City of Derby, Connecticut - Planning and Zoning Commission

Regular Meeting Minutes - Date: April 21, 2026 - **Location:** Derby City Hall and via Zoom

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I. Call to Order - Chair **Aniello D. "Owney" Malerba, III** called the meeting to order at **7:00 p.m.**

II. Roll Call

Regular Members Present: Paul Dinice; David Kopjanski; Aniello D. "Owney" Malerba, III; Albert Misiewicz; Raymond Sadlik. Five regular members were present. **Alternate Member Present:** Joseph Sojka.

Regular Members Absent - Richard Bartholomew and Matthew Ezzo.

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III. Seating of Alternate Member

The Town Clerk Marc Garofalo advised that two regular members were absent, requiring the seating of an alternate. - **Motion:** To seat Alternate Member **Joseph Sojka** for the duration of the meeting.

Motion by: Raymond Sadlik - **Second by:** Albert Misiewicz - **Vote:** 5 in favor, 0 oppose - **Result:** Motion carried.

IV. Approval of Agenda

The Chair noted there were not any additions, deletions, or corrections to the published agenda.

V. Communications - The Chair reported receipt of several items of correspondence and summarized them for the record:

1. **Correspondence from Sharlene McEvoy**, expressing concerns related to development activity at Telescope Mountain and the need for referral to the Inland Wetlands Agency. The Chair stated that the full letter would be submitted into the record and retained on file but not read aloud.
2. **Correspondence from Carya Ecological Services, LLC**, addressing whether the proposed Summit Hill Extension / Telescope Mountain subdivision requires review by the Inland Wetlands Commission. The Chair noted that this correspondence raised jurisdictional issues that would be considered procedurally at the appropriate stage.
3. A **Freedom of Information Act decision was** received by the City, relating to alleged informal pre-application discussions. The Chair explicitly stated that the Commission would not discuss the substance of the complaint, but that the correspondence would be retained as part of the Commission's official records.

Commission members offered no additional communications.

VI. Public Comment (Items Not Subject to a Public Hearing)

The Chair opened the public portion and announced that comments specifically related to the **Summit Hill / Telescope Mountain subdivision** would be deferred until a duly noticed public hearing, to ensure comments are made part of the official hearing record.

Public Speakers:

Attorney Dominick Thomas appeared on behalf of multiple municipal clients and addressed the Commission regarding a pattern of **fraudulent invoices and electronic payment scams** targeting land-use applicants. He explained that scammers were harvesting information from municipal websites and issuing fake invoices directing applicants to wire funds. He urged the City of Derby to provide explicit warnings to applicants and advised vigilance in verifying email addresses and payment instructions. The Chair thanked Attorney Thomas for bringing the issue to the Commission's attention.

John Caporale, 59 Summit Street, asked whether a public hearing would be held regarding the Telescope Mountain project. The Chair clearly stated that **no decision would be made without a public hearing** and advised Mr. Caporale to present comments at that time so they would be formally recorded.

Tim and Nancy Marren, 195 Sentinel Hill Road, addressed the Commission regarding ongoing concerns related to the **Cornerstone Church parking lot**, including noise, lighting, and lack of progress toward resolution. Discussion followed among Commission members and Zoning Enforcement Officer **Kevin White**, who explained that previous communications had occurred and that he would again reach out to the property owner and report back to the affected neighbors and the Commission.

No additional members of the public wished to speak.

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VII. Close of Public Comment

Motion: To close the public comment portion.

Motion by: Albert Misiewicz - **Second by:** David Kopjanski - **Vote:** 6 in favor, 0 oppose - **Result:** Motion carried.

VIII. Approval of Minutes - Minutes of March 17, 2026

Motion: To approve the minutes of March 17, 2026 as presented.

Motion by: Raymond Sadlik - **Second by:** Joseph Sojka - **Vote:** 6 in favor, 0 oppose - **Result:** Minutes approved.

IX. Receipt of Subdivision Application – Summit Hill / Telescope Mountain

The Commission considered the receipt of a subdivision application proposing a **45-lot residential subdivision** within the R-5 and P Zones on parcels identified by the Assessor as Map 9-6, Lots 47 and 47B, and Map 8-9, Lots 94 and 94B.

