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Subject: RE: Capital Video site plan review: Confirming our phone conversation today, Wednesday, December 6, 2006
From: Michael Pill <...>
Date: Wed, 06 Dec 2006 13:34:08 -0500
To: Carolyn Misch <...>
CC: "Lesley Rich.Esq." <...>, A Edward Nota <...>, sandra deschaine <...>

Carolyn,

Thanks very much for leaving a phone voice mail message yesterday and for taking the time to visit with my by phone today, Wednesday, December 6, 2006. This email is to confirm our phone conversation. If anything set forth below is incorrect, please drop me a note right away by email or FAX. Thanks very much. I am sending this to you by both email and FAX, given the present problems with the City's email system.

1. INFORMATION NEEDED UNDER ZONING ORDINANCE Section 11.6, Subsection 9.

You noted that under new Section 11.6, subsection 9, of the zoning ordinance (as amended November 2, 2006), the applicant must show that facades meet the new ordinance, and that nothing displays adult material visible from outside the building.

The planning board needs to see proposed designs for this store at 135 King Street in Northampton, not photos of other Capital Video stores. You noted we have had over a month for this additional material to be developed.

2. ANR PLAN AND CREATION OF LOT NOT CONFORMING TO ZONING ORDINANCE

The recently submitted ANR plan created a nonconforming lot, which violates the dimensional requirements of the zoning ordinance.

REQUEST FOR ADDITIONAL SPECIFIC INFORMATION:

Exactly what was the zoning violation on the ANR plan? Can you please provide a citation to the zoning ordinance section(s), subsection(s) and page number(s) for the requirement(s) violated by the new ANR plan lot lines.

The plan submitted with the site plan review application shows a lot which conforms to zoning ordinance requirements. Before submitting an application for a building permit, we must resolve this issue. One way to resolve the issue is to submit a new ANR plan restoring all lot lines to their former location, then recording that new ANR plan.

3. LEGAL REPRESENTATION FOR PLANNING BOARD

You advised me that City Solicitor Janet Sheppard, Esq. will attend the December 14, 2006, 7:00 P.M., Planning Board hearing in the city council chambers, but that the city is not asking us to pay for her billable time.

4. STENOGRAPHIC TRANSCRIPT OF HEARING AND THE ISSUE OF WHO PAYS FOR IT

Under Mass. General Laws, Chapter 44, § 53G, the city is asking Capital to pay for a copy of a stenographic transcript of the December 14 hearing. During a brief conference call with Capital's independent stenographer Sandra Deschaine, we agreed she could produce a copy of the transcript she will be preparing of the hearing. Whoever pays for the transcript copy, it will be cheaper to have Sandy

prepare a copy, rather than hire a second stenographer to produce another original transcript.

At this time, Capital does not concede that the term "outside consultant" in G.L. c. 44, § 53G, includes the services of a stenographer or the cost of a copy of the transcript. I FAXed a copy of that statute to you for your review. To me, the term "outside consultant" in a land use context refers to engineers, surveyors, wetlands and other environmental experts who evaluate a project application for compliance with professional design requirements or scientific standards. If the legislature meant to include a stenographer within the purview of G.L. c. 44, § 53G, it could have said so.

REQUEST FOR PLANNING BOARD REGULATIONS UNDER G.L. c. 44, § 53G. I asked you to please FAX to me a copy of the Planning Board rules which implement G.L. c. 44, § 53G for zoning applications to the Planning Board.

5. COOPERATION BETWEEN CAPITAL VIDEO AND NORTHAMPTON CITY OFFICIALS

Finally, you advised me that you telephoned A. Edward Nota of Capital Video and left a phone message for him, saying that the City would like to accept Capital's suggestion to work with the City. This potential cooperation would include building facade, outside landscaping and outside window treatment. For this you will be the planning department contact person. The City Councilors involved (whose wards come together at the proposed Capital store location) would be Maureen Carney, David Narkewicz and Marilyn Richards.

Very truly yours,
Michael Pill

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Fax

To: Michael Pill	From: Carolyn Misch <i>CM</i>
Fax: 259-3727	Pages: 2
Phone: 259-1221	Date: 12/6/2006
Re: Requirement for Capital Video Hearing on CC: Anthony Nota/Lesley Rich	
12/14	Fax: 401-464-4884

I received your fax earlier today. I will respond only to the items that need addressing:

Item #2 ANR Plan:

The ANR submitted shows a 15 sf +/- area of land being transferred from 135 King St to 137 King Street. The parcel containing 135 King contains less than the minimum lot size requirement in the HB district. The required is 20,000 sf. The Northampton Zoning Ordinance, §9.3(7) relating to non-conforming structures, uses & lots states:

- 7. *A Pre-existing Nonconforming Lot may be changed, extended or altered:*
 - A. *As-of-right if such change, extension or alteration to the lot does not increase the non-conforming nature of the property, only brings the lot into total conformance with the Zoning requirements in existence at the time of said change, extension or alteration, or adds to the lot.*

Because this showed a decrease in lot area it was stamped with a note stating that a Variance would be required for any use on the site.

Item #4 Stenographic Services:

As you can see from the attached Planning Board rules, which are also posted on our web page, the Board has the ability to request technical assistance for services not available to the City through its employees. It is thus our interpretation that a request for your client to pay for the report that will be made by the stenographer hired by your client is entirely appropriate under this provision given that this expertise is not available within the City Departments.

Finally, please note the final agenda indicates that the Capital Video hearing is actually the third item on the agenda. There is a 6:30 PM joint hearing with City Council Ordinance Committee and a 7 PM new hearing for a shopping Center Complex on King Street that should be anywhere from 30 min to 45 min. So that will put Capital Video likely at 7:45 PM.

**SECTION 4.0
APPLICATIONS BEFORE THE BOARD**

Section 4.1 - Permit Applications:

Applications for a Special Permit with Site Plan Approval, a Site Plan Approval, and Site Plan Special Permits before the Planning Board shall be prepared in accordance with the procedures in the Northampton Zoning Ordinance and the instructions on and attached to the application form. Every application for action by the Board shall be made on the official application form, and as approved by the Board and adopted by reference in these Bylaws and Rules of Procedures.

Section 4.2 - Plan of Land to Accompany Petition:

Each application and petition to the Board shall be accompanied by a sketch or plan as required by the Zoning Ordinance of the City of Northampton.

**SECTION 5.0
REVIEW FEES**

Section 5.1 - Determination to Require Review Fees:

1. If, after receiving an application the Board determines that in order to properly review and process that application it requires technical advice unavailable from municipal employees or departments, it may employ outside consultants. Whenever possible the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the applicant. Alternatively, the Board, by majority vote, require that the applicant pay a reasonable review fee (in accordance with Chapter 593 of the Acts of 1989) for the employment of outside consultants chosen by the Board alone.
2. A review fee may be imposed only if:
 - A. The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board.
 - B. The Board finds that an adequate review cannot be performed by city employees/contractors.
 - C. The work is in connection with the applicant's specific project, and
 - D. All written results and reports are made part of the record before the Board.