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DRAFT MINUTES
November 10, 2011
COMMON COUNCIL CHAMBERS
7:00 PM

ROLL CALL:

Present were Chairman Richard S. Jowdy, Herb Krate, Michael Sibbitt, Joseph Hanna, Rodney S. Moore. Richard S. Jowdy called the meeting to order at 7 pm. Krate made a motion to hear the two items. We have switched the order around because **11-36** is going to be time consuming, Jowdy said. Hanna and Sibbitt seconded the motion. Motion carried unanimously.

Absent was Alt. Rick Roos.

Staff present were Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary. Richard S. Jowdy explained the procedure for a Public Hearing to the audience.

NEW BUSINESS:

11-37 - Hatcher Family Ltd. Partnership, 21 Cedar Dr. (K04145), Sec.8.C.1.c., to allow parking in front yard; Sec. 8.A.2.c.(4), to allow bottom edge of excavation or fill to be 0 ft. from property line, reduced from required 5 ft. (RA-20 Zone). Jowdy introduced this application at 7:01 pm, and Michael Mazzucco, PE, took the mic and signed in. This came before the ZBA recently for the front yard and the side yard. This request is for a retaining wall and parking. To handle the grade, the cars would have to park off the road far enough. Mazzucco distributed his photos to the commissioners. Lots of the lots up in that area are very small lots, and have issues with very limited parking, due to the small width and size of the lots. Krate asked him is the lot you're talking about the one with the fence on it. Mazzucco replied yes, it's under construction now. Commissioners reviewed the plans # 03028. This was a teardown, rebuild, and Mazzucco explained how the house was pulled forward a little bit. Moore asked how many parking spaces are in the front yard. Mazzucco replied two. I think there are 3 or 4 in the lot to the north. The commissioners asked several questions of Mazzucco. The variance you're asking for, Krate asked, and Mazzucco restated the two variances requested. Jowdy said you want to make it conforming. Mazzucco said it's almost identical to the neighbor to the north. Are there any questions for Mike Mazzucco, Jowdy asked. Is there anyone who wishes to speak for or in opposition to this proposal? Krate made a motion to close the **11-37** Public Hearing. Hanna seconded the motion. Motion carried unanimously. Later, Jowdy reviewed the Hatcher variance application. Krate made a motion to **approve** to allow parking in a front yard; to allow the bottom edge of excavation or fill to be 0 foot from the property line, reduced from required 5 feet, per plan submitted, and I have a little ad lib, did you address this with Elpern? And Elpern said he'd look into it. This is per plan submitted. Hanna seconded the motion. Motion carried unanimously.

CONTINUATION OF PUBLIC HEARING & POSSIBLE ACTION:

11-36 - CONTINUED: Neil Marcus, Esq., 114 Triangle St. (K14120, J14268, K14119), Sec.4.B.2.(a); Sec.11.B.2.(b) & (c); to allow expansion / continuance of a non-permitted industrial & commercial use in RMF-4 Zone. Richard Jowdy said we are going into a continuation of **11-36**. This was continued for the lack of a quorum, and Jowdy explained giving the applicant the opportunity to come before a five-man board. Attorney Neil Marcus identified himself at 7:06 pm. The property is on Triangle Street. Krate asked Marcus to bring the easel to the other side. Jowdy noted this one shows the trucks loading platform. Marcus said this is an existing conditions map showing the property that is the subject of this application. Marcus described the framed two-story dwelling in the front and the address. There's been a readjustment of the property line. Behind the house, what's existed here for 70 to 80 years is an auto wrecking slash junk yard known as Bert's. Marcus described the surrounding abutting properties: Lion's, the railroad, and the easement for the power lines. The sanitary sewer goes right through the middle of the property. The Hardships are (A) this is residentially zoned, and other than the front part has never been used other than for residential. The hardship is the sewer line and the power lines going through the site. Jowdy asked a few questions of Marcus about parking. There are no parking spaces shown on this map, Jowdy said, referring to the plan before him on the dais. In a future map you are going to have to show this. We will, Marcus replied. The map that's in front of you is the site plan for the rear proposal. Marcus and Jowdy discussed the separate parcels. Krate asked when did this property line change occur. Marcus explained we defined it to clearly demark what is residential and what's part of the scrap yard. It is a perfectly legal lot, Marcus said. The house has been there forever, nonconforming. The focus of the application has nothing to do with the house. Krate said, well, it does in a sense. Marcus described what exists in the rear of the lot. Jowdy asked about the existing concrete block building. Marcus said the new building is much larger. Marcus handed out the sketch with the size of the building. In 1977 the two Novella's applied to the ZBA for a junk yard, have been used for a motor vehicle as a junk yard, and he stated for how long. The zoning history is that in 1977, for forty years prior, this has operated as a motor vehicle and scrap junk yard. Krate asked has that site been identified by the State as a clean-up site. Marcus said not to my knowledge. Hanna interjected if it goes up for sale, someone will make those tests. In 1954 this site was a junk dealer, Marcus stated, as evidenced by the photo of the license plate Marcus submitted. The City licensed auto and scrap permits 1/20/11 through 1/19/12. Marcus read a further history of what existed on the lot, and I have 15 separately signed statements stating that this was operated as a junk yard. My clients are in Bridgeport, Marcus said, Norwalk, and Danbury now. Marcus next provided invoices on Lajoie's letterhead indicating that business was taking place on the site. Employee James Murphy said, as part of the process of an automotive junk yard, we understand, with the City and the DMV, to do what is right, and clean up the site. If you've been there, we already have. It's a continuous process. Marcus said this is to honor the commitment to clean up the area. None of these papers have dates on them; these are invoices without any dates, Krate said. Some do and some don't, Marcus and Murphy said. We'll give you the year on this, Marcus said. Krate said at some point I would like to see dated invoices, other documentation and see if they correspond. There are cash tickets. Murphy said for copper tubing, some brass and wheels, house wrecking, demolition, stainless steel, some insulated wire. Krate said I don't find this as sufficient documentation, as these are all addressed to Norwalk. Lajoie is the purchaser from Novella, Marcus explained. Krate said okay. Marcus presented an invoice dated 2/11/99 for aluminum, some auto bodies, invoices for copper, all back in 1999, 2000; a whole sequence of them here. Jowdy said I don't disagree with you, but show me documentation that material was brought to Novella in Bridgeport. Marcus said what we are trying to establish is what the historic use of the yard was. They were picking up from Risdon, Amphenol, and got enough