Discussion:

Substantial discussion occurred regarding the **application fee**, with Applicant's Counsel asserting that significant fees had previously been paid and retained by the City in connection with an earlier application. Several Commissioners questioned whether the current submission satisfied regulatory requirements.

Commission Counsel advised that disputes regarding application fees should not delay receipt of the application where statutory timelines apply and recommended that the Commission **accept the application while directing staff and Corporation Counsel to reconcile the fee issue**.

Discussion also focused on **Inland Wetlands jurisdiction**, referencing correspondence received earlier in the meeting. Zoning Enforcement Officer Kevin White advised that no wetlands application had been submitted, but the applicant represented that no regulated activity was proposed. Commissioners emphasized that if wetlands impacts were later identified, appropriate referrals or procedural actions would be required.

Motions:

Motion: To formally **receive the subdivision application**.

Motion by: David Kopjanski - **Second by:** Albert Misiewicz - **Vote:** 6 in favor, 0 oppose - **Result:** Motion carried.

Motion: To schedule a **special public hearing** on the subdivision application for **June 2, 2026 at 7:00 p.m.**

Motion by: Paul Dinice - **Second by:** Joseph Sojka - **Vote:** 7 in favor, 0 oppose - **Result:** Motion carried.

Motion: To **refer the application to the Inland Wetlands Agency** for determination.

Motion by: Albert Misiewicz - **Second by:** Joseph Sojka - **Vote:** 6 in favor, 0 oppose - **Result:** Motion carried.

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Public Hearing – Griffin Hospital Site Plan Modification - 130 Division Street / Spring Street

The Chair opened the duly noticed public hearing concerning Griffin Hospital's request for a site plan modification to allow installation of a **Combined Heat and Power (CHP) unit**, associated equipment, enclosures, and noise-mitigation structures.

Attorney **Dominick Thomas**, on behalf of Griffin Hospital, formally entered notices, certificates of mailing, and related exhibits into the record, and stated that no substantive objections had been received.

Griffin Hospital President Patrick Charmel delivered an extensive presentation detailing:

- The **operational need** for CHP infrastructure to enhance reliability and resilience;
- The **environmental benefits** and reduction in reliance on the electrical grid;
- **Noise-generation characteristics** of the equipment and layered mitigation measures;
- The **relationship between prior setback variances and the present site plan modification.**

Commissioners engaged in lengthy questioning regarding:

- Compliance with the City's **noise ordinance**, including nighttime limits;
- Whether post-construction **field noise testing** should be required as a condition;
- Whether the CHP enclosure constitutes a **"building" or "structure"** under Derby zoning regulations;
- Whether an additional **Zoning Board of Appeals variance** would be required.

Significant legal discussion occurred among Commission Counsel, Zoning Enforcement Officer Kevin White, Applicant's Counsel, and Commissioners regarding the scope and legal effect of the prior ZBA approval.

Given the legal complexity and the Applicant's request to preserve the administrative record, the matter was temporarily recessed.

Chair Owney Malerba called to recess the meeting and pause the recording to review variance-related materials and correspondence.

The meeting recessed at approximately **8:47 p.m.** The continuation of the hearing is noted in the official record.

The meeting was called back to order at **8:55 p.m.**

Discussion continued regarding the scope of the previously granted setback variance and whether the proposed CHP generator and associated sound-attenuation enclosure constitute a "building" under the Zoning Regulations.

The Commission discussed language contained in the Zoning Board of Appeals certificate of approval and noted the inclusion of the words "and area," raising questions regarding the intended scope of the variance.

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Counsel stated for the record that modifications to the approved drawings, including the placement of generators or chillers, were intended to be reviewed by the Planning and Zoning Commission through a site plan modification process and **not** through a new variance application before the Zoning Board of Appeals. Counsel further indicated that this interpretation was communicated through correspondence dated January 5, 2026, which confirmed that the proposed chiller and generator would require a modification to the previously approved site plan, consistent with the conditions of approval.

The Commission discussed whether a generator constitutes a "building" under the Zoning Regulations. It was generally agreed that a generator, in and of itself, would not meet the definition of a building. However, members noted that the proposed sound-attenuation enclosure includes walls and a roof and therefore raised the question as to whether the enclosure, rather than the generator alone, could qualify as a building under the applicable definitions.

