that, that reason?

24 A Well, having read the full opinion and understanding
25 the analysis there. What the judge is saying is that greater
26 specificity intended identity, more specificity as to type of
27 tenancy beyond, for example, just retail. What type of

1 Sakon?

2 MR. SAKON: No.

3 Q (BY MR. SAKON) Mr. Branse, would you please refer to
4 page 3 of Judge Shortall's decision.

5 A I have it in front of me, yes.

6 Q In page 3, does not Judge Shortall write for the record
7 the reasons why the commission denied the application of
8 Victoria Square?

9 A Yes, he does.

10 Q Would you please read those three reasons for denial
11 into the record.

12 A Okay. (as read): One, the uncertainty of special
13 retail tenant types raises concerns and uncertainty relative
14 to predictable traffic patterns that do clearly vary based on
15 specific retail uses. This uncertainty creates concern that
16 area streets and intersection could be overburdened depending
17 upon tenant types in the development.

18 Two, the proposed two Main Street points of vehicular
19 egress have the potential to negatively impact safe and
20 efficient egress to and from existing Main Street businesses
21 including Mobil, Friendly's, Valvoline, and the medical
22 building. None of the egress points including the third on
23 Griswold Street can satisfactorily stand alone.

24 Three, the orientation of the building with the rear facing
25 the predominant residential area will create problems of
26 noise, light and vehicular emissions negatively impacting
27 adjoining residential properties. This orientation will not

1 retail, that kind of thing.

2 I'm not sure the commission was necessarily asking that the
3 name of the tenant be identified. That it say Target or
4 Kohl's or whatever. That they definitely were looking to know
5 exactly what kind of use it was that was proposed.

6 Q Okay. Let's go to item number two. It says the
7 proposed two Main Street points of vehicular egress. Okay.

8 Those two points would be the right-of-way shown on this
9 property as the right-of-way through Friendly's Ice Cream that
10 services Main Street Rear, and the right-of-way shown in
11 yellow on the plan, which is a right-of-way in gross that
12 services 2980 Main Street?

13 A That's correct. Those are the two -- I recall those as
14 being the two egress points that were proposed.

15 Q And it says here that it has the potential to
16 negatively impact safe and efficient egress to and from
17 existing Main Street businesses?

18 A Correct.

19 Q Could that be applied to any application made on this
20 property?

21 A Certainly.

22 Q Okay.

23 A The driveways aren't going to move. That's where your
24 easements are.

25 Q So would that impact any potential development of this
26 property? Could that -- I'll strike that question. Withdraw
27 that question.

1 Any application for special permit probably could be turned
2 down predicated on, upon that reason for denial in reference
3 to the use of these two easements to Main Street. Correct?

4 A Well, if they're not adequate in their current
5 location, width and configuration for retail under this plan,
6 they could certainly be cited as being inadequate for other
7 retail under some other plan. That would certainly be a
8 consistent finding for the commission to make.

9 Q So that could apply to any new application for special
10 permit?

11 A Absolutely.

12 Q And that would be in their discretion?

13 A It would be.

14 Q Okay.

15 A They could also decide it was different. But they
16 could say that it was -- that a different plan addressed these
17 problems for some reason, but they could also decide that it
18 did not.

19 Q And so whether they approve it or not would be
20 speculative?

21 A Yes. It would be discretionary. It would be in their
22 discretion.

23 Q Okay.

24 A And you can't -- and you can't predict how that
25 discretion will be exercised. Obviously, even the membership
26 of the commission changes.

27 Q Okay. At their whim pretty much. Right?

1 presumably because they felt that even the three of them
2 together were not adequate, let alone standing alone. They
3 were looking at one plan.

4 Q The reason for denial number three, would you --

5 A The orientation of the buildings.

6 Q With the rear facing predominately residential area
7 will create problems of noise, light and vehicular emission
8 negatively impacting adjoining residential properties.

9 Could that be implied to most any commercial use that's
10 being proposed on this property?

11 A It could in two senses, I suppose. The first is that
12 that, this property is fairly unusual in that it has highways
13 on two sides directly.

14 Q Interstate highways on two sides?

15 A Well, limited access highways. They're actually not
16 interstate, but they are state limited access highways and
17 both elevated.

18 And then existing street development along two sides. The
19 problem that you have with a case like this is that the back
20 of the buildings has to face somewhere. I know from my time
21 on the commission as a member of the commission and as town
22 planner, Glastonbury has taken a very dim view of rear of
23 buildings facing highways because of the poor impression it
24 creates to the traveling public.

25 This decision is indicating that the rear of the building
26 should not face Griswold Street because of the residential
27 areas there. I see the dilemma here as being that since every

1 A The membership doesn't change at their whim.

2 Q No, I'm saying --

3 A The membership changes the council's --

4 Q -- the decision as to whether to grant a specific
5 permit, given this consideration, would be at the whim --

6 A It's a very high level of discretion. It's an
7 extremely high level. In this case, this decision by Judge
8 Shortall, is, is in the mainstream of the decisions on special
9 permits that accord a very high level of discretion to the
10 commission in granting or denying them.

11 Q We have another right-of-way that serves this Main
12 Street Rear to Griswold Street --

13 A That's the green corridor that's out --
14 (simultaneous talking).

15 Q Yes --

16 A -- Exhibit 4.

17 Q Is that dealt with in the reason for denial number two?

18 A Well, it states that, that it simply indicates that
19 even if you add that in that driveway, that no one of the
20 driveways are capable of servicing the properties standing
21 alone.

22 Q Okay and it says basically none of the egress points
23 including the third on Griswold Street can satisfactorily
24 stand alone?

25 A Correct.

26 Q Okay.

27 A And, I mean the commission has denied this application

1 building has to have a back somewhere, the question is where
2 is it going to face? I would -- I would be astonished if the
3 Planning and Zoning Commission would approve service entrances
4 facing Route 2 or 3. That, that visibility, they would not --
5 they would not generally allow, and have not allowed in other
6 areas along this corridor.

7 Q But in this decision, they said that they don't want
8 them to face the other way towards --

9 (Mr. Sakon moves away from microphone making
10 record unclear).

