

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, FEBRUARY 3rd, 2005
MINUTES**

Feb 14 2005 at *2:10* ^{AM}_(PM)

Esther B Williams

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Theodore A. Harris, agent for "Mike's Famous" Public Hearing for Special Permits for Regional Shopping, a Restaurant and Repair Station at property identified as 15 Industrial Park Road, on January 20, 2005 at the High School Auditorium, Flanders Road, East Lyme, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:45 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas,
Secretary, Norm Peck, Ed Gada, Pamela Byrnes,
William Dwyer, Alternate

ALSO PRESENT: Attorney Theodore Harris, representing the Applicant
Michael Schwartz, Owner & CEO of Mike's Famous
Bill Vliet, Vliet & O'Neill - Traffic Engineers
Jeffrey Bianco, Architect - Bianco/Giolitto/Weston Architects LLC
William Mulholland, Zoning Official
Shawn McLaughlin, Alternate
William Henderson, Alternate

ABSENT: Marc Salerno, Alternate

PANEL: Mark Nickerson, Chairman, Rosanna Carabelas,
Secretary, Norm Peck, Ed Gada, Pamela Byrnes,
William Dwyer, Alternate

Pledge of Allegiance

The Pledge was observed.

Public Hearing I

- 1. Application of Theodore A. Harris agent for "Mike's Famous of Niantic" for Special Permits for Regional Shopping, Restaurant and a Repair Facility at property identified in the Application as 15 Industrial Park Road, East Lyme, Lot 2 on East Lyme Assessor's Map 26.1.**

Mr. Nickerson noted for the record that he had seated Mr. Dwyer, Alternate at the table this evening and that Mr. Dwyer had also been seated for the previous meeting. He added that Mr. Gada was present this evening also and asked him if he had familiarized himself with the record of the last meeting.

Mr. Gada said yes, he had familiarized himself with the record of the previous meeting.

Mr. Nickerson then outlined the order of the Hearing for the evening – Town Officials would speak first, then the Applicant would make his comments from the last hearing and finish his presentation. After that, the public would speak. He said that he would give further instructions when it got to that time. He asked that they remain silent while others are speaking and that cell phones be turned off so that they could hear the people speaking and the information being presented. He then called for Wayne Fraser, First Selectman to speak.

Mr. Fraser said that at the request of Staff, he would briefly answer questions that have been raised concerning Rte. 161, Industrial Park Road, the bridge and the access road where the Middle School is. He said that the Rte. 161 Industrial Park Road intersection has improved tremendously due to the Stop & Shop DOT offsite improvements. That intersection can now handle more traffic, more efficiently and much safer. The turning lane further down on Rte. 161 at Society Road has also resulted in a noticeable improvement. And, the

Town continues to ask the State DOT for even more improvements – including a stop light near Damon Heights Road and a review of the turning lanes.

The widening of the bridge as you enter the Industrial Park has been on the Town's Capital Plan for the last four years. The concern is to create a better, safer turning intersection for trucks and buses. The new plan that has been agreed to by Mike's Famous is an even better solution. A new intersection with proper turning radius and road widths will be constructed on their property, at their expense and deeded to the Town. To put this into perspective, he said that the first bridge estimate the Town received was between \$300,000 and \$400,000.

He said that his last comments were regarding the school access road. The Town supported that access road when the Middle School was built and the Elementary School moved. It was a very important safety and congestion improvement for access to and from the schools and sports complexes. It is a LOCAL ACCESS ONLY road with restricted truck traffic. Additional signage is already planned for both ends to clearly identify NO THRU TRAFFIC and LIMITED ACCESS FOR SCHOOL USE. He said that they would also have the Police Department monitor the area and watch closely for speeders.

Further, this proposed use is fully supported by himself and Dr. Reynolds, Superintendent of Schools. They do not want students walking through the Light Industrial Park and will work together to protect the local access only road to allow school traffic to operate safely and reduce the pressure on Society Road. He lastly said that the heavy bus traffic heads both ways as it splits and goes north also.

Mr. Nickerson said that other business that he had to address was the matter of letters, e-mails and calls that the Commission members have received at their homes. He said that they are not allowed and are not proper procedure. He noted that he had received some but had not entertained them, e-mails he did not open and phone calls he referred the people to speak with Staff. He called upon the other Commission members to state for the record if they had received anything.

Ms. Byrnes stated that she had received a letter that was sent to all of the Commission members but had not replied to it.

Ms. Carabelas stated that she also had received the same letter.

Mr. Gada said that he received the same letter and also some phone calls and that he told the people that they would have to call Town Hall and speak with Staff.

Mr. Peck said that he had received the same letter.

Mr. Dwyer said that he had received the letter also.

Mr. Nickerson noted at this time that the three other public hearings that were on the agenda for this evening would be opened and continued, as they would not have the time to hear them tonight.

Mr. Nickerson asked if a member of the Economic Development Commission (EDC) was present as he was told that they wanted to address the Commission.

Randy White, a member of the EDC read a brief letter from John Jensen, Chairman of the EDC into the record stating that they wholly endorse Mike's Famous coming to 15 Industrial Park Road. He submitted this to Mr. Nickerson and it was entered into the record as **Exhibit 6**.

Mr. Nickerson noted for the record that those opposing the application circulated a letter and the top of this letter had the official Town website logo and appeared to look like an official document from the Town. He wanted to make it clear that it was NOT a Town document and NOTHING in the letter was from or endorsed by any Town Officials.

Mr. Nickerson then called upon the applicant to give their comments.

Attorney Theodore Harris, 351 Main Street, Niantic representing the applicant, said that he would first address a few things that were said at the last public hearing.

First, traffic is really not a pejorative word – but rather something that is complained about like the weather – something always there. If you do not have traffic then you do not have a successful industrial zone. Traffic is

expected in a commercial zone and Mike's Famous will not exacerbate peak hour traffic. He then introduced Bill Vliet of Vliet & O'Neill to address the traffic comments.

Bill Vliet said that he would like to clear up a few things. He has read a lot of things in the newspaper – one being that he is with Fuss & O'Neill – which he is not. He submitted a copy of his resume, which was entered into the record as **Exhibit 7**. He said that he looks at traffic from a scientific manner be it single family homes or a regional shopping mall. He said that he designed the Pfizer roundabouts for the traffic there. He has done work for the Mystic Marinelife Aquarium and many active adult communities. He has studied how and when people travel and has done over 200 traffic studies. In accident studies it has been found that in over 50% of the accidents that it is not the roads or traffic that caused the accident but the driver.

The traffic study for Mike's Famous he wanted to make clear – that the generator type and level of the study does not require a Department of Transportation/State Traffic Commission application as it does not exceed 100,000 sq. ft. or 200 parking spaces. The business does not impact peak hours of travel consistently throughout the year. Being near the water, they normally see summertime spikes in traffic.

He said that he looked at the worst case scenario in Delaware. They do not generate a lot of traffic in the dead of winter. The peak time in Delaware occurs in the month of July. The most traffic they see there in a peak hour does not max out the parking spaces that they have. The average stay of their customers is one hour. In the worst case scenario during the month of July the maximum peak flow could be 85 vehicles per hour. This means entering or leaving and equates to one car every 20 seconds. The Stop & Shop site as a comparison sees one car every 4 seconds. The weekday peak traffic for that area is around the lunchtime period.

Another issue that he wanted to address was the 35,000 patrons in one month. He said that it does not equate to 35,000 vehicles, as each vehicle does not have just one person in it. When all the numbers are crunched, the maximum is 40 vehicles exiting or entering per hour.

He then passed out a 'Monthly Vehicle Trip Generation' Chart which was entered into the record as **Exhibit 8**.

(Attached at end of Minutes) He explained this chart in great detail and said that the peak driving hours and the greatest impact on Rte. 161 is actually Friday PM. The traffic at that time is higher than the peak time during the summertime. Mike's will not generate traffic during the AM peak hour, as they are not open then.