to ship down to Norwalk. Krate asked what do they do at their other locations. Marcus then passed out some books to the commissioners: Lajoie's Auto Wrecking operation in South Norwalk, which shows how a scrap yard operates. Marcus described the storage, recycling, the bale wire, some indoors, some outdoors, the catalytic converters, and the shaker table for sorting metal. This is all being done outdoors in Danbury; all the sorting, separating, baling is outdoors. Jowdy asked the percentage of the business this represented. You are coming in now for an expansion of the use, and now you will have a very large building. Murphy said it makes it more humane. Marcus clarified what percentage Jowdy is asking about. Murphy said that's a very good question. How much more is going to be done outside, Jowdy asked. Krate asked about the number of trips and trucks in Norwalk. How many are there in Danbury today? It's cars, Peter said from the audience. Murphy said that's why we're here, to see what is best for everybody. Krate asked Sean Hearty, if this is approved, what happens next? Hearty explained the need for a site plan, and lot line revision plans; that would take place next. Murphy said the DEP has determined that the site is a bowl, and then DEP would probably require a stormwater detention plan. Krate expressed concern for the runoff leaching out of an area that's been loaded with all kinds of crap for 100 years. Murphy responded as Don Lajoie came to the mic saying I've worked outside with my Dad; now my Son-in-law is taking up new things. Are you going to crucify us? The commissioners objected verbally. The water does not leave the property the DEP determined, Lajoie said, and he then sat back down. Marcus described the scrap material sorted into separate rooms inside. We'd like to move it in. We've showed you how it works in Norwalk, Marcus continued. Krate said you're in an RMF-4 Zone. How high will you stack these pallets? Murphy said all pallets will be inside. Marcus said the only thing outside will be the auto bodies. The three discussed what is currently outside, since there is not yet enough room to keep them inside. They are under tarps to keep the moisture out. Jowdy asked does Mr. Lajoie want to say something. Murphy explained what Mr. Lajoie wants to say is that putting them inside keeps theft down. Murphy said the building would be 30,000 square feet. It's the only location we can go to due to the sewer line and the overhead wires, Murphy said. Marcus described the Norwalk operation with the aluminum baler outside. The last white blank page is Danbury on Triangle Street. This is how we store scrap in Danbury right now; a very small concrete building. The bulk in Danbury is all outdoors. We're trying to get this indoors, Marcus concluded, and he explained the variance that we seek, itemizing the details and equipment of the layout. We are limited to the front northwest corner of the site. It's a clean industrial building. Marcus described the nearby condominiums and the railroad tracks. It was a scrap yard when they built the Lions Condominiums. Marcus handed out the train schedule, proving that these tracks are used. Marcus next described the screening by the building itself and by the planted screen. Krate said we could extend it, but we cannot plant under the high tension wires. Murphy said this is how we screen it in Norwalk, referring to the photos. Krate said you can plant some trees; those wires are quite high. Marcus and Murphy said we could do some planting, but there must be access to the wires. Marcus said I will show you the facades of the building, the front and the side of the building, the loading dock in the back, and the actual dimensions of the building as Mr. Jowdy had asked. Marcus said eleven 25-foot sections. Jowdy said approximately a football field. Here are the elevations again, Marcus said. It's a block. It's a screen. Krate asked Hearty if this has to go before a board that considers traffic flow. Marcus replied as part of the site plan review we will have to address that traffic issue. Marcus referred to Sec. 11.B.2.b. The existing structures are all nonconforming buildings and can be removed, and the new building, although large, is conforming. Marcus said it used to be an RB-5 zone before the regulations were changed. I can't understand why it is a residential zone, Marcus said. So why are we here? Marcus mentioned the commitment to the City to clean up the site. There is a tremendous need for this kind of service. The audience made some comments, and Krate asked the audience to keep it orderly. Marcus said if we are allowed to construct the

building, we are operating; that's the only question we have to answer tonight. Marcus explained the expense of the building and the benefits to the community, the tax rolls, and improvement to the quality of life of the neighbors. The application is merely to build the building. Hanna asked what kind of operating hours will there be? Murphy said we may work 7 am to 5 pm and half a day on Saturday. Marcus said they haven't changed that, but it's a good question. Jowdy said we are not here to crucify Mr. Lajoie, and he explained the mission of the Zoning Board of Appeals, saying it's up to your lawyer to prove that. Is there anyone here in favor of this application? You must come up to the mic and sign in, Jowdy said. Lou Funk and Nunzio Sasso came forward. Funk said I've been a Danbury resident for 14 years; Omaha Beef, Funk discussed the trucks and squeezing the trucks under the Lake Avenue bridge. I had to go to the junk yard to condemn the beef, Funk said. I have known Don Lajoie and spent some time with him, good and bad. So from the picture I just saw now, if he's willing to put his nickel up, I am in favor. Sasso then took the mic, saying I've been in the trash hauler business for 10 years, and I remember this incident. I wanted to give away some scrap metal. I went to a junk dealer, and the answer was yes, we'll take it but we have to charge you. You must give me \$150 and in cash, the junk dealer told Funk. I turned around and went to Norwalk Lajoie's operation. They are wonderful, professional people; they run a clean operation. He's like a kid that doesn't want to grow up. It's in his heart. They make you feel like family when you go there, Sasso concluded. Earl Read from Triangle Terrace said it's the best looking junk yard. Andy Schlemmer said I used to be president of a union. I live at 28 Purcell Drive and am an environmentalist, and this is a bomb ready to explode. Schlemmer described the auto stripping operation. Krate asked Schlemmer are you speaking in favor? Schlemmer said no. Schlemmer gave some history of the Lions Condominiums. Krate asked are you speaking against the proposal? Yes, Schlemmer said. You are out of order, Krate said. We are hearing people in favor of the application.