It was noted that the prior site plan referenced a generator pad but did not include details regarding the generator enclosure. Commissioners distinguished the lack of detail in the prior approval from the specificity of the current proposal, which includes a fully enclosed structure. Members emphasized that this distinction was central to the current deliberation.

Counsel advised that it is within the discretion of the Planning and Zoning Commission, in the first instance, to interpret its regulations and determine whether the proposed installation constitutes a building. Counsel further stated that if the Commission determines the proposal is not a building, a variance would not be required; however, if the Commission determines it is a building, the Commission must also determine the scope and applicability of the previously granted variance.

Counsel further stated that review of the Zoning Board of Appeals record demonstrates that no discussion occurred limiting the variance to the footprint of the MRI building alone. The discussion before the ZBA focused on hardship created by the hospital campus zoning designation and the existing nonconformities along Spring Street, Seymour Avenue, and Maple/Division Street. Counsel asserted that past practice supports interpretation of the variance as applying to the entire length of the affected setback.

Public Comment

Roberto Santos, 3 Cedric Avenue, Derby, addressed the Commission, stating that he attended the meeting both as a resident and as a City Alderman. Mr. Santos noted prior noise concerns expressed by a Spring Street resident related to hospital operations and stated that he intended to relay the information presented at the meeting to that resident. Mr. Santos asked for clarification regarding the height of the proposed fencing relative to the height of the generator enclosure.

The applicant responded that the fencing along the street would extend to approximately four inches below the top of the container, with additional screening provided above the container for air-handling equipment.



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Motion

Upon motion duly made by Raymond Sadlik and seconded David Kopjanksi, the Commission voted unanimously **to continue the public hearing** to allow Commissioners additional time to review requested materials, including presentation documents and reference information. - **Motion carried unanimously.**

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10. New Business

A. Griffin Hospital – 130 Division Street - Site Plan Modification Application (Generators on Spring Street

The Chair noted that the public hearing on the application was still ongoing. Given that fact, the Commission discussed procedural next steps. It was agreed that no final action could be taken while the public hearing remained open.

At the **Chair's request**, a motion was made to **table consideration of the Griffin Hospital site plan modification application until the continuation of the public hearing** at the Commission's next meeting.

Motion: To table the Griffin Hospital site plan modification application pending continuation of the public hearing

Moved by: Raymond Sadlik - **Seconded by:** David Kopjanski - **Vote:** 7 In Favor – 0 Opposed - **Motion carried.**

B. Board of Aldermen Referral – CGS §8-24 – 46-50 Commerce Street

Proposed City Acquisition of 46–50 Commerce Street - (a/k/a 46-50 New Haven Avenue)**

The Chairman introduced Item 10B, a referral from the Board of Aldermen pursuant to **Connecticut General Statutes Section 8-24**, requesting the Planning and Zoning Commission's review and recommendation regarding the proposed City acquisition of property located at **40–60 Commerce Street, also known as 4650 New Haven Avenue**.

The Chairman recognized **Linda Fusco, Chief of Staff**, who stated she had submitted a written letter included in the Commission's meeting packet and inquired whether Commission members had any questions.

Following initial comments, Corporation Counsel Brian Lema addressed the Commission to provide additional context. It was explained that the proposed acquisition was **part of the City's downtown redevelopment effort** and was intended to facilitate the **relocation of the Rubino Scrapyard** to the Commerce Street site.

It was emphasized that the City was **not currently under contract** for the property; however, the City wished to proceed proactively to ensure all necessary statutory approvals were in place should a contract be executed. One such approval would be a **positive recommendation from the Planning and Zoning Commission under CGS §8-24**, allowing the Board of Aldermen/Alderwomen to act without delay if acquisition became imminent.

Commission members asked clarifying questions regarding the property's location. City representatives explained that the site was located **on the opposite side of the river**, at the **terminus of Commerce Street**, between **New Haven Avenue and the railroad tracks**.

The Chairman asked whether there were any further questions. Hearing none, the Commission proceeded to consider action.

Raymond Sadlik made a motion to issue a **positive referral**, noting that discussions regarding the relocation had been ongoing for an extended period and that moving forward would assist the City in advancing redevelopment objectives. David Kopjanski seconded the motion.