11 A Exactly.

12 Q -- highway?

13 A That's true.

14 Q So where would you --

15 THE COURT: Mr. Sakon, could you be near a
16 microphone when you're --

17 MR. SAKON: Oh, I'm sorry.

18 THE COURT: -- asking questions. The further you
19 get away the less opportunity for you to be recorded.

20 MR. SAKON: Okay.

21 Q (BY MR. SAKON) So they certainly -- in reason for
22 denial number three, said they can't face away from the
23 highway.

24 A Correct.

25 Q And you're saying by prior precedent they have said
26 consistently they don't want them to face towards the highway?

27 A Right. I mean the orientation of the buildings could

1 be a ground for denial with any orientation depending on how
2 it was designed, landscape screened.

3 I think the problem you have here is that Routes 2 and 3,
4 because they are so much higher than the property, there's
5 almost no form of screening that would suffice.

6 Q Mr. Branse, predicated now -- Judge Shortall's decision
7 was handed down on June 14, 2006 of this year?

8 A Correct.

9 Q Okay. And in your expert opinion, is it possible that
10 the commission may deem it appropriate not to approve any use
11 on this property requiring a special permit in the foreseeable
12 future?

13 A It is possible.

14 Q And they certainly would have the legal authority to do
15 that?

16 A Yes, they would.

17 Q Okay. And so, therefore, any development of this
18 property would be speculative at best?

19 A Well, I mean all development is speculative. But
20 because, because in this zone, virtually all uses require a
21 special permit. You would have that -- you would have to deal
22 with that very high level of discretion for anything that was
23 proposed.

24 As I testified earlier, in most zoning regulations, in most
25 zones in Glastonbury, there are some things that produce
26 income. Some development uses that are just allowed as of
27 right. In this case, there are none. So there is no safety

1 adjacent come under single ownership, they are deemed to have
2 merged to the extent that they become less nonconforming or
3 conforming and thereafter cannot be divided.

4 Q Mr. Branse, does Glastonbury, the town of Glastonbury
5 have a merger regulation, ordinance or statute?

6 A It does not.

7 Q Okay. Is there any statute in the state of Connecticut
8 that requires the property -- if these properties are separate
9 properties as of record appears and are assessed by the town
10 assessor for individually as separate assessments, is there
11 any obligation of the property owner to merge those
12 properties?

13 A No, there's nothing in the statutes. And absent a
14 local regulation to that effect, there's no automatic merger.

15 Q Mr. Branse, if this property in red is landlocked, is
16 there any obligation of the owner to grant an easement across
17 his other properties -- well, if this property -- I withdraw
18 the question.

19 If this property is, as of record appears, was purchased by
20 a prior owner and deeded as such, and the purchaser happened
21 to own an adjacent property, is there any obligation in the
22 law or under statutes that that purchaser is obligated to
23 grant an easement to this property?

24 THE COURT: You're referring to the Plaintiff's
25 Exhibit --

26 MR. SAKON: Four.

27 THE COURT: Plaintiff's Exhibit 4. You're

1 valve. There is nothing you could propose here where you
2 could say I have an as-of-right use.

3 Q Mr. Branse, you represent 28 other, 28 other
4 municipalities?

5 A Twenty something.

6 Q Twenty some other municipalities. Are you familiar
7 with the zoning regulations of many of those municipalities?

8 A I have to be.

9 Q Is there any other of those 20 municipalities that have
10 such restrictive zoning regulations as this one?

11 A I've never seen -- I've never seen one where arguably
12 there are no special, no uses permitted as of right or at best
13 a farm and a park as permitted as of right. All the
14 regulations allow something as of right.

15 Q What can a landowner do with this property?

16 A Keep applying for special permits.

17 Q And hope the town changes its mind?

18 A Hope that you can present something that they will --
19 are willing to approve.

20 Q Mr. Branse, are you familiar with the concept of merger
21 as it goes to property?

22 A Yes, I am.

23 Q Okay. What is the concept of merger?

24 A Merger is a concept that applies to nonconforming
25 lots. Lots that do not conform with current zoning as to
26 area, frontage. Generally, those two. Many towns have
27 regulations that state that when nonconforming lots that are

1 referring to the parcel marked in red?

2 MR. SAKON: Yes.

3 THE COURT: Did you understand the question?

4 THE WITNESS: I did. Yes, Your Honor.

5 A I mean absent civil law concepts of right-of-way by
6 necessity or that kind of thing, no, there's no -- some
7 parcels are landlocked. It can happen. There's no obligation
8 by an abutter to provide access absence some other legal
9 requirement like an easement or something like that.

10 Q Okay.

11 THE COURT: I thought the question, Mr. Sakon, was
12 that if you owned two adjoining parcels was there an
13 obligation of one parcel to provide a right-of-way to
14 the landlocked parcel. Is that --

15 THE WITNESS: And the answer to that is, no.

16 THE COURT: -- your question?

17 THE WITNESS: Answer to that is, no. There's no
18 obligation per se.

19 MR. SAKON: Okay.

20 THE COURT: I'm not quite sure I understand, Mr.
21 Branse. If a party owns two separate parcels that
22 adjoin each other, and one is landlocked and one is
23 not, why would the owner of both lots obligate itself
24 to grant an easement on the parcel that it owns to the
25 parcel that it owns? Why would a person who owns two
26 adjoining lots have to create any kind of easement?

27 THE WITNESS: Well, I suppose that --

(Simultaneous talking).

MR. SAKON: I think your answer to that --

THE WITNESS: -- if you --

MR. SAKON: -- they don't --

THE WITNESS: Combine them.

THE COURT: All right. Wait a minute.

MR. SAKON: I think he answered, Your Honor, that they don't.

THE WITNESS: Well, they don't have to. But His Honor's question, I believe was: Why would they need to; not only do they have to, but why would they need, why would they bother?

THE COURT: But if you own both pieces, why would you need to grant an easement over one parcel to another?

THE WITNESS: If they're separate lots of record. The only question would be whether they would, whether they could be separated thereafter.

If you wanted to merge them, if you wanted to combine them into one development, you wouldn't need an easement.

THE COURT: All right.

THE WITNESS: But if they remain their separate identity, then one is still landlocked by record.