Nickerson said I've known Mr. Burke way back, in the early days. He was a very good friend of mine, and in fact he offered to sell me the junk yard. The Novella's bought the junk yard. There were a lot of wooden buildings in the front. I brought a lot of stuff in there that Novella accepted, and I bought a lot of stuff from there. I witnessed steel vats of copper that he had accepted. Nickerson said you had questioned whether this would impact someone's well-being. The hardship, I can't see it. Jowdy said the hardship does not supercede his hardship. His hardship, Nickerson said, is trying to do everything outside. Nickerson said this is a big hardship, the weather. Moving inside will make it a lot easier for his workers. I've known Mr. Lajoie a long time, and as you can see with his operations he's created, it's completely organized. You'd be amazed at what they do, and they ship it out. There operation is of high level; top notch. With this junk yard or this scrap yard, I'm positive that Mr. Lajoie will make it a top notch operation. It will be organized. If you could see his other operations, I'm positive this operation will be the same, Nickerson concluded. Chairman Jowdy said the ZEO is going to make a presentation next, before the opposition speaks.

Sean P. Hearty, City Zoning Enforcement Officer, identified himself and his position and the October application # 11-36 from Neil Marcus. I offer a long history of the site. We will start with a hand-out on the history of the parcel, stating the parcel number, in the RMF-4 zone. Hearty put the map from 1977, May 31st, on the easel. Russell and Anthony Novella owned 3.838 acres. Hearty discussed the lots in back and the two-family home in front. The lots in the rear 19 and 20 have operated as a junk yard prior to the existence of the zoning regulations. Hearty handed out Exhibit A, the old assessor's cards, to the commissioners. Hearty said Novella purchased the rear lot in 1977, and the front lot in 1980. Hearty discussed extending the nonconforming use that exists; pushing the lot line up from here to here. The ZBA granted on 7/14/77 an auto junk yard and it was specific in its approval, which Hearty distributed. Hearty said the map presented in 1977 was this map, approved with the stipulation that the fence would be maintained between the