Motion: To issue a **positive referral under CGS §8-24** recommending approval of the City's proposed acquisition of 40–60 Commerce Street. **Moved by:** Raymond Sadlik - **Seconded by:** David Kopjanski.

The Chairman called for discussion. Hearing none, the motion was put to a vote.

Vote: In Favor: Unanimous voice vote - Opposed: None - **Motion carried.**

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Discussion: Possible Zoning Text Amendments – Informal Meetings / Pre-Application Discussions

The Commission next engaged in a lengthy discussion regarding **possible zoning text amendments**, specifically addressing the use of **informal meetings and pre-application discussions** between applicants and the Commission.

The Chairman opened the discussion by noting concerns about **informal discussions occurring outside of a noticed public hearing**, referencing a **recent Freedom of Information (FOI) complaint** related to agenda wording. He expressed the view that decision-making should occur transparently and on the public record, emphasizing that informal discussions risk excluding residents and undermining public participation.

Several Commission members echoed these concerns, stating that informal meetings could inadvertently guide applicants in a way that prejudges applications and potentially constrains the Commission's future discretion. It was further noted that case law generally disfavors premature commitments by land use boards.

Commission members stressed that the Commission's responsibility is to act in the **best interests of the City**, not to streamline processes solely for developer convenience, and that regulations should be revised through properly noticed public hearings when deficiencies are identified.

It was also noted that any informal discussion should, at a minimum, be **clearly identified on the agenda**, including the property and general subject matter, so the public is aware of the discussion and has the opportunity to attend.

The **City Engineer** clarified that the FOI complaint had already been adjudicated and that the issue was not the existence of an informal discussion per se, but rather the **failure to properly identify the property on the agenda**. He advised that state statutes permit, but do not require informal discussions and encouraged careful wording of agendas to ensure compliance.

A robust discussion followed regarding the role of **staff-level meetings**. Several members expressed support for applicants meeting with **staff only** (Zoning Enforcement Officer, planner, engineer) prior to formal submission, with staff acting as a conduit for general feedback, rather than applicants appearing before the full Commission in an informal setting.

Members also noted Derby's limited staff availability and recent efforts to revise application procedures to emphasize staff review and adherence to established checklists prior to Commission consideration.

Attention was drawn to **ambiguous language in certain zoning and subdivision regulations**, particularly within the Special Design District (SDD), where the term "shall" may imply that applicants are required to appear before the Commission for a pre-application meeting. Several members agreed that this language could place applicants in an awkward position and should be reviewed for clarification.

The consensus of the Commission was that the matter warranted **further review**, including potential technical amendments to the regulations, but that no action would be taken at this meeting.

The Chairman stated that the discussion would be **continued to a future meeting**, at which time staff could present proposed language or recommendations for consideration.

No action taken under this item.

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11. Payment of Bills

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The Commission reviewed one invoice from **SLR** in the amount of **$3,142.50**.

Motion: To approve payment of the SLR invoice in the amount of $3,142.50

Moved by: Paul Dinice - **Seconded by:** David Kopjanski. Hearing no discussion, the motion was put to a vote.

Vote: In Favor: Unanimous voice vote - Opposed: None - **Motion carried.**

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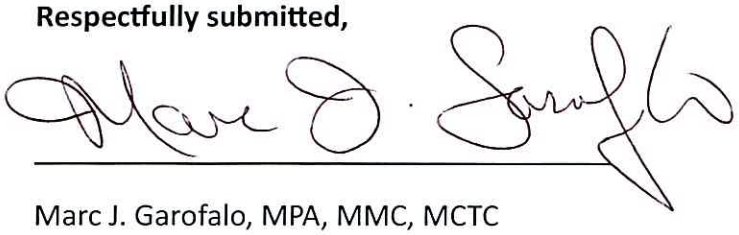
12. Adjournment - A motion was made to adjourn the meeting.

Motion: To adjourn - **Moved by:** Joseph Sojka - **Seconded by:** David Kopjanski. The Chairman called for a vote.

Vote: In Favor: Unanimous voice vote - Opposed: None - **Motion carried.**
The meeting was adjourned at 9:37 p.m.

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Respectfully submitted,



Marc J. Garofalo, MPA, MMC, MCTC

Town/City Clerk