Q (BY MR. SAKON) So, therefore, the owner of the property in red, Mr. Sakon -- I apologize for referring to myself, as if I'm not here. The owner of the property in red

Q (BY MR. SAKON) Mr. Branse, actually your office represented the acquisition of this piece from the St. Mark's Lutheran Church for Mr. Sakon, did you not?

A That's correct.

Q And this landlocked piece was acquired by -- was owned by the St. Mark's Lutheran Church?

A Yes, it was.

Q And the St. Mark's Lutheran Church was an adjacent property owner?

A Yes, they were.

Q And does the St. Mark's Church own access onto Griswold Street or frontage?

A They do.

Q And so, therefore, any easement of necessity would go to St. Mark's Lutheran Church and not necessarily to adjacent parcels of the owner?

A If there had been, yes. But as I said, there was nothing of record indicating that that red parcel had a right-of-way anywhere.

Q Okay. If the town of Glastonbury had granted the Victoria Square application, which was for all four properties combined, would that have merged the properties?

A Yes, it would have.

Q Okay. But they denied that application?

A That's correct.

Q One final line of questioning, Mr. Branse. When you sat on the commission, did you sit on the commission when the

has the perfect legal right to sell that property as it appears on this plan, if that survey is correct and that's the deeded property?

A Yes.

THE COURT: Well, let me ask Mr. Branse again, you're an expert. Can -- if the person owns two adjoining parcels and one parcel is landlocked, such as the parcel in red, are you saying that if the property owner sells the landlocked piece, that that does not create a private way by implication over the remaining parcel?

THE WITNESS: I would say, no, not unless there's some other -- that's why I said absence some civil claim of a right-of-way by necessity or implication like that, that there was a driveway created or roadway or something like that.

But I mean in this case, Mr. Sakon acquired the piece landlocked. I don't know why he couldn't sell it landlocked.

THE COURT: All right. So your testimony is that a person can sell a landlocked piece and retain an adjoining parcel to that landlocked piece?

THE WITNESS: Yes. Yes.

THE COURT: And that landlocked piece then remains landlocked?

THE WITNESS: Exactly.

THE COURT: That's your testimony. All right.

Home Depot was approved in the Plan Travel Zone in the town of Glastonbury?

A I was on the commission, but I disqualified myself. I did not participate.

Q But you're familiar with that application. Correct?

A In general.

Q From the time they filed the documentation form until the time they were approved, how long did that take?

A It was a couple of years.

Q Years?

A A couple years, thereabouts.

THE COURT: Mr. Sakon, what's the relevancy of referring to Home Depot?

MR. SAKON: Your Honor, just as an offer of proof, Home Depot took, and we're going to show later, that from the time they filed their initial documents until the time of approval was approximately two --

THE COURT: Well, but what's the relevancy of that time of approval to this case? Why is that important in this case?

MR. SAKON: Basically, Your Honor, it goes to the issue of use of a property and the property's ability to generate income and an income stream. Commercial property --

THE COURT: Is the Home Depot proposed for this subject property?

MR. SAKON: No, Your Honor. I am going to -- and

1 what I'm trying to show, again, as an offer of
2 proof -- that the town of Glastonbury, even in the
3 special permit process, can take years in order for the
4 special permit process to resolve, even to a conclusion
5 of denial.

6 THE COURT: All right. But what's the relevancy?
7 You could use any example with development in the town
8 of Glastonbury as to how much time it takes them to
9 develop some other property, but why is it relevant to
10 this property?

11 MR. SAKON: Your Honor, it's relevant to this
12 property because, because of the special permit process
13 is so highly discretionary, the town of Glastonbury
14 does not follow this statutory time frame for approval
15 of applications. And --

16 THE COURT: Well, but wouldn't it be -- and I
17 don't want to cut you off -- but wouldn't it be more
18 appropriate for this witness, since you've qualified
19 him as an expert, to testify how long it would take an
20 application for a special permit on the subject
21 property to go through the process rather than dealing
22 with Home Depot?

23 MR. SAKON: Okay. I will do that.

24 Q (BY MR. SAKON) Mr. Branse, you were involved in the
25 initial applications of Victoria Square. Am I correct?

26 A Yes.

27 Q And that was with the Wetlands Commission. When was

1 Q Is the development of these properties controversial?

2 A Yes.

3 Q And so, therefore, it would take a longer period of
4 time?

5 A Yes. The same with other developments. I mean, for
6 example, Home Depot was also controversial. That's why it
7 took a couple years too.

8 Q As a matter of fact, opposition groups formed to oppose
9 any development of this development. Is that correct?

10 A That's correct.

11 Q That would be the Glastonbury Coalition for Sensible
12 Growth?

13 A I believe that's what it's called.

14 Q And the Glastonbury Coalition for Sensible Growth has
15 represented on the record that they feel that the only
16 permissible development of this property, that it should be
17 developed for, is for a park. Is that correct?

18 A I was not present for those hearings.

19 Q Okay.

20 MR. SAKON: I have no further questions for the
21 witness, Your Honor.

22 THE COURT: Cross-examination, Ms. Critton?

23 MS. CRITTON: Thank you.

24 CROSS-EXAMINATION BY MS. CRITTON:

25 Q Mr. Branse, when you advised Mr. Sakon with respect to
26 his wetlands permit application, did you advise him to file an
27 application for each parcel individually?

1 that?

2 A I don't recall. It was a few years ago, several years
3 ago.

4 Q 2001?

5 A Thereabouts.

6 Q Okay.

7 A I know it was just a couple years after I left the
8 commission. So it would have been about 2001.

9 Q Okay. And in reference to Judge Shortall's decision
10 ultimately the Town Plan and Zoning Commission denied that
11 application, did they not?

12 A Yes.

13 Q And I'm referring to Judge Shortall's position on page
14 3, they denied that application on -- oh, actually, page 4.
15 July 20th, 2004. Is that correct?

16 A It sounds right.

17 Q Okay. And so, therefore, from the beginning of the
18 filing of applications for this particular land use to their
19 decision was well over three years?

20 A That's what the record indicates.

21 Q Okay. Is that unusual in the town of Glastonbury?

22 A No. For larger projects, two years plus or minus is
23 pretty normal, two to three years.

24 I mean, generally, around two years. This -- it obviously
25 depends on the level of controversy. Some projects are more
26 controversial than others, but -- but a couple years give or
27 take is not unusual.