Also, they did not do a 'delta' analysis of what this site generated before (as Metal Pro). They based this study on Mike's Famous only without subtracting any of the previous traffic generation from the previous use of the property. They will have a stop sign at the end of drive so that traffic has to stop before leaving Mike's Famous. The proximity of the facility to the school will generate a minimum of traffic during the school hours and during the school year. School is closed during the summer season. They will also post signs stating no right turns. He said that a new patron to the facility has no need to turn right as they do not know where they are going or where they would end up.

Attorney Harris said that there was much discussion on the events and how they operate. He said that Mike Schwartz would explain the events.

Mike Schwartz, Owner & CEO of Mike's Famous passed out and submitted 'Mike's Famous Harley-Davidson East Lyme, Connecticut. This was entered into the record as **Exhibit 9**. This was also done as a slide presentation for everyone to see. From June 2003 to Present there were 160 listed descriptions of 'events' which breakdown as follows: 5 offsite events, 12 programs, 12 food events (BBQ, water ice, etc.), 13 operational notifications, 15 charity rides, 18 events, 33 educational seminars and 61 specials, discounts, promotions. He supplied a typed complete list of events in full detail and this was entered into the record as **Exhibit 10**.

He noted that two and a half years ago there was a bikini contest and he determined that it was inconsistent with the type of business that he runs and it has not happened since and will not happen here. He said that there has been a lot of talk about the potential for rallies in East Lyme. North Carolina, South Dakota and others hold week long events known as rallies and the dealers associated with them do not host them, it is the Town or City that generally hosts the rallies. None have been held at any of his locations and he does not plan any for here. Further, that type of event would require a permit from the Town.

As an example of an event - on Saturday, January 29, 2005 in Delaware the Jewish Federation of Delaware held a Leather & Lace Ball and raised over \$200,000 for a non-profit organization. This event did not involve motorcycles but rather people having a good time and giving back to the community.

He submitted a newspaper piece – The News Journal that was entered into the record as **Exhibit 11**. In this, the article was about volunteers making up boxes of footwear to send overseas to American troops in Iraq and Afghanistan.

He summed that the facts are that - every event (except for seminars, specials and programs) is charitable in nature – over 140 charities were contributed to in 2004. There are NO RALLIES and there is NO ALCOHOL.

Mr. Schwartz then showed slides of pictures of the existing interior of the building and explained the new floor plan in great detail. He noted that there would be a community bulletin board available to post things on and that there would also be a community room available for meetings that would have its own entrance so that it would not have to close when the business did.

He said that they heard some things about the architecture of the building and the inside of it is in the nature of the very strong industrial type. They are trying to work with that and in doing so, they asked John Carlin of Carlin Construction who he would suggest as the best architect to work with this type of building. He suggested BGW (Bianco/Giolitto/Weston) Architects of Middletown, CT. Some of the things that they have designed are: The Pension Building in Washington, DC, the UConn Diary Bar, Gateway Community College and the Old Saybrook Town Hall.

He then introduced Jeff Bianco of BGW to present the new design for the outside of the building for Mike's Famous, East Lyme.

Jeff Bianco, Architect BGW, 500 Plaza Middlesex, Middletown, CT said that he is also the Chairman of the Middletown Preservation Board so he sees both sides. He said that they had two weeks to jump in on this process. He explained that they are starting with an industrial box that has an impact and an important location. They are looking to develop the property so that it reflects what goes on inside of the building. The Harley-Davidson name is an American standard and classic. They are looking to incorporate that and still have the industrial building image. He unveiled his design for the building with the gabled brick elements typical of the New England style mill buildings. It would have a shed roof like a RR station with brick piers in front that would hold flag poles. The signs would be externally illuminated. He said that he would love to have this project in Middletown, where he is from. He asked if there were any questions.

Ms. Carabelas asked if the tower would be lit up.

Mr. Bianco said that the tower concept is really a brick drum and is open on three sides. It is an open-air structure and the top will be glazed with cut-off lighting. The interiors of the building will be visible from outside with no spillage of the lighting.

Mr. Dwyer said that they wanted the 40' height waived on the original design and asked if they are still requesting the waiver.

Attorney Harris said that based on the calculations the top height is 44'. While it is 2' over the 42' height, it is allowed by the regulations if the Commission allows it.

Mr. Bianco added that over one-third of the height has been reduced from what was originally presented.

Mr. Nickerson thanked the applicant for considering their comments and doing a design change based on their comments. He added that they do not have an architectural review committee in East Lyme.

He said that they would take a brief break (9:10 PM) and hear further comments from the applicant and then open it to the public.

Mr. Nickerson asked the applicant if they had further comments.

Attorney Harris said that he would comment again after the public speaks.

Mr. Nickerson said that he was informed that there is a student in the audience who would like to speak and who needs to get home so she can get to bed for school tomorrow.

Brianna Ducey from East Lyme High School said that she would like to give them a 16-year-olds point of view on Mike's Famous. She has been working for them for three months now and has had a good time. She is glad that she is not working at McDonald's or Burger King like some of her friends do. She has heard a lot of controversy over Mike's and she wants them to know that it is not another pizza restaurant coming into Town. She has seen doctors, lawyers and others in the store and they are not the 'bikers' that people keep writing about. She said that she enjoys her job and that they are concerned for her and that she continues to get good grades while she is working there.

Mr. Nickerson then explained the process to the audience.

He said that in a typical Zoning Public Hearing, the applicant pays a significant amount in fees and has the right to be heard and to present his application. The applicant has to do this before anyone can comment on it. He said that they had placed sign up sheets just inside the auditorium for those who wished to speak in favor and for those who wished to speak in opposition of this application. During the break, he had collected the sheets. He noted that they appeared to be evenly divided with respect to the application. He asked that they limit their comments to five minutes or less and that they not repeat what has already been said.

He said that he would start with those who wished to speak in opposition first this time and then go to those who wish to speak in favor.

Each side would have a half-hour. He called people from the sign-up lists.

Those who wished to speak in opposition to the application – he called:

Karin Kari, 6 Boston Post Road, East Lyme said that she was surprised that she would only have five minutes as they have gotten, and she has heard 'infomercials' from the applicant. She submitted her presentation on 'What is Proposed' and this was entered into the record as **Exhibit 12**. She also had a PowerPoint presentation covering the 10 pages of her presentation that asked and answered her nine questions regarding the application. (10 pages attached at end of Minutes – the rest is available for viewing in the Zoning Office). She summed up that if it 'quacks and looks like a duck it is not an overweight bird with laryngitis.'

John Fichtman, 1 Windfall Lane said that he has lived here for 31 years and it has been an excellent place to live. He is opposed to this application as he sees it as being a high risk. He said that he can't say for sure but he thinks that they should not take the chance and he encourages them to deny this permit.

Claire Nurzyk, 3 Gooseberry Lane, Niantic said that she has been a resident here for one year. Seven years before she came here, she lived in a fishing village in South Carolina - 25 miles south of Myrtle Beach, South Carolina. Each May they hold a motorcycle (annual) rally and they have 50,000-100,000 bikers who attend it. She left there to get away from them and came here and she can't think of anything positive that the bikers would bring to this area.

Sarah Beaudin, 61 Terrace Ave., Crescent Beach, Niantic said that she is a retired teacher who came here 18 years ago for the excellent school system for her sons. She also came for the quality of life with the seashore life and the calming style. She is retired now and plans to enjoy her retirement. She said that she would expect the Town Officials to call for preservation of that area for future generations and she asked why not use the building where Mike's Famous wants to go for an assisted living facility with sidewalks? She said that she has six words for them that sums it up – No More Noise, No More Traffic. She also said that she had signatures of others who live in other places than Chapman Woods to give to them.

James Deschenes, 10 South Ledge Rock said that he doesn't mind the way the building looks or the traffic. What he minds is the noise of 20,000 vehicles in and out per month. He asked what percentage of that – 20%? Per day would be bikes? He doesn't want to listen to motorcycles going up and down the road. He wants them to hold out for another business to go in that building.

