

May 27 2022 2:28 pm

**FITCHBURG PLANNING BOARD MEETING MINUTES
TUESDAY, APRIL 26, 2022**

NOTE: This was a hybrid meeting via FATV due to the pandemic.

CALL TO ORDER

Meeting called to order at 6:19 p.m.

ROLL CALL:

Members Present:	Paula Caron, Chair,	Paul Fontaine, Jr., Vice-Chair
	Alyne Butland	Peter Capodagli (virtual)
	Amanda Koeck	Alex Lopez (Virtual)
	Laura O’Kane	Tracy McGrath (Associate member)

Staff: Herlin Jaime, Mike O’Hara

ANR PLANS

KCMC Management, Inc., 105-121 John Fitch Hwy.

No applicant present for this item. Parcel around existing structure at 105 John Fitch Hwy. is proposed to be enlarged by incorporating a 10,141 sq. ft. portion of the adjoining parcel at 121 John Fitch Hwy. (in the same ownership) to create one undivided 24,930 sq. ft. lot. The existing structure will be demolished and a new drive-thru only Dunkin’ Donuts constructed.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to have Mike O’Hara endorse the ANR plan on behalf of the Board.

Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Romano, 612-640 South St.

Present: Doug Romano, property owner. Existing property line between the dwelling at 612 South and the greenhouses at 640 South is proposed to be adjusted so that both greenhouses will be on the same parcel. Lot 1 (dwelling) will have 12,307 sq. ft. Lot 2 (greenhouses) will have 20,253 sq. ft. An easement area on the east side of Lot 2 will insure continued access to a garage on a neighboring lot at 37 Romano Ave.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to have Mike O’Hara endorse the ANR plan on behalf of the Board.

Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Dufour, 650 - 688 John Fitch Hwy.

No one present for his item. (*Chris McNary, surveyor has registered but had trouble with his mic.*) Existing property line separating the former Dufour’s RV at 650 John Fitch Hwy. and the Auto Shower Car Wash at 688 John Fitch Hwy. is proposed to be adjusted so that 650 JFH (Lot 3) will have 1.45 ac. and 688 JFH (Lot 4) will have 1.06 ac.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to have Mike O’Hara endorse the ANR plan on behalf of the Board.

Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

MINOR SITE PLAN/SPECIAL PERMIT MODIFICATIONS / EXTENSIONS

Extension - Site Plan Approval, Large Scale Solar Array, Ashburnham St., Mad River Solar

Present: Atty. John Barrett had submitted a request for the Board to extend Mad River's Site Plan Approval for one year. However, since the revised Zoning Ordinance which became effective last September now requires a Special Permit for a Large Scale Solar Array, the Board determined that they cannot issue such an extension. Applicant needs to submit new site plan with a Special Permit application.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to Deny an Extension of the Site Plan Approval. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O'Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Minor Site Plan - 14 Highland Ave. - parking plan for 2-family

Present: Paulo Caires. Ms. Caron: Application cannot be submitted as a Minor Site Plan per Building Commissioner. Applicant stated that a Special Permit was requested in 2021 and fees were paid. Board members suggested that applicant reach out to Building Commissioner and get a new Zoning Determination in order to apply to convert to two-family dwelling. Board members informed applicant that hand-drawn site plans are not acceptable. Applicant to formally withdraw Minor Site Plan application and apply for a Special Permit with \$300 filing fee waived since he has already paid that.

Motion made (Ms. O'Kane) & seconded (Ms. Koeck) to Accept the request to Withdraw the Minor Site Plan Review application. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O'Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Minor Site Plan - 83-85 & 0 Marshall St., AG Dream Flip, LLC, parking plan for reinstated 3-family

Present: Applicant Nico Berthet. Revised plan dated April 19, 2022 reviewed showing ten 9' x 18' spaces on the west side of Marshall St. on his and the adjacent parcel (n/f Bergeron), and one proposed 9' x 18' space to be cut into the front yard of 93-95 Marshall. A retaining wall at the back edge of the ten parking spaces is proposed; there is a steep drop-off down to the adjacent street (High St.). He has cleaned up the 0 Marshall parcel.