1 A No. As I've already testified, the Wetlands Commission
2 doesn't deal with parcel ownership, as long as the applicant
3 has standing to file the application. What they're dealing
4 with is the activity.

5 Q All right. And what activities --

6 A It's the activity that's subject --

7 Q -- what --

8 A -- that's subject to their review.

9 Q -- activities. I'm sorry.

10 A Yes --

11 Q -- I didn't mean not to let you finish. What activities
12 were proposed for this development?

13 A There was an east/west crossing of the wetland corridor
14 that runs north/south. And then there was also -- this also
15 involved the stormwater drainage system totally, which, of
16 course, discharged to the wetlands and watercourses involved.

17 Q And where were the different components of the
18 stormwater drainage system located?

19 A They were on various parts of the property.

20 Q Could you point out to me where some of the
21 different --

22 A No, not without -- if there were a plan here that
23 showed where the catch basins were, we could certainly do
24 that. But the property was -- the wetlands application was
25 for drainage systems, different drainage systems.

26 Q Were there some systems --

27 THE COURT: Just a minute. To answer Ms.

1 Critton's question, couldn't you refer to the
2 topographic map, which is plaintiff's exhibit
3 something? That's on the reverse side of the board.

4 MS. CRITTON: That might or -- I mean that might
5 or might not help --

6 (Simultaneous talking).

7 THE WITNESS: That wouldn't help.

8 MS. CRITTON: -- often, often what happens is
9 that -- not to come away -- there may be stormwater
10 detention systems --

11 THE COURT: All right. But --

12 MS. CRITTON: -- proposed on --

13 THE WITNESS: Correct.

14 THE COURT: All right.

15 MS. CRITTON: -- another part of the property --
16 THE COURT: -- all right. But Mr. Sakon referred
17 to the wetlands on the property on the topographic map,
18 why wouldn't that be appropriate to respond to your
19 question?

20 MS. CRITTON: Because you -- if I may?

21 THE COURT: Well, if it doesn't help you, then --

22 MS. CRITTON: Well, no. I appreciate. Often, and
23 particularly when a lot of impervious surface is
24 proposed for a development, the plan of stormwater
25 management will include detention basins, infiltration
26 basins that may be on a different part of the
27 property --

1 learned earlier that the wetlands permit included the
2 entire site, including the property in pink. And I was
3 asking if Mr. Branse remembered what wetlands-related
4 activities were included in that parcel in pink.
5 Because, you know, it seemed to be that the
6 representation that perhaps that parcel had no use
7 or --

8 MR. SAKON: Your Honor --

9 THE WITNESS: That was not my testimony.

10 THE COURT: Just a minute, Mr. Branse --

11 THE WITNESS: Sure.

12 MR. SAKON: I'm going to maintain my objection.

13 THE COURT: -- one at a time.

14 MR. SAKON: Mr. Branse testified that there were
15 no wetlands on --

16 THE COURT: Well, I --

17 MR SAKON: -- on the property.

18 THE COURT: But you covered -- you covered it, Mr.
19 Sakon, and you did qualify Mr. Branse as an expert. So
20 I'll overrule the objection.

21 Did you understand the question, Mr. Branse?

22 THE WITNESS: I'm not sure I did.

23 THE COURT: All right. Could you restate the
24 question again, Ms. Critton.

25 MS. CRITTON: Well, I had asked if any components,
26 stormwater management system were proposed for the
27 parcel that is in pink.

1 THE COURT: All right.

2 MS. CRITTON: -- then where the wetlands are
3 actually located. I think what makes sense is for us
4 to get the actual wetlands permit.

5 THE COURT: All right.

6 Q (MS. CRITTON) Do you recall if any, though, if any
7 components of this system were, for example, on the parcel
8 that is pink?

9 A I don't --

10 MR. SAKON: Your Honor, I'm going to object.

11 THE COURT: Just a minute.

12 MR. SAKON: I'm going to object.

13 THE COURT: Mr. Sakon, you have an objection?

14 MR. SAKON: No foundation. Relevance.

15 THE COURT: Relevance for what? You say the
16 question is not relevant?

17 MR. SAKON: Yes, it's not relevant to his direct
18 testimony.

19 THE COURT: What was your question again, Ms.
20 Critton?

21 MS. CRITTON: My question was, I was asking about
22 the wetlands permit, which was discussed. And I was
23 asking if Mr. Branse -- Mr. Sakon's testimony was that
24 the wetlands area was in a particular place. And that,
25 that -- that there were buffers around that wetlands
26 area.

27 I was asking if the site as a whole -- what we

1 THE COURT: If he's familiar with --

2 MS. CRITTON: If he remembers -- well, he helped
3 prepare the application, so --

4 THE COURT: Yes.

5 MS. CRITTON: -- I thought he might recall.

6 A I guess where I'm not clear is in what you mean by the
7 stormwater management system?

8 Q (BY MS. CRITTON) Well, for example, a detention basin.

9 A I don't recall any detention basins in the pink area.

10 Q Thank you. I -- we'll get the plans.

11 A All right.

12 Q And go from there. You talked earlier, you mentioned
13 your reluctance to use the word "buffer".

14 A Correct.

15 Q And why, why are you reluctant to use the word
16 "buffer"?

17 A Both the case law and the statutes tell us that the
18 focus of a wetlands agency is on the protection of the
19 wetland. Many wetlands agencies in Connecticut take the
20 assumption that the hundred or a hundred and fifty foot area,
21 or whatever it may be that they designate that surrounds the
22 wetland is an absolute protection zone.

23 That is not correct. That is not the law. It is a -- the
24 jurisdiction of a commission to review activities in
25 Glastonbury's case within a hundred feet of a wetland, is to
26 review the impact on that wetland and not to serve as an
27 absolute no development area.

1 So I prefer to say "upland review area". Buffer makes it
2 sound like it must remain absolutely virgin, and that is not
3 the law as it's supposed to be.

4 Q And if an engineer comes in to present a proposal and
5 is able to show that the activities proposed in the upland
6 review area will have no impact on wetlands or watercourses,
7 can the commission deny the application based on the fact that
8 something is proposed in the upland review area?