Izzy Schwartz, 100 Columbus Ave., Niantic said that he would speak regarding the taxes that they talk about. He said the current property is assessed at \$1M and the taxes are slightly under \$30,000 now. The new owner paid \$3.8M and 70% would relate to taxes on \$2.6M or around \$69,000 in taxes. There is no big increase in the tax base here. It would bring maybe \$40,000 in money but it would bring other things too and it is not worth it to the Town. Also, regarding traffic – he sees 70,000 vehicles in the summertime and not 35,000. They would need another policeman to watch this and that would cost us money. It costs us \$50,000 for one policeman. So, to have this here, it would cost us money for this to come to our Town. Lastly, he said that in no way would this fall into the Top 10 taxpayers of the Town, he has the list and they are not on it.

Thomas Holland, 1 Carlisle Lane, Niantic said that on 1/22/05 he wrote to the Town expressing his original concerns – does the Town want to be the motorcycle capital of the Northeast? He also attended Mike's meeting with the public and he thinks that the Town would be impacting quality. He cited the following issues – The Delaware location is more metropolitan than ours. We are a seacoast area and we cannot absorb that type of activity. Some motorcycles are loud and travel in groups – very large groups and too many would be riding in the Town of East Lyme and this would discourage other residential development in Town. Mike's has no peers – he is the #1 Dealer in the world and he accomplished this by energetic expansion, a gift clothing store and extra activities. Review the past two years of activities on his site and see if you would want them

here. The 'More than a Dealership' concept will label East Lyme as a motorcycle area and we will become a destination of choice and that would jeopardize our seaside image.

Axel Mahlke, Upper Pattagansett Road said that he is a new resident from Germany and that he is a young parent. Many other young parents are not here because they have to watch their children. He said that he hears motorcycles all summer long and he is concerned with the noise. He works with the elderly and they have a spinal mobility problem where they can't see people on motorcycles, as they cannot turn far enough around to see them. They are moving this type of business into an elderly community and he is concerned that it is not the right thing to do.

Mr. Nickerson said that the half-hour was up and now called for those who wished to speak in favor of the application from the sign up list. He said that the same rules apply a five-minute limit and please do not repeat what has been said.

Jim Lahey, 20 Bishops Bay Road, Niantic said that he and his wife have lived here for 23 years and raised their boys here. He has a Harley and he has attended the last public hearing on this application. He said that he is amazed by what has been written regarding this application – café, pornography business on I-95 ... In the words of John Stossel – 'Give Me A Break!' He said that he and his wife are not the rogues or rebels that they all heard about at the last meeting. He came to present them with some facts – Harley-Davidson is one of the few American businesses that has survived. Police departments use them all over the country and they led the Inauguration of the President in a V-formation. Over 600 Harley-Davidson businesses exist. He bought his Harley in Branford, CT. We should be welcoming them here with open arms. With respect to noise – Mike's building in Delaware abuts a residential area and there have been no complaints in the six years that he has been there. He said that he rides his own bike in this area and neighborhood and there have been no complaints. Traffic - He heard residents say that they moved here to the quiet seaside Town – sure, it is in February but his experience in the 23 years that he has lived here is that everyone and their brother and friends come to this 'seaside' Town in the summer. So much for 'quiet'. As a taxpayer he does not see his taxes going down so he welcomes this to Town. Mike's will also bring jobs and jobs make an area strong when people are employed and have benefits. If you visit the Harley-Davidson website, you can see that they train their employees and dealers. In conclusion he said that Mike's Famous would be good for our community, our taxes and for the other businesses in our Town. He asked that they please weigh the scare tactics carefully. To Mike he said – Thanks for choosing our Town!

Bill Budds, 15 Liberty Way, Niantic said that he is a businessman and a landowner. He employs 57 people and is the Chairman of the Eastern Connecticut Chamber of Commerce. He supports and welcomes Mike's Famous to East Lyme. He said that he took a trip to the Delaware Harley-Davidson and found that he had to go down the road to another place to have a beer, as Mike's does not serve alcohol. He said that he lived near the Ocean Spray in New London for two years and had no problems. He said that he applauds the Town planning for age-restricted housing and growth – but opportunities like Mike's Famous do not come along all the time and they should be seized. East Lyme has traditionally approved the Education budgets and luxury items and we need to bring in taxes to support this. He said that he has heard nothing but overwhelming support for Mike's from people he has run into in public.

Dave White, Nathan Hale Drive, East Lyme said that he wanted to address the 'nagging noise issue'. He said that his office is on Flanders Road and he can see down the road and there are many motorcycles there already and he has heard no complaints. Businesses like this create a ripple effect in the Town and it becomes infectious. He said that he thinks that the pros strongly outweigh the cons and he strongly supports this.

Gary Lakowsky, 12 Methodist St., Niantic said that he is a former member of the Board of Selectmen, an Ex-Officio to this Commission and is currently on the Smith Harris Commission. He also gives many hours of volunteer time to these and other activities for the Town. And - he owns and drives a motorcycle. He said that he lives close to Burke's Tavern which is one of the two motorcycle places in Town and about 150 bikes from May to October come to Burke's on the weekends. They leave between one and two AM and sometimes can be heard for about ten minutes while they clear the lot. He lives next to this and it does not bother him. He said that he does not agree with the comment about the taxes not being much. We have been supporting residential for years and we all know that we lose money on residential in terms of the schools and the taxes that are not enough to pay for what is used. Senior housing will eventually require more EMT people. This is a good use of the property and he said that he supports it coming in to Town and the Industrial Park.

Scott Organeck, Southington, CT said that he works for the Connecticut Children's Medical Center (formerly Newington Children's Hospital) which serves all 169 Towns in the State. They receive funds from the Miracle Ride. When Mike bought New London County Motor Sales they were concerned about our kids and if he would continue to support them. Needless to say, he has continued to support our kids and to help supply incubators and other items that are needed. But – what he most importantly brings to these kids is the smiles when they get to ride in a sidecar or sit on a bike. The smiles are priceless.

(Mr. Nickerson explained to the audience and some members who started to object to Mr. Organeck speaking because he was not from East Lyme that Mr. Organeck was entitled to speak the same as anyone else.)

Howard Tisler, 152 Old Black Point Rd., Niantic said that he wants the Commission to look at this project under a different 'light bulb'. Bill Mulholland has been pushing and prodding people to design buildings in a different fashion. He cited the City of Hartford that has the Old State House building and next to it is the behemoth Travelers Tower. He cited other differences in architecture that sit beside each other and somehow work quite well. He said that he disagrees with the architects on this particular project. This piece of property cannot be looked at as just any piece of property – as this is the Gateway property and it should be sleek, have lots of glass and shine. He said this could be our 'hook' and a reason to come to East Lyme. He said that it would be a very real shame to see a sign on the highway - 'Welcome to Waterford – Home of Mike's Famous'.

Bob Gadbois, 358 Boston Post Road, East Lyme said that he could not attend the last hearing on this however he went to the Town Hall and read the minutes on it. (He thanked the Recording Secretary for the Minutes). He said that he thinks that this is a good venture for the Town. He goes to Waterford and Groton to the cycle shops in those Towns and there are no 'gangs of people hanging around'. He said that he thinks that this will bring a good business to the Town and he hopes that they support it.

Tom Lloret, 59 Plants Dam Road, East Lyme said that he has been riding bikes for 40 years and he is the current Captain of the New London Club. He has two kids, a house and a business and he pays taxes here in East Lyme. He said that he takes every opportunity that he can to buy from the businesses in East Lyme as this makes it profitable for everyone.

Tonight, he said he has heard a lot of new things here. He has heard that if you drive around old people that they can't see you. He has heard about noise – this building is 300' in the northbound lane of I-95 and all he hears is truck noise and this is not going to be an issue. This business is this man's livelihood. There are big bucks involved in it and this is his reputation. He has heard about traffic – well this was a factory and a beer distributorship before and there has always been heavy truck traffic there. It is an Industrial Park and there is going to be traffic.