Board comment: Applicant must meet building code requirements, spaces must have a 3-foot setback from property lines & sidewalk. Mr. Capodagli is concerned with the steepness of the slope down to High St. It would be to be a substantial retaining wall. Board is willing to approve plan with conditions provided a revised plan is submitted to Mike O'Hara. Conditions to be reflected on new plans: Pave & stripe parking spaces, provide engineered retaining wall and/or guard rail, provide 3-foot setback to property line & sidewalk (*i.e. 21 ft. from sidewalk to retaining wall*), provide room for trash receptacles off-street.

Nick Erickson, DPW: Applicant must adhere to Building Code requirements. Any retaining wall over 36 inches high needs stamped engineering plans.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to Approve Minor Site Plan with conditions. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O'Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Minor Site Plan - 160 Plymouth St. - parking plan for reinstated 4-family

Present: Ricky Frias. Applicant submitted updated plans showing five parking spaces including two tandem (back to back) spaces, snow storage area, trash receptacles, and guard rail. First floor will have two 1-BR units (requires 1 parking space each), second and third floors will each have a 2-BR unit (requires 1.5 space each). Board members agree to approve plan provided applicant update plans to reflect no more than 2 bedroom on any unit.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to Approve the Minor Site Plan with condition that there be no more than 2 BRs in any unit with total not to exceed the 5 required parking spaces. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

PUBLIC HEARINGS

Special Permit & Site Plan Review - ReMax Patriot Realty, 41 Fox St. -Convert 2nd floor to 4 residential units, 1st floor commercial space, also a waiver of the minimum lot area for a multifamily dwelling

No one present for this item. The applicant had previously requested that a continuance to the next board meeting date be granted. Revised plans from his engineer not yet ready.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to continue the hearing to 5/24/22. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Proposed Zoning Ordinance Amendments by making several minor corrections & clarifications

Hearing re-opened. Tom Skwierawski quickly recapped proposed zoning changes which had previously been previously discussed at the March 14th special meeting (see attachments).

Atty. Christine Tree, ZBA Chair had some comments (attached).

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to close the hearing. Vote 7-0.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to recommend in favor of the proposed amendments as modified tonight. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor. (see attachment)

Ms. O’Kane recused herself from the meeting due to a conflict of interest.

Proposed Zoning Map Amendment - To add 49 Snow St. & 0 Elm St. to 40R “Smart Growth” district

Hearing opened. 49 Snow St. (NE corner of Main & Snow) had previously been approved by the Board via Special Permit for a 156-unit residential development. Including this project in the 40R district will benefit the City by making it eligible to receive \$3,000 per dwelling unit from the Commonwealth when the project is built.

The 0 Elm St. parcel is Lowe Park, adjacent to the B.F. Brown School (a/k/a Fitchburg Arts Community). An easement for access & parking on this parcel is part of this project. B.F. Brown is already in the 40R district. Attorneys for NuVue Communities requested that this parcel (including the easement) also be added to the 40R district to clarify that the entirety of the project is included in the 40R district.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to close the hearing. Vote 7-0 in favor.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to recommend in favor of this petition to add 49 Snow St. & 0 Elm St. (Lowe Park) to the 40R “Smart Growth” Zoning District. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. Caron: Yes. Vote 6-0 in favor.

Ms. O’Kane returned to the meeting.

Special Permit & Site Plan Review - Pristine Choice Realty, LLC, 4-unit residential, 147 Daniels St.

No one present for this item. The applicant had requested another continuance to the next meeting. Whitman & Bingham is still working on a revised site plan showing finished grades & stormwater management.

Motion made (Mr. Fontaine) & seconded (Mr. Lopez) to continue the hearing to 5/24/22. Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O’Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Ms. O’Kane recused herself from the meeting due to a conflict of interest.

Amendment of Special Permit 2006-9, Woodland Estates, Rindge Rd. to add project completion timeline.

Present: Joanne Hamberg, Jamie Rheault, P.E., Whitman & Bingham.

Hearing opened. Mr. Fontaine: The purpose of this hearing is to set an end date to this project.

Jamie: Applicant is asking the Board to allow the project to proceed to no later than 12/31/2024.

There will be no blasting or rock hammering or processing of materials on week-ends.

Public comment:

Mark Christian, 71 Bennett Rd. Contrary to what Ms. Hamberg had previously stated no notification to abutters on blasting is currently being made, he has never rec’d such a notification. There are 3 to 4 18-wheelers per hour going in & out of the construction site, close to 100 trucks in a week. There is on-site rock crushing 8 hrs. a day, 5 days a week. The noise is worse than ever.