9 A Well, yes, they could -- they could still deny it for
10 the simple -- your question was if the applicant's engineer
11 says no -- you see, the commission is allowed use its own
12 expertise --

13 Q All right. Is --

14 A -- and that of its advisers --

15 Q Okay. We could really get into this, but --

16 THE COURT: Let's do it one at a time.

17 MS. CRITTON: Okay.

18 THE COURT: -- because the court reporter --

19 MS. CRITTON: But this is such fun --

20 THE COURT: -- cannot take both testimony at the
21 same time. So let's -- question, response, question,
22 response, rather than both talk at the same time.

23 MS. CRITTON: All right.

24 THE COURT: Did you get your question answered?

25 MS. CRITTON: Well, I'd like to rephrase my
26 question.

27 THE COURT: All right.

1 A Well, the Home Depot. It's been mentioned a couple
2 times. And very small, smaller developments along the main
3 street.

4 Q And with respect to the other planned districts in
5 Glastonbury, is it fair to say that most of them require
6 special permit for any significant commercial use?

7 A For most uses. I don't think any of them are as
8 restrictive as this one.

9 Q But, but it is common for the planned districts to use
10 the special permit mechanism with respect to the approval of
11 specified uses?

12 A Yes.

13 THE COURT: Well, let me just ask a follow-up.

14 Mr. Branse, did I understand you that the -- understand
15 you to say that the planned travel regulation was
16 designed to prevent a development of property that
17 would be in competition with some other planned
18 development?

19 THE WITNESS: Yes, Your Honor, you understood me
20 correctly. That's the truthful answer, I'm afraid.

21 THE COURT: It sounds like some constitutional
22 issues involved, but apparently nobody raised them.

23 THE WITNESS: No, they didn't.

24 MR. SAKON: Your Honor, the plaintiff agrees with
25 it.

26 Q (BY MS. CRITTON) Were constitutional issues raised in
27 the, in the Victoria Square appeal?

1 Q (BY MS. CRITTON) If substantial evidence supports the
2 fact that there will be no impact on wetlands or watercourses,
3 can the commission deny something just by virtue of the fact,
4 and have their denial upheld just by -- they can't deny it
5 based on the fact that it's simply in the upland review area?

6 A That's correct. They're not supposed to. That's
7 right.

8 Q Okay. Now you've testified that you had worked on the
9 development of the regulations --

10 A That's correct.

11 Q -- that now include the Plan Travel Zone. And what was,
12 do you recall what the Plan and Zoning Commission's
13 intention -- well, was with respect to those regulations?

14 A With respect to the Plan Travel Zone regulations?

15 Q Yes.

16 A Yes, I do.

17 Q And what was its intention?

18 A Its intention was to effectively prevent development in
19 the entire Plan Travel Zone area in order to allow the
20 Glastonbury Redevelopment Project, which was approved in 1969,
21 to proceed without competition from the north part of the
22 town. That is, I fear, the truthful answer to your question.

23 Q And in practice, though, has the -- have developments
24 been approved in the Plan Travel Zone?

25 A Yes.

26 Q What developments have you seen approved in the Plan
27 Travel Zone?

1 A Well, I did not represent Mr. Sakon before the Planning
2 and Zoning Commission or any appeal.

3 Q Right. But you had it in front of you and were
4 familiar with the case --

5 A Yes.

6 Q -- that was entered --

7 A I saw the decision, yes.

8 Q Yes.

9 A There's a footnote about it. There is a footnote in
10 Judge Shortall's decision. So I assume it was raised.

11 Q And did the -- did the court find that the Plan Travel
12 District was unconstitutional?

13 A The court's finding was, was it had not been suitably
14 framed for consideration by the court. So the court really
15 did not rule on it. The footnote merely indicates that it was
16 not adequately briefed; and, therefore, the court would not
17 consider it or rule on it.

18 Q Did the opinion -- did Mr. Sakon, in Victoria Square,
19 challenge the regulation for any other reasons?

20 A Well, the opinion indicates that the validity of the
21 regulation itself was challenged on the ground that it
22 exceeded the authority delegated under 8-2 for special
23 permits.

24 Q And did the court agree with that?

25 A No, the court held that the regulation was valid.

26 Q Thank you.

27 A And in my testimony, I've assumed it to be valid

1 because that's the state of the law today.
 2 Q Correct. When you were describing the application
 3 process, you said that we, we got the wetlands permit first.
 4 Why does a --
 5 A That's correct.
 6 Q -- why does a developer get the wetlands permit first?
 7 A Although it's not a regulation in Glastonbury, it is
 8 the practice that Glastonbury has followed, for as long as I
 9 can remember, of requiring applicants to go to the wetlands
 10 agency first, to the Conservation Commission first. And out
 11 of the cooperation of applicants, they do so.
 12 Q All right. Would you describe obtaining a wetlands
 13 regulation as a hurdle --
 14 (simultaneous talking).
 15 A A wetlands --
 16 Q -- permit -- obtaining a wetlands permit as a hurdle
 17 that, that an applicant has to --
 18 A Yes, in all cases.
 19 Q And in all towns?
 20 A Right.
 21 Q So having a wetlands permit is, having one in place is
 22 a good, at least lays the groundwork for applications to
 23 follow. Is that correct? Particularly, in Glastonbury where
 24 you can't go -- you're saying you can't --
 25 A It's one component and one step.
 26 Q Okay. Thank you. To your knowledge, is the wetlands
 27 permit that was issued for this property still in effect?

1 A Yes.
 2 Q So it's a valid wetlands permit governing -- could you
 3 point out which parcels of land just for -- to reconfirm what
 4 parcels of land are subject to the valid wetlands permit?
 5 A I will confirm again wetlands permits don't deal with
 6 parcels --
 7 Q Okay.
 8 A -- they deal with activities.
 9 Q Okay. The wetlands permit relates to activities on
 10 which parcels?
 11 A The wetlands permit, the regulated activity would have
 12 been the crossing on the green parcel, and the stormwater
 13 drainage discharges into the wetlands. The wetlands are these
 14 crosshatched areas.
 15 Q Okay.
 16 A So that the crosshatched areas are the areas that are
 17 being, that are being protected by the Wetlands Commission.
 18 This is follow-up to your earlier question. You asked me
 19 about the buffer versus upland review area. The whole parcel
 20 is not under wetland's jurisdiction. It is the discharge to
 21 wetlands that is under their jurisdiction.
 22 Q Thank you. You talked earlier about the delay inherent
 23 in the application process in Glastonbury.
 24 A Yes.
 25 Q Is that -- and you were able to give an average figure
 26 with respect to that delay.
 27 A That's correct.