And – when you choose to live in a tourist Town as this is, then you expect that you will wait in some traffic during the peak season and that is what you do. Also, most riders are seasonal riders and they put their bikes away for the winter months. He said that he is more concerned with the people who are driving around with the loud stereos that you can hear even through closed windows as they come up or down your street and by your house.

We spent money on the Boardwalk because we want people to come to our Town – but – we don't want 'these people' to come to Town? Also, the people who make trouble on motorcycles are not doing it on Harleys, as they cannot afford them.

Ruth Ames, 74 Old Black Point Road, Niantic said that she was speaking tonight as a taxpaying citizen of the Town of East Lyme and not as its' Tax Collector. She said that her understanding is that Mr. Schwartz's proposal to establish Mike's Famous has met the Zoning Regulations as required by the Town of East Lyme and that they have even changed the look of the building to be more pleasing to our New England location. She said that she attended the first public hearing on this application and was very concerned that if Mike's is turned away – just what we might be stuck with in that industrial site. The purpose of industrial sites is to house **Industry!** Mike's is not a sweatshop or a noisy manufacturing facility with clanging machines. She said that she thinks that many of the objectionable statements were made based on an image factor. To this she said that she loves fishing and NASCAR racing and is not ashamed to be dressed in her fishy smelling fishing clothes or her favorite drivers' shirt – but she asked – does this make her a sub-standard citizen? And then answered – 'I don't think so.' She asked if they were putting everyone who drives a motorcycle into a *less of a citizen than we think we are* category?

She asked the Commission to please allow Mike's to put his clean operation in our wonderful Town.

Esther Williams, Upper Pattagansett Road, East Lyme said that just as Ruth Ames spoke, so too does she – as a citizen of this Town and not as a Town Official. She said that she has been in the office of the Town Clerk since 1967 and is a life long resident of this Town. Also – she said that she has NEVER before spoken in a public forum either FOR or AGAINST an issue.

However, in her capacity of Town Clerk she has received numerous e-mails and other letters regarding the issue of Mike's Famous coming to East Lyme. 99% of the letters are from people at Chapman Woods and the tone of these letters is disturbing.

However – the other day one letter was brought to her attention - she noted also that she never did receive a copy of the letter although it said that it was Cc'd to her. She said that she would like to quote from the letter: *"We are appalled that Mr. Fraser, Mr. Nickerson, Mr. Mulholland and Esther Williams have entertained the proposal to allow this type of business to be established at this site." . . . "We vote to put responsible people in office to shape and form our town into something we can be proud to live in. Please take a good look at what you are proposing and listen to the voter's who you represent. Do not allow this type of business at the site proposed."*

She said that in speaking about *'the voters who you represent'*, that she would like them NOT to forget that there are many out there that do not feel as they do. She asked – whom do we represent then?

She continued that many of these 'folks' who are against this project are the same ones who objected to the Stop & Shop coming in because of the 'traffic' it would generate. She said that while she, herself was not wholly in favor of it that she would be the first to admit that the traffic is not a problem and that she travels this road every day both to and from work.

She said that we couldn't put ourselves in a cocoon, as there is 'a world around us but it does not revolve around us.' She said that she is not a motorcyclist and never has been and does not know if she could afford a Harley. However, she said that she thinks that the type of facility that Mike Schwartz is proposing would be a positive for the Town of East Lyme and if any problems were to arise, they could be handled on an as needed basis.

(Note: Mr. McLaughlin left the meeting at this time)

Mr. Nickerson called for a five-minute recess after which he said that he had spoken with the applicant and it was decided that they would go until 11:30 PM with people speaking from the public. The time would be evenly split and he would once again start with those opposed to the application. He noted that Virgil Horton who had requested to speak again (he spoke at length at the first public hearing) would take the last ten minutes of this time. He called from the list of those opposed –

Sam Stein, 3 Hawthorne Lane, Niantic said that he had missed the other meeting as he and his wife were out of Town. He heard that a lot of things were discussed. He thinks that the only thing that is important is if the building and the business suit one another. He said that he lives in Chapman Woods and Wayne Fraser and the City Fathers welcomed him here and they welcome them all the time. He said that if this business were on another site that it would be a fine business. If the Gateway was done, they could have put in a service road that would run along I-95 and Mike could have his own entrance and exit without entering the Town. He said that Chapman Woods has \$16.5M in assessed property and they paid \$400,000 in taxes to the Town. Chapman Farms has about \$12M in valuation. There is also Spinnaker and the issue of if this is an appropriate use of the site. The traffic guy did a nice job but Exit 74 has the highest accident rate and every resident gets off at those exits so the safety of all of us is at risk.

Karen Concannon, Laurelwood Drive in Giants Neck, Niantic said that she moved here because this Town reminded her husband of his home in Ireland. She has two children in LB Haynes. When the new Middle School was built, the Town was up in arms over the construction noise. So, she does not understand why they are not concerned about cars travelling through that road. She does not think that this is a good mix with two schools in close proximity. Also, the Stop & Shop is not a tourist attraction however, they would come to see this so she does not see this as a good mix. She thinks that Mike's needs a bigger Town to suit them.

Wayne Walker, Laurel Hill, Niantic said that he is worried about the noise and that Mike is trying to pass off the noise of a Harley to be like that of a car. Most of the motorcycles that he hears are louder. He does not like the idea of a rally or ride or how often they are going to hold them. It is 2 AM when they leave the bars and there will be noise. He lives within earshot of the Stop & Shop and will hear the noise.

Mr. Nickerson noted that they had ten minutes left for those opposed to speak, he called Virgil Horton.

Virgil Horton, 2 Amberly Lane, Niantic faced the people in the audience and said to all of them that is it unfortunate that they had to turn this into a bikers thing . . .

Mr. Nickerson said to Mr. Horton that he was to address the Commission and not the audience and reminded him that his ten-minute clock was running.

Mr. Horton said that he wanted to talk about Noise and how it is harmful to school children, causes hearing loss and depression. This was also presented on a PowerPoint presentation. He submitted 'Noise, School Site Selection and Approval Guide – Prepared by School Facilities Planning Division – California Department of Education' which was entered into the record as **Exhibit 13**. He said that a motorcycle at 30' has a db level of 88. East Lyme has a noise ordinance that says 'reasonable' and they do not enforce it. Bikes with extension pipes are not reasonable. Mike's promotions include outside activities that play music and cause noise. He said that while he appreciates the Red Hat Ladies – he would quickly show the other bikini event that was held there. He said that there is other noise – repair shop noise and test drive noise. Community action groups across the country are working on noise ordinances. A motorcycle noise of 119 db with the engine revving can damage hearing. He then said that he wanted to talk about traffic – he has seen it with his own eyes – he saw it with the Camp Rell open house, there is a traffic problem.

Mr. Nickerson noted to Mr. Horton that his time was up.

Mr. Horton said that the Mike's Famous building facing I-95 will cause a distraction to the highway drivers and cause accidents. Lastly he said that he wanted to discuss the fact that this is in the Aquifer area and the increased water usage will stress the Town supply. He also again started to tell the audience that it is unfortunate that they turned this into a bikers . . .

Mr. Nickerson told Mr. Horton that his time had expired and that he had already been told that he could not address the audience.

Mr. Nickerson called for those who wished to speak in favor of the application –

Mark McLeod, 103 Walnut Hill Road, East Lyme said that he is an East Lyme resident and that Mary Salvatore, his wife is a life long resident of this Town. They are both in full support of Mike's Famous coming to Town.

He said that he finds the issues of traffic and noise from the Chapman Woods people offensive. They moved tenths of a mile from a major intersection, in a commercial zone, near an industrial park that has been here for more years than most can remember and on top of I-95 and they complain about traffic and noise!

He said that he is sorry about the people who do not want this in our Town. He is sorry about the things that they do not like. And – to Mike – he said that he is sorry that this has become a long drawn out process. And – if it goes, as it should – he wants to be the first to welcome Mike's Famous to East Lyme. (He went and shook Mike Schwartz's hand).