business and the properties, allowing a maximum of 315 cars, due to the property values in the neighborhood, Exhibit D. Krate said I have a question. Hearty said I'm just telling you how it was approved in 1977. Exhibit E is the minutes of that meeting. The importance is that it was conditioned on how it could be used. Refer to page 30. Mr. Rader was the attorney, and he said we do not intend to expand the operation; we do not want to degrade it; we do not want to expand their operations. Hearty explained they agreed to hold that fence line, and that fence line is currently up. Hearty continued to discuss the minutes of that meeting. I'm just trying to establish the fact that the use there was not going to be expanded. Jowdy read a portion of the minutes. Krate said I would like the last submission, E, to be included in the minutes of this meeting. Hearty described the orders issued, the Cease & Desist, the Notices of Violations sent by Bohan and himself, and it is not to disparage anyone's memory. Hearty continued discussing 1980, 1981, and Bohan's investigation. Krate said submit Item F to the minutes as well. An automotive relay station is how Bohan referred to the site, Hearty said. There's a letter from me dated 1/20/99 warning the Novellas, followed by an October 1999 Cease & Desist order. It was an expansion of the nonconformity; it was not permitted. In 1988 it discussed my visits, violations, that auto wrecking cannot be expanded here, Exhibit F. There are three orders from me, in answer to Chairman Jowdy. Cars were being dropped off outside his lot in the night, Hearty said. Several issues arise with the variance application, and Hearty discussed the uses, the front being used as residential. Moore asked Hearty how do you keep track of enforcement of this number of cars? Hearty replied it's hard, given the nature of his business and people dropping off cars in the night. You will see a lot a numbers flung around here tonight regarding the variance applications. Hearty read the regulations for the RMF-4 zone, Sections 11.B.1., 11.B.2.b., establishing the use here, and whether it was an illegal use. Violations started as of record in 1981. The rear parcel was a pre-existing nonconforming use prior to zoning. Jowdy said they were actually in violation with the Cease and Desist order, operating illegally. Hearty discussed the operation in front of the site. The rear property was operating as a junk yard. Hearty explained that Novella said cars were being dropped off in the night. Hearty continued citing the regulations pertinent to this history, expanding the use to recycling. Exhibit G shows it in 2007. The zoning amendments were effective 10/15/2007. A change of use from one nonconforming use to another is an illegal change. Hearty continued some sort of scale was located on the property, but Dean Esposito, of the Office of Weights and Measures, states a scale never existed on this site. No scale was located at 114 Triangle Street, Hearty said. 1980 was when they purchased the residential site. In 1981 the violations start. October of last year was the purchase date, James P. Murphy said. The map is still in effect, Hearty said, essentially expanding in the RMF-4 Zone. Marcus and Hearty discussed it being signed off and recorded. Krate said technically they could not approve it. Marcus replied they did. Hearty discussed the history; scrapping was never permitted on the site. There was a scale on the operation on Thorpe Street, but not on Triangle Street. The site now looks pretty good. They need to meet these requirements, Hearty said. We removed the junk yard (use) in October, 2007, as allowed in the City of Danbury. My job here is to present to you the City's position on this complicated lot's history. Moore asked about the lot line and the encroachment of the new building. Hearty said it would be a structural expansion of a nonconformity. Jowdy said that may be a question for Corporation Counsel. Hearty and Krate said we are challenging the lot line, and also the scrapping operation. If they can fit that building on the back parcel, they do not have to come to us. Hearty and the commissioners discussed the issues. This is a tremendous amount of stuff for us to go through; I suggest a postponement just to digest all this information. Jowdy said we will not decide on this tonight. Hearty read from Sec. 9.A. of the regulations (Nonconformities). Hearty asked Krate has the new lot line been accepted by the City? And can they do that because they can't arbitrarily expand a nonconforming use without a variance. Hearty said that would be Planning. Krate said I would like to clarify with Planning and Corporation

Counsel. In my mind, this board was formed to grant relief. I'd like you to address this with Corporation Counsel, so we can look at this without any gray areas. Understanding is not the same as telling me for sure, Krate said to Hearty. Marcus said, as a point of information, we are confusing in this discussion the changing of the property line with the changing of the use. Krate said no, we're not. In doing that you are increasing the use, Krate said. It was not the same, Neil, Krate said. Hearty said there is no current violation on the site. Krate said if that new property line was drawn, you do not wipe out the fact that that would be an expansion of a nonconforming use. Marcus said that is the issue that was just raised by Sean. Hanna asked about the permitted use. Marcus and Jowdy and Krate discussed shifting property into a nonconforming use, where it could be included in a nonconforming use. Marcus said the applicant has requested to withdraw the application at 8:43 pm. Krate explained the application is officially withdrawn. Tom Beecher, Attorney, representing Andy and John Delorenzo, stood up and said we are in opposition. I believe that if the application is formally withdrawn, the Public Hearing is closed. Some members of the audience said, no, I want to say something. Beecher said there's nothing legally pending if the application is withdrawn. Krate said, excuse me, we have another application to consider. Right now there's no opposition because there is nothing on the floor. Krate made a motion that we go into the voting session. Sibbitt seconded the motion. Motion carried unanimously at 8:45 pm. Commissioners then returned to the Hatcher application for voting (#11-37). For the record, I think that Sean did an incredible job.

ACCEPTANCE OF MINUTES: October 27, 2011, Meeting. Motion to accept these minutes as complete by Krate. Second by Moore. Motion carried unanimously.

ADJOURNMENT: Motion to adjourn by Hanna. Second by Krate. Motion carried unanimously at 8:48 pm.

The next regular meeting of the ZBA is scheduled for **December 8, 2011.**

Respectfully submitted,

Patricia Lee, Secretary