1 Q Can I infer from that, that all parcels that have to
 2 obtain special permit approval are inevitably going to be
 3 subject to some delay?
 4 A To a greater or lesser extent, yes. I mean it's, it
 5 is, it is -- it is a slow process in Glastonbury. Slower than
 6 other towns, but that would be the case, again, depending on
 7 the level of controversy.
 8 I mean if have you an opposition group, for example, that's
 9 going to slow the process down. But very few applications
 10 move through the process quickly, even, even ones that are not
 11 controversial.
 12 Q Thank you.
 13 A And I don't say that as a critique by the way.
 14 Q No. You had given an estimate, I was just following up
 15 on that.
 16 Your testimony earlier with respect to restrictions on use,
 17 and that even farm use was not permitted without a special
 18 permit or a park use.
 19 To your knowledge have, has, has any -- has anyone ever
 20 received a cease and desist order for commencing a farm use on
 21 the property?
 22 MR. SAKON: Objection, Your Honor, relevance.
 23 THE COURT: What's your objection?
 24 MR. SAKON: Relevance, Your Honor. Her question
 25 goes to -- speculative. Whether the town took any
 26 enforcement action, that's not subject to the tax
 27 appeal.

1 THE COURT: The question, I assume relates to the
 2 subject property, does it not?
 3 MS. CRITTON: It does.
 4 MR. SAKON: Yes, the question relates to the
 5 subject property, but they're saying -- what her
 6 question is saying is that he has said that that would
 7 not be a use permitted under the zoning regulations.
 8 And if someone were to speculatively put the property
 9 to the use, did the town -- which she has not
 10 established that that occurred -- would the town then
 11 issue a cease and desist order, which would also be
 12 speculative as to the actions of the zoning enforcement
 13 officer.
 14 So we have Mr. -- She's asking Mr. Branse to
 15 testify as to the actions of people who he cannot speak
 16 for, and to testify as to events which have not
 17 occurred.
 18 THE COURT: Well, but he's -- he's testified that
 19 he's an expert, and he's worked with the town of
 20 Glastonbury as the town planner in Glastonbury.
 21 It is cross-examination. So I'll overrule
 22 objection. Did you understand the question?
 23 THE WITNESS: I'd like to hear it one more time.
 24 Q (BY MS. CRITTON) To shorten it a bit. I asked if, to
 25 your knowledge, any enforcement action, such as a cease and
 26 desist order, had ever been issued with respect to use of
 27 property in the Planned Travel District as a farm?

1 A So it's not -- you're not just asking but this
2 property?

3 Q Well, I said the Planned Travel District?

4 THE COURT: You've expanded the question --

5 MS. CRITTON: All right.

6 THE COURT: -- to a planned --

7 MS. CRITTON: All right. Let's ask it first --

8 THE COURT: -- and you can do that, if you wish.

9 MS. CRITTON: Right.

10 Q (BY MS. CRITTON) But let's ask it first. Have any,
11 have any -- do you know if any cease and desist orders have
12 been issued with respect to this property?

13 A I don't know that there's been any farming on this
14 property.

15 Q Okay. And you did testify that you've looked at this
16 property over the years, and to your knowledge no farming has
17 ever occurred on this property?

18 A No, I've never seen it.

19 Q Okay. Thank you very much. When a regulation is
20 ambiguous, and you suggested that this one is, is it a
21 tentative statutory construction with respect to zoning
22 regulations that a commission will attempt to reconcile the
23 two inconsistent portions to make them workable?

24 A That is one tentative statutory construction. The
25 other, of course, is that the later enactment controls.

26 Which is why, when Mr. Sakon asked me whether there were
27 any permitted uses I answered, no, because I view the '81

1 a particularly ambitious application has been turned down,
2 there is --

3 MR. SAKON: Objection, Your Honor.

4 THE COURT: Just a minute --

5 THE WITNESS: Let her finish.

6 THE COURT: I haven't heard the question. Let me
7 hear the question.

8 MS. CRITTON: When a -- he's represented he's an
9 expert witness in the zoning law.

10 Q (BY MS. CRITTON) That if a particularly ambitious
11 proposal is turned down, that a, that -- that does not mean
12 that the less ambitious proposal would necessarily be turned
13 down?

14 THE COURT: Objection, Mr. --

15 MR. SAKON: Objection as to the word "ambitious".
16 It's causing -- I'm sorry. Objection to the word
17 "ambitious".

18 THE COURT: Well, do you understand the term
19 "ambitious," Mr. Branse?

20 MR. SAKON: I think she should --

21 THE COURT: Just a minute, Mr. Sakon.

22 THE WITNESS: I think I understand how it's being
23 used here.

24 THE COURT: Pardon?

25 THE WITNESS: I think I understand how it's being
26 used here.

27 THE COURT: All right.

1 amendment as taking precedent over the '73 text.

2 Q Thank you. But as you mentioned earlier, the
3 commission has considerable discretion in the interpretation
4 of its own regulations. Is that correct?

5 A They have discretion. The case law is that, that
6 they -- where's there's an ambiguity, they have discretion as
7 long as they don't distort the words with what they actually
8 say.

9 Q Okay. Thank you. With respect -- you mentioned that
10 there was an application for, what, in 1971, I believe --

11 A Thereabouts.

12 Q -- you said? Do you recall what that was for?

13 A It was for a motel.

14 Q And do you recall if that was approved?

15 A It was. It was not, not for, by the way, not the same
16 -- it was a portion of this land.

17 Q Okay. Thank you. Now the application that was subject
18 of the decision, the Victoria Square decision.

19 A Yes.

20 Q Do you know how much -- it's in the decision, and the
21 decision is in evidence -- how much retail space was proposed
22 for the property?