Tom Wright, Old Lyme said that he is the previous owner of the 15 Industrial Park Road property and the former Metal Pro. When he came to this Town he said that he was welcomed with open arms and they were granted the special permits that they needed to do business in this Town. When they were approached by Mr. Schwartz to purchase the property, he said that they looked carefully into the business and went to the Newcastle Delaware store to see what it was like. The place was not only impeccable but totally amazing. It would be welcome in this Town and the spin off business that it would generate would be wonderful for the Town. He said that he encourages them to welcome Mike's Famous to East Lyme.

Paul Brackett, Wagon Wheel Road, said that he is not a biker however what this comes down to is if it is good for East Lyme. The people who have spoken against have listed technicalities but have not said how this relates to if it is good for East Lyme. They have heard about noise and the kids. The kids are far away and it will not affect them. They have heard about old people and noise but this has nothing to do with if it is good for East Lyme. He said that he has been to the Delaware site and he thinks that it is great for East Lyme.

Reverend Dr. Watts, Village Court, East Lyme said that he has heard so much said about bikes and bikers and read so much of the same stuff in the papers that they have to stop and think about what they are saying. He said that if we deny bikers and run from them then we would deny most of the ministers, preachers, deacons and professional people in society. He wants the community to be aware that they cannot judge Mike's Famous by some bar. They have to compare him by his reputation and what he has already done – in two weeks time he got another architect and came up with another building design. Regarding the kids and the

schools – the kids are not in school in July. They have to realize that East Lyme has the opportunity to have a good clean-cut business come to this Town and they should welcome it.

(Note: Mr. Henderson left the meeting at this time.)

Mr. Nickerson said that this would conclude the public comments. They would take a five-minute break and the applicant would give closing comments with questions from the Commission.

Attorney Harris, representing the applicant said that he would like to respond to what has been said regarding car dealerships and shopping centers and what is allowed in the district. He said that regulatory wise, Section 11.2.2 allows the regional shopping center and also allows a repair shop. It is not, by any stretch of the imagination an automobile sales business. He submitted: In Re: Application of Mike's Famous – Memorandum Regarding Use Regulations as Applicable to Mike's Famous, which was entered into the record as **Exhibit 14**. (Attached at end of Minutes)

He said that the discussion on a dealership that was brought up earlier conveniently left out 'car' with reference to dealer. It is the fabric of the use regulations to distinguish only the sale of automobiles from that of other vehicle types. It is rather obvious why this distinction is made – automobile dealers with large outdoor retail sales areas are very visible to the general public. They also require substantial outdoor lighting. While, other types of retail vehicle sales do not share these attributes and are sold from an inside sales area comparable to other retail outlets. To highlight this concern, an automobile sales agency is a Special Permit Use in the CA Zone. Mike's Famous in the LI Zone is just like the approval of the Bridal Mall shopping center on Liberty Way which represents a general retail of bridal related items intended to draw from the region. The theme here is a retail center selling a variety of items. They are in the LI Zone that allows a retail shopping center and this Commission has acknowledged that fact by approving the Bridal Mall.

There is also misinformation out there as we are not asking that changes be made to the regulations – we are asking to apply under regulations as they already exist.

Traffic and Noise – He said that he cannot see where Mike's Famous is going to create havoc on I-95 or Rte. 161 – especially when the Stop & Shop generates three times as much traffic. If they look at the alternative – that building could be a truck terminal and could run trucks in and out of there 24 hours per day without issue. The activity of Mike's Famous is done inside the building so you are left only with the presumption of noise. Mr. Horton put up decibel levels that related to altered vehicles and Mike has said that he will not sell or alter bikes.

To hold Mike accountable for a few bad eggs around is totally absurd – it would be like not having a pharmacy in Town because someone might abuse drugs. Or not allowing alcohol to be sold because someone might get drunk – the list could go on and on, you get the picture. They are right near I-95 and trucks whiz by there daily. Mike has said that there would be no rallies and there is a fear factor here that is NOT based on FACT.

They have heard from the neighbors, Police Department and Town Council in Delaware that there is no issue with traffic or noise there. He then submitted the article that was recently published in The Day about the history of Mike and his business. This was entered into the record as **Exhibit 15**. He summed that there is no realistic issue on traffic due to Mike's with the improvements that have been made to the area and with the improvements that Mike would make to the area.

In short, if they take the experience of Mike in Delaware and the testimony of the people there, there is no valid issue for this fear. And – what you are left with is a use that is legitimate in this zone and that will significantly increase the tax base for the Town. They have consistently tried to revitalize the commercial area in this Town and this will do that for this area. He said that he has a business in Town along with his partner and they can't wait for Mike's to get there. The Town has a new Boardwalk and they want people to come here to it and to our Town and Mike can promote the Boardwalk on the side of his building. He said that he really thinks this is great for the Town and he sincerely feels that Mike would be a successful promoter for the Town – one that does not create undue noise or traffic. What they are left with is a business that suits the regulations. This is a successful business and a successful business breeds other successful businesses. He then asked if there were any questions from the Commission.

Ms. Carabelas said to Mr. Mulholland that they were talking about a regional shopping center and restaurant at Mike's and she wanted to know how this fits into the regulations.

Mr. Mulholland said that if she looks in the Zoning regulations that it lists the uses and also, he referred Ms. Carabelas to his original memo to the Commission members that said that these uses were permitted and explained where to look in the regulations. They are permitted by special permit.

Mr. Peck asked about motorcycle riding lessons and demonstrations of vehicles and where and how this would take place.

Mr. Schwartz said that he has a policy of test rides and that old bikes come out of the factory per the State and Federal laws on decibels. He also noted that he did call Mr. Horton to go over this as they have a policy on riding and that no right turns would be allowed for test rides. Patrons will be instructed to leave the dealership and go out on to I-95.

Mr. Peck asked about lessons.

Mr. Schwartz said that they are not permitted by CT Law to teach people how to ride, so there would not be any lessons.

Mr. Peck asked about the events and what a typical event would consist of.

Mr. Schwartz said that they have two open houses per year that could have up to 100 bikes at a time. If an event would host more than 200 people then they would have to go before the Town and apply for a permit.

Mr. Peck said that he had said that he would have 100 or so employees – he asked how many would be there at any one time.

Mr. Schwartz said that he expected that there would be 40-50 at any one time. It could perhaps grow to 100 for a summer event however, that would not be the norm.

Mr. Gada asked Mr. Mulholland if there was an event being run there and 100 people were expected but 300 people showed up – what mechanism is there for this.

Mr. Mulholland said that if the Commission approves this application that is something that they could make a condition of their approval.

Mr. Schwartz said that he thinks that there is a theme that he is hearing here. He said that he has been a Harley-Davidson dealer for over 10 years and has consistently worked with the neighbors. He thinks that there are safeguards in effect with regard to the Town and with respect to his own track record to allay any fears.

Mr. Nickerson clarified for the Commission members that the Zoning Commission put the regional shopping center in the LI Zone years ago and since that time the Bridal Mall has come in.

Attorney Harris said that it was in 1992 that it was approved by the Zoning Commission that the Bridal Mall could be a regional shopping center in the LI Zone.

Mr. Nickerson recapped that they had been told that test rides would be instructed to go out to I-95; there would be no alcohol served on the premises including catered parties.

Mr. Schwartz said that they do have a catering license and that they did two events at their business last year however they take their business seriously and do not allow alcohol. He also stressed that they do not have rallies and would not hold a rally here. Rallies are week long events.

Ms. Byrnes asked Mr. Schwartz who minds the shop here when he is in Delaware.

Mr. Schwartz said that he takes full responsibility for his business. He has a place in Mystic and also has a full time Manager living in this Town. He added that his track record of success has been and is well documented.

Mr. Mulholland said that he still was not clear on the events such as Saturday/Sunday, outdoors/indoors and what actually happens.

Mr. Schwartz gave as an example of an event that they would make a run from his dealership (maybe 35 riders) to the Children's Hospital to see the children. In September they have an open house.

Mr. Mulholland asked what the actual activity of the event was – would there be tents in the parking lot or on the lawn?