Hal Melanson, 13 Bennett Rd: City noise ordinance is not being abided by on Saturdays. Work is taking place sometimes on Sunday. This is too big of a project for the neighborhood, this project has been ongoing for 16 years. He played noise he hears over his cell phone for the Board. No pre-blast survey was ever done again after the first blasting 16 years ago. He asked the Board to please put a stop to this now.

Councillor Marisa Fleming: She has heard complaints from abutters to this project for years, suggested putting a time limit of one more year.

John Larkin, 11 Bennett Rd. Wants no extension of time, wants project to stop.

Maryellen Mara, 71 Bennett Rd: Has concerns about bridges at Nigel Court & Rindge Rd. Trucks that seem to be over the weight limit are crossing those bridges multiple times a day. Just days after the last Planning Bd. meeting there were trucks hauling materials off-site. For the past 6 months, water has been pooling on her abutting property again. A 6-month time project extension was suggested, another 3 years is unacceptable.

Kathy & Ron Deschamps, 1307 Rindge Rd.: Another three years is unacceptable, finish the drainage work within 6 months and end the construction.

Jamie: The catchbasins that will be installed at the end of the cul-de-sac will address the ponding issue on the abutters’ property. The CBs will be installed once the area has been brought down to the proper grade.

Jon Benoit, 43 Billings Rd: He is a half-mile away but hears construction noise, but not as disturbing to him as to some closer neighbors. There was work being done there last Sunday.

Ms. Puputti, 1361 Rindge Rd.: The nearby construction has caused damage to her property and an encroachment. Water from site is now flowing onto her property. Jaimie will check.

Nick Erickson, DPW: With regards to concerns over bridge and truck weight limits, they should insure that the trucks are not over the weight limit, or if they are overloaded, they need to travel another route, such as via Ashby West Rd. He has discussed issue with Fitchburg P.D. They are contacting the State Police for reinforcement.

Herlin Jaime, CDP relayed a message from Councilor Marissa Fleming: “I wish to voice my opposition to any special permit that is longer than a year. Rindge Rd. residents have had more than their share of noise, blasting and disruption in their rural residential lives. Please do not approve any special permit that is longer than a year from now.”

Joanne Hamberg: Finishing the drainage is her priority.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to close the hearing. Vote 7-0 in favor.

Discussion of possible conditions:

- No work on Sundays of Holidays.
- No blasting or rock hammering on weekends or holidays.
- Construction hours limited to 8:00 a.m. - 5:00 p.m. Mon. thru Sat.
- Perform another pre-blast survey within 300-feet.
- Notify all abutters of every proposed blast.
- No construction vehicles over the weight limit of the Rindge Rd. bridge south of the site.
- Resolve drainage problems on abutters' property.
- Provide dust mitigation stemming from blasting/construction activities.
- Repair damage to wall on abutter's property line.
- Install appropriate erosion controls.
- By 12/31/24 all infrastructure including drainage, site grading, and installation of building pads shall be complete. Manufactured homes may be placed on the pads after that date.

Ms. Butland stated that this is too much time, the end date should be 12/31/2023. Mr. Lopez agreed.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to Approve a Modification of the Special Permit with the conditions noted above, and that all infrastructure work shall be complete by 12/31/24.

Roll call vote: Butland: No. Lopez: No. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. Caron: Yes. McGrath (Associate member): Yes. Vote 5-2 in favor.

Ms. O'Kane returned to the meeting.

Special Permit - Belanger, Construct 1,600 sq. ft. Self-storage units, 172 Lunenburg St.

Present: Alan Belanger, applicant. Patrick McCarty, McCarty Engineering.

Prior to the meeting Ms. Caron had emailed with concerns about the application as submitted.

Under new Ordinance provisions effective September 2021, the proposed portable storage containers are only allowed as a temporary (accessory) use per Sec.181.3267. Additionally, they cannot be located on parcels that are adjacent to a residential zone. Suggested applicant check with Bldg. Commissioner.

Motion made (Mr. Fontaine) & seconded (Mr. Koeck) to continue hearing to next month. Vote in favor.

Site Plan Review - A.L. Prime Energy Consultant, demolish existing building & construct new 1,930 sq. ft. convenience store w/ gas pumps, 237 Lunenburg St.