23 A I could certainly look at it. It shows a total, there
24 was 11,600 square feet existing, and 65,775 square feet
25 proposed.

26 Q Thank you. Is it also a tenant of zoning law, and I
27 believe the court actually mentions it in the case, that when

1 MR. SAKON: Then I withdraw my objection, Your
2 Honor.

3 THE COURT: All right.

4 A And I guess my answer is: That, first of all, no, I
5 don't see the decision as saying that.

6 And, second, just so you have a frame of reference, and the
7 Court has a frame of the reference, 65,000 square feet is the
8 size of a typical grocery store. It's the size of the Stop &
9 Shop around the corner from this property.

10 It's the size of a typical single user. A Target, for
11 example, is 86,000 square feet. A Home Depot is a 140,000
12 square feet.

13 So I could never describe 65,000 additional square feet as
14 ambitious --

15 Q Okay?

16 A -- it's anything but.

17 Q All right. What I asked is if it was a tenant of
18 zoning law that a less ambitious, when a more -- all right. I
19 will state it differently.

20 When a development of a particular scale is turned down, is
21 it a tenant of zoning law that a less large scale development
22 will necessarily be turned down?

23 A There is no such tenant, no.

24 Q So in the case, when the judge said, and used italics,
25 the commission has denied an application for a permit to
26 conduct this particular use of land, using "this particular"
27 in italics. He, you know, he's -- and then he goes on to say

1 that he will not conclude that the commission's denial
2 foretold anything about its action on future applications --

3 THE COURT: You're reading from Plaintiff's
4 Exhibit 11?

5 MS. CRITTON: I'm reading from Plaintiff's Exhibit
6 11.

7 THE COURT: Yes. Okay.

8 MS. CRITTON: Pages 19 to 20.

9 THE COURT: All right. And what's your question
10 to the witness?

11 MS. CRITTON: Well, I was just asking him to -- he
12 had said that the court did not say that a -- that a
13 less ambitious or less intense application would be
14 turned down.

15 I mean, I think the implication is that that's
16 what the court was saying.

17 THE WITNESS: No, I don't think that's what the
18 court said.

19 Q (BY MS. CRITTON) okay.

20 A What the court said was that a different proposal might
21 fare differently, which, of course, is a truism. I mean a
22 different application might fare differently. And on direct,
23 Mr. Sakon asked me if you could file other applications for
24 different uses, and my answer is, yes, you could.

25 What my direct was, however, that if you look at the three
26 reasons for denial, the stated reasons for denial, at least
27 two of them would apply to any retail use regardless of scale

1 looking for tenants. But, typically, when you do a shopping
2 center, you may have an anchor tenant identified. That's
3 common. But to know, to know the exact nature of every
4 tenancy at the time of application is unheard of.

5 Q I don't think that's what the reason says, but --

6 A Okay.

7 Q -- you know, I'm not going to --

8 A It says "uncertainty".

9 THE COURT: There's no question pending, Mr.

10 Branse.

11 MS. CRITTON: Right.

12 Q (BY MS. CRITTON) So with respect to your testimony
13 regarding merger, it's your testimony that the granting of a
14 wetlands application that includes multiple -- you have not
15 testified with regard to the granting of wetlands
16 application.

17 Does the granting of a wetlands application that includes
18 multiple properties have any bearing on merger?

19 A None whatsoever. Merger is a zoning concept.

20 MS. CRITTON: I have no further questions for this
21 witness.

22 THE COURT: Do you have any redirect --

23 MR. SAKON: Redirect. Yes, Your Honor, I'll be
24 very brief.

25 THE COURT: Well, we're going to take recess in a
26 couple minutes for lunch.

27 MR. SAKON: Yes, Your Honor.

1 and regardless of design, because they all have to use these
2 access points in their current width, their current
3 configuration, and their current topography. And any
4 development would have to identify uses only to the extent
5 that they're capable of doing it at the application stage.

6 So Reasons 1 and 2 could be applied to any development
7 regardless of size or pattern. And that was my testimony, and
8 I reiterate it.

9 Q Isn't it -- I'm looking at Reason No. 1, which is the
10 uncertainty of specific retail tenant types.

11 A Yes.

12 Q Isn't the reason for requesting some information about
13 retail tenant types simply to assess the amount of traffic,
14 the hours of operation, and is it to assess the impact of the
15 development?

16 A That's what -- that certainly is what the reason is
17 saying, and that is what the court has upheld. The problem is
18 that the Glastonbury zoning regulation identifies use
19 categories. It's in Section 4.7.1. It identifies the use
20 categories.

21 And I can rarely remember a general service shopping center
22 being proposed -- not only in Glastonbury, but anywhere --
23 where the developer at the time of application knew the exact
24 tenancies, whether it be a furniture store versus a grocery
25 store versus a drugstore.

26 When you do a shopping center anywhere, not just
27 Glastonbury, anywhere, once it's approved, then you start

1 THE COURT: All right.

2 MR. SAKON: I'll be very brief.

3 REDIRECT EXAMINATION BY MR. SAKON:

4 Q Mr. Branse, you testified that when these zoning
5 regulations were adopted there was a redevelopment agency and
6 redevelopment property in the center of town --

7 A Correct.

8 Q -- did you not? Who owned that redevelopment property?

9 A The town of Glastonbury.

10 Q So the town of Glastonbury really adopted regulations
11 in such a fashion as to promote the town's own property
12 interest over that of private developers. Is that correct?

13 A I wouldn't express it that way. The town was trying to
14 give the redevelopment project --

15 Q Attraction?

16 A -- an opportunity to get established.

17 Q Okay. But after that redevelopment project was
18 finished, did they amend the regulations to allow further -- I
19 mean easier development of these properties?

20 A I don't believe so.

21 Q A question to you. In the Planned Travel Zone, are you
22 familiar with the Summerset Square?

23 A Yes.

24 Q Was that at one time located in the Planned Travel
25 Zone?

26 A It was, but it was approved under Planned Area
27 Development, the floating zone.

1 Q Okay. So basically the developers of that zone went to
2 the town council and got a zone change to, for an approved
3 use?