Mr. Schwartz said that the two open houses per year are meant to be a place for people to get together. They could have a band.

Mr. Mulholland asked the purpose of the band.

Mr. Schwartz said that it was for entertainment while people got together. No alcohol is served on the site and no one is allowed to bring their own to the site.

Mr. Mulholland asked if there was the possibility that there would be an event every weekend during the season.

Mr. Schwartz said that they do not do it now and he sees no reason why that would change. Last year they had three events and two open houses for a total of five event activities.

Mr. Mulholland asked what if the Commission were to condition the number of events or issues that he has. Mr. Schwartz said that he is putting \$10M into this building and will employ 100 people and they are making a major commitment here – he said that he would have trouble answering that at this time.

Mr. Mulholland asked Mr. Schwartz to have Attorney Harris detail the events and what would be happening in a letter for the Commission to see.

Mr. Schwartz said that he would detail the events. He said they would be more like birthday parties for kids. People come for different charities and they raise money for them. They may even visit other businesses.

Mr. Dwyer said that he would like staff to review Exhibit 11 – the News Journal article about making up boxes of boots for the soldiers.

Mr. Nickerson said that he would enter into the record as **Exhibit 16** – the 8 letters they received in favor of the application and the 38 letters opposed to it as well as the list of signatures that were submitted earlier.

Mr. Nickerson then called for a motion to close this public hearing.

****MOTION (1)**

Mr. Gada moved to close this public hearing.

Ms. Byrnes seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned this Public Hearing at 11:56 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

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 CRASH RECONSTRUCTION
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February 2, 2005

*** MONTHLY VEHICLE TRIP GENERATION**

	Vehicles IN	Vehicles OUT	Total Vehicle TRIPS
Mike's Famous • 35,000 Patrons ¹	12,000	12,000	24,000
• 30,000 Patrons ²	10,250	10,250	20,500
• 25,000 Patrons ³	8,500	8,500	17,000
• 20,000 Patrons ⁴	6,750	6,750	13,500
• 10,000 Patrons ⁵	3,500	3,500	7,000
Stop & Shop Development	130,500	130,500	261,000
Chapman Woods	8,500	8,500	17,000
Office (40,000 SF)	7,500	7,500	15,000

visitors

is a bit higher than what Chapman Woods generates

Typically Nov. - Feb

This is every month - 12 mos. per year

Site reviewed this + issued Certificate

As just office would generate this

1. Assumes Best Month visitation by 35,000 Patrons
2. Typical July Monthly Visitation (about 30,000 patrons)
3. Typical May, June & August Monthly Visitation
4. Typical March, April, September & October Monthly Visitation
5. Typical November, December, January & February Monthly Visitation

*Rte 101 + Lpk Rd = 23,000 daily cars
 processed
 come from DOT Stats*

*Attachment
 Exhibit 8
 Tomlin*

2/3/05

Exhibit 12
2/3/05

Harley-Davidson in East Lyme?



WHAT IS PROPOSED?

APPLICATION FOR SPECIAL PERMIT: "Special permit for regional shopping, restaurant, and repairer's station" (Exhibit 100)

NOTICE OF PUBLIC HEARING SIGN ON SITE :
"...Special permit to construct a shopping center, a repairer's station, & rest. specializing in Harley Davidson Motorcycles."

* Note - Exhibits available in Zoning office

Zoning 2/3/05 Attachment 10 pgs 1

WHAT THE REASONABLE PERSON WOULD CONCLUDE:

1. FROM THE APPLICATION SUBMITTED TO ZONING: A regional shopping center of 50-100 stores with at least one large major department store, and an array of general merchandise apparel, and home furnishings; a restaurant that may be drive-in, fast food, or standard (sit-down service); and a gas station that does repairs.
2. FROM THE SIGN ON INDUSTRIAL ROAD, partially obscured by bushes: looks like a Harley Davidson Café in a shopping center, that will include a gas station that does repairs.

➡ Where are the words "MOTORCYCLE" and "DEALER"?

WHO IS APPLYING FOR THIS?

1. "Mike's Famous of Niantic" was on: The application to EL Zoning for Special Permits; and based upon this, the legal notices in *The Day*.
2. This could never have been the intended name: Harley corporate requires the DBA of a dealer to include the words "Harley-Davidson". (Exhibit 101, Page 2)
3. Mike's Famous of Niantic does not exist as a DBA
4. The legal name of Mike's corporation is Mike's Famous Harley-Davidson, Inc., and his Groton Dealership is Mike's Famous Harley-Davidson, Groton, CT. (Exhibit 102)

➡ AN ATTEMPT TO OBFUSCATE THE NATURE OF THE BUSINESS AND THE INTENTIONS OF THE APPLICANT.

" REGIONAL SHOPPING"

1. Why not call it a "Regional Shopping Center, which has commonly used definitions in both retailing and real estate and is in EL Zoning Regulations as allowable in LI ?

➡ BECAUSE MIKE CAN'T MAKE THE DEFINITION FIT ✓

2. Regional Shopping Center definition & examples: the Urban Land Institute, the International Council on Shopping Centers, The American Marketing Association, Directory of Malls 2004, CT (Exhibits 103 & 104): 300,000 to 1 million square feet - a class of planned shopping centers, usually with one or more department stores, and 50-100 stores, with great depth and variety (shopping goods, general merchandise, apparel, furniture, and home furnishings, in full depth and variety), serving a very large trading area. Examples: Buckland Hills Mall in Manchester, CT, the Galleria Mall in White Plains, NY, or Providence Place.

➡ THIS IS IN NO WAY A REGIONAL SHOPPING CENTER;
It is one business and one brand.

"RESTAURANT"

1. The Application cites, EL Zoning Regulations, Section 11.2.1 which allows in LI district, "Standard restaurant, fast food restaurant, drive-in restaurant."

2. Mike's Application for a Special Permit does not state the classification of restaurant he proposes.

➡ Without a signed Special Use Application, specifying the type of restaurant and/or number of seats, and only a passing reference in the last Zoning Meeting, how is the Commission to evaluate the parking, water and other requirements?

"REPAIRER'S STATION"

1. "REPAIRER STATION" in EL Zoning – definition 1.21.1: "Includes any qualified person, having a suitable place of business and having adequate equipment, engaged in the repairing, overhauling, adjusting, assembling and disassembling of any motor vehicle..."
2. "MOTOR VEHICLE REPAIRERS STATION" is allowed in LI District, and the 1500 feet separation from another "gasoline, or diesel filling station, repairer's or limited repairer's station, or new and/or used car dealer's business is exempt under section 20.19.1.1 in EL Zoning Regulations, under 3 conditions, including 20.19.2 (a): "The business is operated as a subordinate part of a gasoline service station which existed at the time this regulation was adopted."

➡ Therefore, NOT A PERMITTED USE: There is a gas tank there, but there never was a gas station at 15 Industrial Way.

WHAT WAS APPROVED SO FAR?



Planning Commission:

In their meeting of 1/4/05, the Planning Commission, at the written advice of Meg Parulis, EL Director of Planning who said "The Planning Commission is not in a position to determine the adequacy of the plans pertaining to Aquifer Protection." (Exhibit 105) found the applicant's plan "CONSISTENT with the Plan of Conservation and Development upon successful demonstration by the applicant to the Zoning Commission ..." "that any hazardous materials used on the site will be properly stored and disposed of, that there will be no increase in storm water runoff from the site after development and that the provisions for disposal for sanitary wastes are adequate." (Exhibit 106)

➡ THEY DID NOT SAY THEY FOUND THAT MIKE'S PLANS ADEQUATELY PROTECTED THE AQUIFER AREA (WHERE OUR TOWN WELLS ARE). THEY SIMPLY REFERRED THE MATTER TO ZONING FOR THEIR EVALUATION AND DECISION.

WHAT WAS APPROVED SO FAR?

