

December 16, 2016
Response of the Neighbors to Applicant's Enclosure II

**TOWN OF NEW CANAAN
PLANNING AND ZONING COMMISSION**

GRACE FARM FOUNDATION, INC.

**ENCLOSURE II RESPONSE TO QUESTIONS
FROM
TOWN PLANNER / SR. ENFORCEMENT OFFICER**

September 26, 2016

[1 Applicant] In response to the questions raised by the Town Planner / Sr. Enforcement Officer in his letter of June 24, 2016 ("the Letter") [Appendix B], the Foundation respectfully responds that *its activities since opening Grace Farms in 2015 fall within the recognition and grant of authority specifically set forth for the Foundation in the Special Permit, viz., Resolution Paragraph 4 [... "the Foundation is a not-for-profit charitable foundation established in 2009 in New Canaan to support initiatives in the areas of faith, the arts, social justice and community..."} and Condition 12 ["...the Commission acknowledges that as part of its religious mission, the Applicant, among other activities, pursues interfaith meetings and charitable initiatives..."], and within the legitimate activity of any religious institution conferred in Resolution Paragraph 1 and Conditions 1, 7-10 and 13 of the Special Permit.*

[1 Neighbors] The repositioning of the separate sections of the Special Permit, and making them appear as though, in Condition 12, the Commission's reference to "the Applicant" is actually a reference to the Foundation, is a misleading attempt by to make it appear as though the Foundation itself was granted the right to operate on the property. The only specially permitted usage activity at the site is for a "Religious Institution". At the time of the 2012/2013 proceedings, due to the ownership structure then in effect, "the Applicant" for the Special Permit was properly the then owner of the Property, Grace Property Holdings LLC, which actively and expressly presented the application to be solely for the benefit of Grace Community Church.

The "WHEREAS" Recital #4 states in full: "Evidence presented in the record indicates that Grace Farms Foundation is a not-for-profit charitable foundation established in New Canaan, Connecticut, to support initiatives in the areas of faith, the arts, social justice and community."

Other than this recital, there is no other reference to the Foundation in the Special Permit.

This recital while defining the “Grace Farms Foundation” does not provide Grace Farms Foundation with any rights or permitted Special Permit uses on the Property. The discussions regarding the existence of the Foundation and its lack of rights on the Property are well documented in the record.

In fact, during the public hearing on January 29, 2013, Mr. Hammer, attorney for Grace Property Holdings LLC, stated that “If in the future there was a desire by anyone, whether its Grace Farms Foundation or anyone, to conduct ANY activity that’s not within the scope of the existing permit [referring to the 2008 Special Permit], then either additional approval would be obtained or that activity would not take place.” 1/29/13 at 71:7-12 (emphasis added).

During that same hearing Attorney Hammer also said: “I want to just reiterate Grace is not proposing any new or different use than they contemplated in 2007 and 2008 when they were before you. They’re not proposing any new or different use than what you contemplated when you approved the application, and they are not proposing any new or different use beyond what other churches throughout the town of New Canaan do on a daily basis.” 1/29/13 at 69:2-9.

The suggestion herein that in 2012 Grace Farms Foundation intended to apply for and received specific permission to pursue its initiatives under the special permit granted in 2013 is starkly at odds with the facts. Indeed it is at odds with those binding resolutions of the Special Permit that expressly restrict and condition use of the property:

- Condition 7 limited worship services to the Sanctuary;
- Condition 8 limited the number of worship services;
- Condition 9 prohibited any other use during worship services;
- Condition 10 – no school use;
- Condition 11 – no renting or use by for-profit or commercial organization;
- Condition 12 – no multi-organizational conferences or conference center use.

All of these limitations were aimed at what was stressed and represented throughout the application and hearings by the principals and representatives of the applicant and in their written submissions to the Commission – namely, that the only proposed use of the Property was for a Church, which would hold worship services in the Sanctuary and conduct ancillary Church activities.

Again, the best that one can conclude from the reference to the Foundation in the recitals to the Special Permit is that the Commission acknowledged its existence as a separate entity from the Applicant. At that time the Foundation held the title to abutting Parcel 2 and had identified itself

as an entity that was managing the design and building of the church facilities.

[2 Applicant] In his Letter the Town Planner suggests that P&Z believed that it was "...approving a church but with a more defined and perhaps more robust outreach program through the Foundation." The Special Permit, however, as quoted in the preceding paragraph, does not say this. Nor does the Special Permit even mention the term "outreach" or "ancillary" in respect of the Foundation activities or existence. The absence of such language is consistent with what the Foundation described to P&Z in the public hearings.

[2 Neighbors] The Applicant is correct that the Special Permit says nothing about a "more robust outreach program through the Foundation" and the absence of such language is consistent with the fact that the principals and representatives of the Foundation indicated in the public hearings – not that the activities of the Foundation at the site would not be merely ancillary, but that they would be in conjunction with and on behalf of Grace Community Church.

The public hearing on December 18, 2012, demonstrably indicated what the Commission intended in the Special Permit. Indeed, this seemed to be at the top of the Commissioners' minds:

Commissioner Goodwin: "A question on the foundation activities. Typically a foundation, and correct me if I'm wrong, but typically a foundation would be you're looking at opportunities. You're looking about where you want to position yourself, where you want to donate to, but you're not necessarily bringing groups in. You're not necessarily having conferences etcetera, etcetera. It's been implied that you would do that. Is that correct or not?"

Mr. Prince: "We would only do it – we would only do that as a facilitator for the church, because we are there – the church doesn't have the ability to operate this property. We are doing this on behalf of the church."

Mr. Goodwin: "Right."

Mr. Prince: "And so we would only do that with, in conjunction with the church."