4 A That's correct.

5 Q And that was not approved by a town Plan And Zoning
6 Commission?

7 A It was not. And it was not done under the travel zone
8 regulations.

9 Q Okay. So they used a special provision of the
10 regulations rather than the normal, the normal --

11 A That is correct.

12 Q -- application. Okay. In reference to, you testified
13 that there was a motel approved on this property at one point
14 in time?

15 A That's correct.

16 Q Okay. I'll refer you to page 19 of Judge Shortall's
17 decision. He deals with the question of that motel approval,
18 does he not?

19 A He does.

20 Q And reading from the top of paragraph, the first
21 paragraph of page 19, what is his conclusion as to the status
22 of that motel approval?

23 A Judge Shortall concludes that the approval has expired
24 by operation of law.

25 Q Okay. Just out of clarification, has -- to your
26 knowledge, has Judge Shortall's decision been appealed?

27 A I understand it has, yes.

1 Q -- particular issue?

2 MR. SAKON: I have no further questions, Your
3 Honor.

4 THE COURT: All right. Let's stand in recess
5 until two o'clock. You may step down, Mr. Branse.

6 THE WITNESS: No recross?

7 MS. CRITTON: Well, I --

8 THE WITNESS: I was trying to find out if I could
9 leave.

10 MS. CRITTON: No recross.

11 THE COURT: Well, I'm going to give you an
12 opportunity after lunch, Ms. Critton, if you'd wish
13 to --

14 MS. CRITTON: No. Thank you, Your Honor.

15 THE COURT: -- to do any recross. You had a
16 question, Mr. --

17 MR. SAKON: May Mr. Branse be excused?

18 THE COURT: Well, that does raise an issue. Did
19 you wish to --

20 MS. CRITTON: I don't know if I will need, you
21 know, to --

22 THE COURT: Well, maybe we ought to have him come
23 back at two o'clock, and then you can make a decision.

24 MS. CRITTON: I know that I have no immediate
25 need. Whether I might want to recall him at some
26 future time -- the pace that this is going, I
27 suspect --

1 Q In the zoning process, you have to file a certification
2 of appeal or is it an appeal as of right?

3 A It's a petition for certification.

4 Q And that has been filed?

5 A That's my understanding.

6 Q Okay. A question as to the constitutionality of the
7 property, which was raised by the court --?

8 MR. SAKON: Last question, Your Honor.

9 Q I would refer you to the first full paragraph on page
10 20, would you please read that into the record and comment on
11 it.

12 A Page 20 under item six?

13 Q No, the first full paragraph: There was ample.

14 A There was ample evidence before the commission to
15 support its second reason for rejecting the applicants'
16 application, in its action in doing so did not constitute an
17 unconstitutional taking of any property interests held by the
18 appellants.

19 Q That really deals with the constitutional issues that
20 were raised by the applicant, is it not?

21 A I suppose so. I remember the footnote just
22 indicating --

23 Q But in that particular section, it says that he rules
24 on the -- so, therefore, a constitutional issue was raised --

25 A Apparently so.

26 Q And it was resolved by the court in that --

27 A. Yes.

1 THE COURT: Well, since he's here, why don't we
2 have him come back at two, and then if you want to ask
3 him a question you can, rather than have him come all
4 the way back at another time. That's, what's your --

5 MS. CRITTON: My preference is that we simply
6 excuse Mr. Branse.

7 THE COURT: Excuse him. All right. You're
8 excused.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. We'll stand in recess
11 until two o'clock.

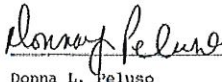
12 (Recess).

SUPERIOR COURT
JUDICIAL DISTRICT OF NEW BRITIAN
AT NEW BRITAIN

JOHN ALAN SAKON : CV05-4003783 S
v. : October 13, 2006
TOWN OF GLASTONBURY :
_____ :

C E R T I F I C A T E

I, Donna L. Peluso, Court Reporter/Monitor, certify that the foregoing is, to the best of my ability, a true and accurate phonetic transcription of the proceedings had in the above-entitled case, before The Honorable Arnold W. Aronson, Judge Referee.



Donna L. Peluso
COURT REPORTER/MONITOR

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Shoppes at Avalon Assessor Parcels

MINIMUM LOT SIZE	PLANNED TRAVEL	REQUIRED	PROPOSED
10 acres	PLANNED TRAVEL	10 acres	13.55 acres
MAXIMUM BUILDING COVERAGE	MAXIMUM BUILDING COVERAGE	11.84% S.F.	14.20% S.F.
BUILDING SETBACKS:			
FRONT		25' R.	25' R.
REAR		25' R.	25' R.
SIDE YARD		5' R.	5' R.
MAXIMUM BUILDING HEIGHT		2.5' R.	2.5' R.
MAXIMUM STORIES		2.5' R.	2.5' R.
MAXIMUM LOT AREA		18,240 S.F.	22,524 S.F. (2.5' R.)
MAXIMUM OPEN SPACE		18,240 S.F.	22,524 S.F. (2.5' R.)

NOTE: BUILDING HEIGHTS SHALL BE MEASURED FROM THE FINISHED GRADE AT THE POINT OF MEASUREMENT. BUILDING HEIGHTS SHALL BE MEASURED TO THE TOP OF THE ROOF OR TO THE TOP OF THE SIGN, WHICHEVER IS GREATER.

REQUIREMENTS:

- 1. MINIMUM WALKWAY WIDTH SHALL BE 4 FEET.
- 2. MINIMUM WALKWAY WIDTH SHALL BE 4 FEET.
- 3. MINIMUM WALKWAY WIDTH SHALL BE 4 FEET.
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- 9. MINIMUM WALKWAY WIDTH SHALL BE 4 FEET.
- 10. MINIMUM WALKWAY WIDTH SHALL BE 4 FEET.

2958 Main Street Ground Lease

Deeded Roadway Easement

8E Main Street Rear

Deeded Roadway Easement

2B Griswold Street Rear

131 Griswold Street

Utility Easement

Drainage and Roadway Easement

THE SHOPPES AT AVALON PLAN OF DEVELOPMENT

MAIN STREET & GRISWOLD STREET
GLASTONBURY, CONNECTICUT
DATE: 07.07.07



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