→ Conservation Commission:

In their meeting of 1/18/05, the Conservation Commission approved the application of Mike's Famous (Exhibit 107) saying that the applicant has successfully demonstrated that "1. There will be no adverse environmental impact on the wetlands or watercourse, and 2. Impacts are mitigated by the use of a stormwater system and long term maintenance plan. They attached 11 conditions, one of which related to removing debris from the wetlands on the property, and made two recommendations for Zoning.

They stated that ..." this basin is not going to be maintained as a wet basin, and thus requires no wetlands planting or wetlands monitoring."

➡ If the Applicant had applied as a motor vehicle dealer would their considerations and resultant decision have been different?

QUESTION #1

Does the Applicant plan to sell many motorcycles, new and used?

Mike's SALES OF MOTORCYCLES are clearly not "ancillary". He was named Harley-Davidson's largest Dealer and sells approximately 1800 motorcycles a year. (Exhibit 108) with sales of up to 315 new bikes in one month. (Exhibit 109) His website as of 1/27/05 listed 221 used motorcycles for sale. (Exhibit 110).

Mike's exhibit showing the breakdown of his December 2004 sales (Exhibit 111), not during biking season, included 7 categories of H-D branded items, including 81 motorcycles. 4557 meals even @\$10 = \$46K, the revenue from approximately 2 bikes. 1483 t-shirts, even at \$25=\$37K, again the revenue from approx. 2 bikes.

H-D Dealer sales % from Motorcycles (from articles): 50-74%(Exhibit 112)

H-D Corporate sales % from Motorcycles(Annual Report): 78.3% (Exhibit 113)

➡ Mike, as well as other H-D dealers sell a large number of motorcycles and they are a large % of their total sales.

QUESTION #2

Is Mike's proposing a motorcycle dealership in East Lyme, Connecticut?

Connecticut General Statutes, Chapter 246: (Exhibit 114)

Sec 17: "Dealer" includes any person actively engaged in buying, selling or exchanging motor vehicles, or trailers, who has an established place of business in this state..."

Sec:47: "Motor Vehicle" means any vehicle propelled or drawn by nonmuscular power, except aircraft, motor boats, road rollers, ...baggage trucks,...electric battery-operated wheel chairs,...golf carts,...snow blowers..." [Does not exclude and by definition includes motorcycles.]

Sec 46: "Motorcycle means a motor vehicle, with or without a side car, having not more than three wheels in contact with the ground and a saddle or seat on which the rider sits or a platform on which the rider stands, and includes bicycles having a motor attached..."

El Zoning Commission Regulations: Sec 1.4.1: "New Car Dealer - includes any person engaged in the business of merchandising new vehicles under a manufacturer's or importer's contract for each make of vehicle who may, incidental to such business, sell used motor vehicles and repair motor vehicles or cause them to be repaired by qualified persons in his employ."

Mike's business is a new car dealership proposing to do business in East Lyme, Connecticut.

QUESTION #3

Does the Applicant Plan to comply with State of CT Motor Vehicle Regulations with regard to licensing for new vehicle sales?

If so, he is required to obtain a "MOTOR VEHICLE DEALERS OR REPAIRERS LICENSE" from the State of CT. (There is no separate Motorcycle Dealers or Repairers License; motorcycles are included here.) (EXHIBIT 116) This license indicates whether you are licensed to SELL new motor vehicles . Motorcycles are a part of this definition of motor vehicles. Once you have this license, you are, by definition, a DEALER.

Neither Motor Vehicle Dealers or Auto Sales Agencies are allowed in the LI District, as either a Permitted or Special Permit Use.

QUESTION #4

Does the applicant conduct business as an authorized Harley-Davidson dealer?

Exhibit 100, page 2, Harley-Davidson Prospective Dealer Application refers to an "application of the undersigned for a Harley-Davidson dealership."

This document must be signed and accepted by Harley-Davidson for Mike to get allocations of new motorcycles and branded merchandise from Harley-Davidson.

Did Mike sign this for Delaware and Groton?

Is Mike planning to move his dealership from Groton to East Lyme?

➡ Mike's Famous is a Dealer and is not allowed in the LI district

QUESTION #5

Will the applicant host/control/allow mass gatherings on this site, even if he isn't always primarily responsible for planning and/or promoting them?

➡ He will need a mass gathering permit (Exhibit 116), approved by the Town. Note: A large % of motorcycle events are not like football games where tickets are sold - they are grassroots-based mass rides and gatherings with no official list of organizers or sponsors, but promoted at other rides, and on many club and organization sites.

East Lyme Zoning regulations state that their purpose is "to promote the health, safety, and general welfare of the Town of East Lyme."

➡ What assurances can this business give us about safety and crowd control?

QUESTION # 6

Vleit & O'Neill, LLC, a crash reconstruction & traffic engineering firm, has submitted a "Traffic Impact Statement". (Exhibit 118) with Mike's as their paying client.

The Statement indicates that, "the proposed development use (Mike's Famous) is not contained in the ITE (Institute of Transportation "Trip Generation" - 7th Edition) data base. Accordingly, extensive discussions were held with the Mike's Famous development team in order to gain an understanding of the proposed operations and expected traffic generation."

- ➡ Are we prepared to accept a traffic impact statement signed by a Professional Engineer working for a consulting firm that has based its evaluation wholly on numbers and statements provided by the applicant?

QUESTION #7

Does the Applicant plan to operate a museum with an indoor theater on the site?

LI zoning does not permit an indoor theater. Only drive-on theaters are allowed as a special use. Museums are not included in permitted or special uses.

- ➡ Mike's whole concept of selling motorcycles, fulfilling dreams, and entertaining the masses seems to be fading away in the regulations.

QUESTION #8

Does the Applicant plan to have events in the name of/for the benefit of charities using their non-profit status to obtain "Charitable Organization" liquor permits? Will the Applicant hire caterers who will serve liquor with their permits?

- ➡ The applicant has promised no alcohol on premises (Exhibit 120). Does he plan to host/participate in such events in East Lyme or in our region, with stops at his dealership?

QUESTION #9

How will the applicant address Realistic Parking: Industrial Road is not wide enough for street parking. The applicant proposes 144 parking spots, and will have 100+ employees. The majority of spots would be taken by full time employees alone, & his business vehicles. Parking spots are a specific size and there are no smaller motorcycle parking spots in our regs.

Where's mass parking in his plan? There is NO SHARED PARKING ALLOWED in an LI zone. There is no space on Mike's property to accommodate reasonably expected crowds: runs of motorcycles (1200-1500) that all arrive within an hour, or weekend traffic of up to 5000 (Exhibits 121 and 122).

Is the Applicant asking for a waiver of sidewalk requirements to so he'll have space for bike parking?

- ➡ The applicant's need for mass parking is *regular, recurring, and not adequately addressed in his plan*. This site can't handle his business.

Summary

1. The Applicant is a dealer who sells motorcycles - not allowed in LI.
2. The applicant is a one-brand business that does not qualify as "Regional Shopping" or a "Regional Shopping Center". Not allowed in LI.
3. The applicant can have a restaurant here, but his not specifying what kind and size make its evaluation impossible.
4. The applicant cannot be a "repairer" or "repairer's station, because there is not and never was a gas station on this site. Not allowed in LI.
5. The applicant cannot operate a museum or indoor theater, as they are not permitted or special uses in LI.
6. The applicant has strained his credibility as a businessman and good neighbor with his representations about his business.

dealership

Exhibit 14 2/3/05

**EAST LYME ZONING COMMISSION
IN RE: APPLICATION OF MIKE'S FAMOUS
MEMORANDUM REGARDING USE REGULATIONS AS APPLICABLE TO
MIKE'S FAMOUS**

There are two areas in which Mike's Famous is subject to Use Regulation under the Zoning Code:

- ✓ (1) Whether or not this proposed use is allowed in the LI Zone.
- ✓ (2) Whether or not this use is subject to separation distances as provided in Section 20.19.

These are different considerations and subject to different issues:

I. Mike's Famous would be considered a general retail use in both commercial Zones; and is a regional shopping center - given its scope- in the LI Zone. It is not, under any stretch of the imagination - an Automobile Sales Agency.