Present: Tony Guba, P.E., A.L. Prime. Site plan dated 3/31/22 reviewed. Tony explained project: the existing two-story 2,296 sq. ft. full service gas station will be demolished & a new single-story 1,997 sq. ft. bldg. built at the left rear corner of the site with same number of gas pumps (self-service). New double wall fiberglass USTs to be installed. Stormwater runoff from the site will be reduced approximately 25-30%. Roof runoff will be infiltrated via underground infiltration system which will meet all Mass DEP stormwater standards. New landscaping will be installed along the rear property line and abutting residential use. Site will accommodate all fuel delivery truck turning movements. Total construction time is expected to be less than six months.

Board comment: Eliminating parking space #5 nearest Lunenburg St. would enable the provision of a small landscaped area on the front corner. Possible to tighten up the existing wide curb cut on Lunenburg St.?

Tony: Since street is a MassDOT road they'd need a permit to modify driveway. They don't want to start process because at an A.L. Prime in another community, modifying the access would have triggered a lengthy MEPA review.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to close the hearing. Vote 7-0 in favor.

Motion made (Mr. Fontaine) & seconded (Mr. Lopez) to Approve the Site Plan with conditions:

- Eliminate space #5 & provide landscaped area.
- Rebuild & extend concrete sidewalk in front of site toward Garland St. to ADA standards.
- If feasible connect the proposed fence to the one on Walgreens's property.

- Screen dumpster with white vinyl fencing.
- Install silt sacks in catchbasins during construction.

Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O'Kane: Yes. Caron: Yes. Vote 7-0 in favor.

Site Plan Review - Fitchburg Land Property Owner, LLC, construction of 366,912 sq. ft. industrial warehouse and distribution center, 0 Crawford St. (Airport Pit)

Present: Bill Hannigan, P.E., Hannigan Engineering, Hayley Palazola & Jacqueline Bart, GFI Partners
Bill gave an overview of the proposal. Fitchburg Redevelopment Authority own this 40 ac. acre site, split approx. in half between Fitchburg & Lunenburg bordered by Nashua River & Baker Brook.

Proposed 367,000 sq. ft. warehouse building. 367 parking spaces (9 accessible) & 67 spaces for tractor trailers to be provided. Two points of access off Crawford St. Employee access via a widened entrance where existing access to the sand pit, truck access via new driveway further to the east. Water & sewer connection off Crawford St. Stormwater Mgmt. provided through underground recharge chambers & a large stormwater infiltration basin. Traffic Impact Study is being prepared.

Board agreed to have a 3rd party engineering peer review done of both the stormwater management plan and Traffic Impact Study.

Motion made (Mr. Fontaine) & seconded (Mr. Capodagli) to continue the hearing to next month.

Roll call vote: Butland: Yes. Lopez: Yes. Koeck: Yes. Capodagli: Yes. Fontaine: Yes. O'Kane: Yes. Caron: Yes. Vote 7-0 in favor.

OTHER BUSINESS

Game On Fitchburg – update

No on present for this item. Nothing new to report, other than that the new entrance sign at Westminster St., is to be installed about 29th

Meeting Minutes

Motion made (Mr. Fontaine) & seconded (Mr. Capodagli) to approve the February 22 & March 22 minutes as amended. Vote 7-0 in favor.

Action on the March 14 minutes (Zoning Amendment only) deferred to next meeting.

Motion made (Mr. Fontaine) & seconded (Ms. Koeck) to adjourn. Vote in favor.

Meeting adjourned: 10:38 p.m.

Next meeting: Tuesday, May 24 at 700 Main St.

Minutes approved: May 24, 2022.

