





all directions, and additional landscaping in the front yard to make it greener beyond just grass as well as around the dumpster area. He said there are no seats proposed at all, service is either by a drive-thru or walk in and pick up. They have provided a truck turning movements plan and noted that they plan to use a box truck for deliveries to this site. The lighting has been designed to not to shine on any residential properties. Mrs. Emminger said it is the Planning Department's opinion that the travel lane serving drive-thru does not serve site, it only serves the drive-thru. She said the Staff comments still stand that this does not comply with the Zoning Regulations. Attorney Neil Marcus said the Regulations allow driveways to be in the buffer area although the language is poorly drafted because it doesn't define what a driveway is. He said this is a driveway and suggested the Commission read the actual language and see if they think this does not comply. He said driveways always have to cross a twenty foot buffer to get out onto street and again suggested they review the regulations. Mrs. Emminger reminded the Commission that as part of a 2007 amendment package, this issue was addressed by adding specific language, which is Sec. 3.E.8. She said based on these amendments, the travel lane is part of the drive-thru and serves the drive-thru. Attorney Marcus argued that the language in the Regulations is poorly drafted. Mr. Keller said this is a site plan issue; there is no problem with the Regulations. Mrs. Emminger said there is no ambiguity; the travel lane is served by the drive-thru. Attorney Marcus said they would take a look at the plan. Mrs. Emminger the said intent was very clear on this. Mr. Urice said if it ends at the window, it is not a travel lane. Chairman Finaldi suggested that since the public hearing is still open, they should move on as they can come back to this issue.

Mr. Virbickas said they received comments from staff regarding the floodplain and they haven't had time to address them yet. He said the Commission had asked for something to show where driveways are, so he presented an aerial rendering of the area. Mr. Keller said this is an issue of safety pointing out that this entire site is three to four feet below the base flood elevation. Attorney Marcus said they can't apply this regulation because the building is pre-existing. He said ZBA said they can't put up a new building and this Commission is saying they can't use this building because they can't meet the requirements to access it. He added that for fifty to sixty years this building has been used as a gas station and also a car dealership with no history of anybody's safety being impaired. They are not putting any seats in this building to prevent anyone from hanging around for too long. He added that there have been floods in this area recently and no one was hurt. Chairman Finaldi said during the 1999 flood which took over this area, even the properties across the street were flooded. Attorney Marcus said that was different because it was not a flash flood, it was an extensive amount rain over a period of time. He said if this Commission says they can't use this site, then the driveway issue doesn't matter because the City will have to own the site. Attorney Marcus asked the depth of water during a hundred year storm and Mr. Virbickas said four feet deep, maybe fifteen inches of water will be in and around the store property. Mr. Urice asked how employees safely exit a building that is under four feet of water. Mr. Virbickas said no one was stranded at the site during Hurricane Floyd. It is not a flash flood and once people know the road is flooded, they aren't going to be rushing to get a donut. He said the donuts are made at the Commerce Park facility which is almost adjacent to this site. Attorney Marcus said the owner can monitor the Still River from the Commerce Park site and if need be, he can close the Federal Rd. store.

Mrs. Emminger said the development at Greentree Toyota was done during the 1980's and by means of variances to the floodplain regulations granted by ZBA. She said the last approved use was a car dealership. This Commission is not denying them use of the property because this

same use could go in without approval. Last April, Federal Rd was closed because of four feet of water and in that same situation, the first area that will flood is the drive-thru. She said because the Still River is right behind this site, the Planning Dept. does not feel this site complies with the floodplain regulations. Attorney Marcus then read from ZBA minutes for Greentree Toyota saying there is a hardship. Mrs. Emminger said at this time, this fails to comply with the regulations and if they don't get a variance from the ZBA, then they cannot comply. Attorney Marcus said the Commission really needs to go to Corporation Counsel for an opinion on this. Mr. Urice said he thought that the ZBA told them they couldn't grant the variance. Attorney Marcus said Dick Jowdy (the Chairman of the ZBA) told them they might as well use the existing building because they couldn't grant them the variance. Mr. Manuel asked if they had asked for variances to use this building and Attorney Marcus said they did not ask for that. Mr. Urice asked if we are getting an extension of time to continue the hearing and Mrs. Emminger said we got a thirty day extension this morning. Attorney Marcus then said the City's traffic report says Federal Rd. is already a heavily traveled road and this use will generate a lot of traffic movements. He added that the question is can the Commission deny the use of the site based on traffic? He continued saying that is unimportant if they are going to require them to get out of the building above the floodplain because that is never going to happen. He added that conditions not caused by the site are being held against it and that does not make sense.

Allan Mess, Barkan & Mess, said Dunkin Donuts does their greatest amount of business in the morning. He said there is significant difficulty turning left in or out at any time during day because of intersection not being signalized. He said that restricting turns is sometimes a solution. He said with the amount of traffic that will be in and out of this site and no signalized intersection, they are going to have traffic problems. Mr. Manuel asked Mr. Mess if he is saying that any business on this site will have traffic problems. Mr. Mess said there is the left turn pocket going northbound for home depot entrance which could be used to create turning lane. Ms. Hoffstaetter said the City Traffic Engineer's report does not agree with that, there are not a lot of options to accommodate the turns. Mrs. Emminger said at last meeting the Commission had requested a map showing the signalized intersections and the travel lanes. Mr. Virbickas said he may have misunderstood what they wanted, he thought the photo showed the information they were looking for. Mrs. Emminger asked if there is some feasible way to provide a plan showing the turning lanes. Mr. Mess said if they were to create an area to accommodate left turns, they would have to take it from the existing turning lane used to get into Bob's and the Home Depot. Chairman Finaldi asked Mr. Virbickas if he had said that the CT DOT had done a study of trip generation for Dunkin donuts specifically and Mr. Virbickas said they had. Chairman Finaldi asked how big this report is and Mr. Virbickas said it is about 200 pages. Mr. Mess said they submitted the trip generation findings as part of his report.

Attorney Marcus said there is very little traffic moving northbound on Federal Road most is going southbound and Mr. Mohammed's conclusions about exiting this site are wrong. He added that the only time they should be concerned about is the AM peak because the afternoon traffic will not be impacted by a Dunkin Donuts. Chairman Finaldi said several of the Commission members live in this area and have observed this site on their own. Ms. Hoffstaetter said it is pretty busy on Saturday and that during the week, it will be even busier. She said it is not a good idea to encourage crossing three lanes of traffic to get in or out of this site. Attorney Marcus said people tend to figure out the best way to get through traffic. Mr. Urice said he had a question regarding Fire Marshal Rickert's comment about fighting a fire on a site located