The only allowed uses relating to automobiles are contained in the CB and CA zones, and with respect to repairers, the LI zone.

In CA and CB Zones, an auto and/or automobile sales agency is a specifically allowed use, and as such, it is implicitly distinguished from other retail uses which are allowed. While the term automobile is not defined in the regulations, the common understanding of the term certainly is a passenger car with four wheels. For example, American Heritage Dictionary defines an automobile as "a self propelled vehicle that usually has four wheels and an internal combustion engine." Princeton University Word Net defines it as a "4-wheeled motor vehicle." By carving out this use from other retail, the regulations implicitly include other retail sales of vehicle types under general retail. For example, the vendor of bicycles, clearly a vehicle, would be considered under general retail; as would jet skis, ATVs, riding lawn mowers, hardware stores, book stores, and many many others.

Thus, it is the fabric of our use regulations to distinguish only the sale of automobiles from that of other vehicle types. It is rather obvious why this distinction is made: Automobile dealers with large outdoor retail sale area, are very visible to general public. They also require substantial outdoor lighting. Other types of retail vehicle sales do not share these attributes—and indeed are sold from an inside sales area comparable to other retail outlets. As if to highlight this concern, an automobile sales agency is a Special Permit Use in the CA Zone.

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Attachment Zoning

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Thus Mike's Famous, even if it were only a retail vendor of motorcycles, would be considered a retail sales store based on the pattern established in the regulations. It would be treated no different than the vendor of any other retail item from hardware to books to boats or any of a wide variety of retail items which stores in our town sell. But as has been shown, it is far more than that: it sells a wide variety of products designed to attract patrons from a wide area. A similar operation owned by the Applicant in the state of Delaware has been characterized as "one of the most unique retailing concepts I've seen in America" by Chris Castagno, President of the New Castle (Delaware) City Council.

Mike's Famous is an all encompassing retail complex designed to attract tourists and shoppers from a wide area to buy a variety of items from clothes to gifts to pet supplies to motorcycles—and to stop and enjoy its restaurant, museum, and other entertainment features. In recognition of this, it has been called "the gap for motorcycles" (NY Times) and "a Harley themed entertainment complex" (Baltimore Sun)

✓ Mike's is little different, though smaller in scale, from many of the regional shopping malls—they provide a shopping experience in a building where a variety of items may be purchased, where other services may be available, where they may want to stop for some food, and where there tends to be an entertainment element to the shopping experience. Indeed some malls have become tourist attractions in of themselves.

✓ Mike's is clearly considered retail under the East Lyme Regulations. With its variety of items and regional draw it is, in substance, little different from any major mall. In short, it is a regional shopping center. This conclusion is consistent with prior treatment of retail use in the LI Zone. This Commission will recall its approval of the Bridal Mall on Liberty Way, which represented a general retail of bridal related items, intended to draw from the region. In fact, the Bridal Mall shopping center is approximately half the size of Mike's Famous, but as with Mike's, it maintains the essential elements of a regional shopping center: the general retail sale of goods designed to attract patrons from a wide regional area.

II. Mike's Famous is not subject to the separation distances as provided for new car dealers in section 20.19. of the Regulations.

The reasons for this are twofold: first it is not a "new car dealer" in accordance with the Regulations. Second, the primary business is not vehicular related, but as described earlier, as a regional retail attraction selling a variety of items, including motorcycles.

Section 20.19 of the Regulations provides for a distance separation with respect to several specific uses, among them is a "new and/or used car dealer's **business**" (emphasis added). Certainly when one hears the term new car dealer, the immediate visualization is of an automobile dealer with scores of cars parked for outside display

under bright lights and with minimal show room area compared to outdoor display. A review of the Regulations does not disturb this common sense understanding.

At the outset, we should note that there is no defined use in any zone which matches the “new car dealers business” language. The only use reference for new car sales is, as referenced above, an automobile sales agency. The regulations do, however, define a “new car dealer” as one who is “engaged in the business of merchandising new vehicles under a manufacturer of importer’s contract...” This definition must be read as a whole, and in light of the regulatory fabric within which it is contained.

First, it clearly regulates a business, not a license or permit. There are a variety of activities which may require certain permitting from the Connecticut DMV; however this Regulation only deals with one specific businesses: a new car dealer as is defined in the East Lyme Zoning Regulations, considering the regulations as a whole. Moreover, since the use category under which the business can operate is defined as an automobile sales agency, these terms should be interpreted consistently, as the separation distance was presumably intended to regulate allowed uses. Finally, when the Regulations wanted to regulate permits in distance requirements, they have done so: For example, Section 20.20.6 is an exception to distance required for sale of a alcoholic beverages for “restaurant permit” only. Nor is it unusual for governmental entities to group a variety of use type activities under one permitting structure. For example, a restaurant liquor permit covers both a fast food restaurant or a standard restaurant. Yet, from a Zoning perspective, these two entities are treated differently.

The title, new **car** dealer (emphasis added) indicates that the intent was to govern what would normally be construed as an automobile. Otherwise, it would seem one would have described the entity as a new vehicle dealer. One may argue, however, that the reference to the term “vehicle” in the definition broadens the title. However, when viewed in light of the overall fabric of the Regulations, and the implications of its application of all “vehicles”, the only sensible conclusion is that the word vehicle was intended to be limited by the reference to car in the regulation title.

As pointed out earlier, the Regulations have, in their use categories, carved out automobile sales agency as a specific identifiable use separate and apart from other retail uses. And for good reason: new and used auto dealers have a common thread of outdoor sales, often at night. Moreover they tend to want to be near other areas where autos are sold, to draw from potential customers seeking autos. The separation distance is a means of limiting the potential for the growth of an area of town devoted to large well lighted outdoor sales. This is to be contrasted with the type of vehicular sales which occur in a fashion not different from other retail outlets, and as a result, did not need to be specifically regulated. The separation distances is a further manifestation of the theme. Cars (automobiles) are not only a specific use category, but in addition are to be limited to a spacial separation.

In light of the broad nature of the term “vehicle”, to interpret this Regulation to cover all vehicles would lead to absurd results, totally inconsistent with the intent of the regulation as evidenced by its title. Given the fact that a vehicle is defined as “a device or structure for transporting persons or things” (American Heritage Dictionary), it obviously covers a wide variety of propelled and non-propelled devices. For example, a bicycle shop, shops selling various power sport items such as ATVs and four tracks, even shops selling garden tractors would be included. This was not the intent is evident in the location of many local retail centers vending these items in close proximity to each other. Just as in the Use Regulations, it was the intent of this Regulation to limit vendors of automobiles - as one would commonly understand them to be.

The nature of Mike’s Famous also indicates that this Regulation is inapplicable. Mike’s, in selling a variety of items, far more non-cycle items than cycles, transcends beyond a vehicle dealership. Most visitors do not buy a cycle; rather they stop at the restaurant, buy some clothes gifts or accessories, visit a museum, see a video about Harley Davidson, purchase insurance, or just walk around. It is a general retail tourist destination, and as such, can not be said to be in the primary business of selling only vehicles. A review of the number and variety of non-cycle sales give abundant testimony to that. Mike’s is no more a car dealer than Home Depot is a nursery—both sell a variety of items; Mike’s includes cycles, Home Depot includes plants.

In short, Mike’s is not subject to the distance requirements of 20.19 because it is not a car dealer. It is not one in the first instance, because a car dealer as defined in our Regulations must sell automobiles. Moreover, even if the term car dealer were deemed to include the sale of motorcycles, the nature of his operation, the variety of sales items, the tourist nature, of its attraction, defines a primary business that simply is not vehicular, but rather general retail. As such, since zoning governs the primary use, it would not be subject to this separation distance.

In the undersigned’s professional opinion, under the facts presented, Mike’s famous fits the description of a regional shopping center, and since it is not a “new car dealer business” it is not subject to the separation distance requirement of Section 20.19.

Respectfully submitted,



Theodore A. Harris

TAH:jp1