**Planning Board 4/26/2022 Public Hearings
Zoning Ordinance Amendments**

	Subject (Petition #009-22)	Board Recommendations/Comments	Recommended Language
1	181.313 Table of Principal Uses Footnote 1- Residential Uses by Right on Main St.	<input type="checkbox"/> Recommended <input checked="" type="checkbox"/> Not Recommended Comment: Instead of limiting to 3 units or less, the Planning board voted to exempt existing buildings with frontage on Main Street.	<i>Use Table (181.313)</i> <i>Footnote:</i> <i>Residential Uses by Right on Main Street.</i> <i>Notwithstanding the provisions of the Table of Principal Use Regulations, residential uses are permitted by right for existing structures in the DB District provided they are located above the first floor of the structure, as viewed from Main Street and are located on a lot which has frontage on Main Street.</i>
2	Abandonment or Non Use 181.336-Typo Correction	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As written in original petition
3	Abandonment or Non Use 181.3362(b)iii – clarifies parking requirements	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment: <i>Recommended with changes.</i>	As originally recommended at the Planning Board’s March Public Hearing “The structure or zoning requirements for the number of off-street parking spaces in Section <u>181.512</u> , provided that the parking spaces may be are located on the premises or on a dedicated private or public off-street parking facility located within eight hundred (800) feet or a reasonable distance from the lot where the principal use is.”
4	Abandonment or Non Use 181.3366 by striking paragraph (e)	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As written in the original petition
5	Methods for Calculating Dimensional Requirements 181.4123, Lot Width	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As written in the original petition
6	Earth Removal 181.6922 & 181.6923 – Typo correction	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As written in the original petition

7	Multi-Family Developments- Standards 181.743(2) – striking Residential Uses by Right on Main St.	<input type="checkbox"/> Recommended <input checked="" type="checkbox"/> Not Recommended Comment: Recommended to be reworded to correspond with Amendment #1 (i.e. Use Table Footnote)	1. For every dwelling unit above three (3) units, there shall be an increase in minimum lot area, over and above the minimum for the district, equal to one-third the minimum lot area for the district. Lots subject to 'Residential Uses by Right on Main Street' (181.313 Table of Principal Uses, footnote 1) are exempt from this provision. 2. For Multi-Family Developments of nine (9) or more dwelling units and Residential Uses by Right on Main Street located above the first floor of the structure, the Planning Board may waive the this density provision under 181.743(1) if determined that the grant of such waiver will not adversely affect the neighborhood and promotes the purpose of this section.
8	Zoning Map Amendment Add 4 School St. to DB District	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As drawn in the original petition
9	181.85, "Floodplain Protection Overlay District (FPOD)" – delete in entirety and replace	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As written in the original petition

	Subject (Petition)	Board Recommendations/Comments	Recommended Language
1	Delineation of the Smart Growth Zoning District 181.845 – Add 49 Snow St and 0 Elm St. parcels to corresponding Zoning Map	<input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended Comment:	As drawn in the original petition

CHRISTINE M. TREE COMMENTS ON PROPOSED ZONING CLARIFICATIONS

Comments:

Amendment (1), §181.313 Footnote 1:

- The wording prior to the 2021 revisions was “in the CBD-zoned portion of the Urban Renewal Area provided they are located above the first floor of the structure, as viewed from Main Street.”
- The amendment limiting residential uses allowed by right to 3 families or less will create additional nonconforming uses on Main Street, but is appropriate given the parking limitations of the Main Street area.
- The words “as viewed from Main Street” are unclear, as they do not indicate whether the property must have frontage on Main Street or not.
- I suggest that, if only Main Street-fronting properties are to be included that the sentence end “as viewed from Main Street, and also provided that they are located on a lot which has frontage on Main Street.

Amendment (2), Support.

Amendment (3), §181.3362(b)(iii) and (e):

- Given that the ZBA handles a substantial portion of requests to resume abandoned uses and structures, I request that a vote on this provision be delayed for one month to allow the ZBA members to discuss and comment at their next meeting and forward the same to the Planning Board as a body.
- If not, the following are my personal comments:
 - o The modification to §181.3362(b)(iii) would indicate that parking must be existing in order to resume an abandoned use or structure under that provision, which would limit the properties able to avail themselves of this abandoned property revival provision through the Building Commissioner.
 - o The removal of §181.3366(e) would eliminate that criteria of a good-faith effort at reuse, which does not fall under any other criteria for a special permit, and would eliminate it completely from consideration by the ZBA. I would only keep this provision if we wanted additional grounds on which to grant the special permit to resume an abandoned use or structure. The language here is relevant to a determination of the whether the property has been abandoned under current caselaw.

Amendment (5), No comment.

Amendment (6), This change is in agreement with the current Table of Uses.

Amendment (7), The proposed change does not modify this, but any residential use between 4 and 8 units located on Main Street must meet the 2500 SF lot size per unit, but 9 or more units does not. It is not clear to me why 9 units or more may have a smaller lot size than an 8 unit building.

Amendment (8), Support.

Amendment (9), No Comment.