Mr. Goodwin: "So activities specific to the church, but you wouldn't be doing a conference where, I don't know, third world –"

Mr. Prince: "that's not the point of what we're doing."

Mr. Goodwin: "Okay. It's important to verify that."

12/18/12 at 19:20 to 20:18

Thus, the absence of a reference to the Foundation's activities being for "outreach" or being "ancillary" to Grace Community Church was not a reflection of the Commission's intent to

permit a more liberal use of the site by the Foundation, as counsel for the Applicant implies. To the contrary, it was the result of repeated representations by the Foundation that its activities would be limited exclusively to facilitating the activities of the church and perhaps not even rise to the level of being ancillary. The record clearly reflects that the Applicant refuted all assertions that the Foundation's presence at Grace Farms would be anything other than managing the construction of the River Building and assisting with the operation and maintenance of the developed structures going forward.

Perhaps the omission of the word "ancillary" in the Special Permit itself is a result of the acknowledgement by the applicant that any uses not related to Grace Community Church's religious mission would need to be ancillary to the mission. See for example, Attorney Hammer's January 18, 2013 memorandum to the Commission in which he protests any scrutiny of the Foundation's activities or planned activities. The caption to the first topic states that "Grace [Property Holdings LLC] holds a valid special permit allowing it to establish a religious use and ancillary uses on its property..." (emphasis added). Attorney Hammer then reaffirms the impression given in the caption by referencing Mr. Kleppin's 11/21/12 Planner's memo which states that the "[t]he use has been approved and affirmed through litigation. The changes proposed are site planning issues not related to use." Thus, it was acknowledged that the only uses permitted pursuant to the 2013 Special Permit would be for those of Grace Community Church and activities that were *ancillary* thereto.

For those who wish to believe the Foundation's activities were initially envisioned by the Foundation to be ancillary to that Grace Community Church and that the Foundation's role just became clearer over time as the situation evolved, the current Application disproves that theory. On page 6 of Enclosure I of the Application, the Applicant states that "[w]hile the Church's outreach and that of the Foundation each embrace a shared sense of mission and service, and while in 2013 the Church's outreach was more visible, this does not alter the basic truth that it was always intended that they would be pursuing shared goals on divergent paths." (emphasis added). Thus, the Applicant leaves little doubt about the fact that representatives of Grace Farms Foundation deliberately misled the Commission.

[3 Applicant] Indeed, it was the Foundation, through its affiliate, Grace Property Holdings, LLC, and not Grace Community Church ("the Church") that was the applicant in 2012. The Foundation was not established as a religious institution, but as a charitable institution. The Church does not control any aspect of the Foundation governance or activities, and has never had any ownership interest in Grace Farms itself. Further, the Church operates at Grace Farms under a revocable license granted by the Foundation. The Foundation and Church do share a common origin in local residents seeking to facilitate virtuous living and good works in the community. But neither entity is structured or was intended to act for the other, even as they embraced similar goals and mutual support. Again,

this was made clear in the Special Permit record from 2012-13.

[3 Neighbors] The Foundation was clearly not the applicant in 2012. The application in 2012 was for an amendment of the 2008 specially permitted “religious institution” institutional use at the site that had been issued to Grace Property Holdings LLC as the title holder to Parcel 1. Grace Farms Foundation had not even been FORMED when the 2008 Special Permit amendment was issued. And no application was made in 2012 for a specially permitted “philanthropic or eleemosynary” institutional use at the site. The fact that Grace Farms Foundation now has ownership of both Parcel 1 and Parcel 2 is the result of a transfer of title of Parcel 1 from Grace Property Holdings LLC on September 29, 2014. In 2013, the Special Permit for a “religious institution” institutional use was granted to Grace Property Holdings for the benefit of Grace Community Church, and not Grace Farms Foundation, which would have required a “philanthropic or eleemosynary” institutional use special permit to legally operate at the site. The important distinction to keep in mind is that of ownership of a property versus operating activities at a property that are legally permitted by means of special permit exception.

Prior to the current submission it was not common knowledge that the license provided to Grace Community Church was revocable by the property owner. Presumably, today, the revocation by Grace Farms Foundation of such license would call into question the validity of the existing Special Permit, because the Special Permit is for the operation of a Religious Institution (defined in New Canaan’s zoning regulations as “a place where persons regularly assemble for religious worship, and which is maintained and controlled by a religious body which is organized to sustain public worship”), and as stated above, the Foundation is not a religious institution.

The Applicant suggests that there was clarity on the record in 2012-2013 as to the activities of the nascent Foundation and its separate goals and objectives from that of Grace Community Church and that the Commission knew, or perhaps should have known, that the nascent Foundation would use the Special Permit applied for by Grace Property Holdings LLC to enable it to pursue its own separate initiatives, including those that are unrelated to the religious institution use for which the Special Permit was granted. As the testimony referenced above confirms, if there was any clarity from the 2012-2013 record at all, it was just the opposite – that the role of Grace Community Church was paramount to the interests of Grace Farms Foundation.

Indeed, not only did Grace representatives speak to the fact that the activities of the Foundation would be, in effect, limited to supporting the efforts of Grace Community Church, but also counsel for Grace at the time argued strenuously that any consideration of the activities or potential activities of the Foundation should not be considered (and could not be considered) by the Commission. At the December 18, 2012 hearing, Attorney Hammer stated the following:

“I guess I would like to put it in as simple terms as I can possibly try to put it for you, which is the intent is to live within the scope and bounds of the permit that you’ve already granted when it comes to uses and ancillary uses, and again, we think, from our perspective, that this commission probably has given as much, if not more, scrutiny five years ago to the uses and ancillary uses of this church than any other church in town, and many of those churches granted have been operating perhaps since before there even was zoning in New Canaan.

“But you imposed specific conditions on the ancillary use five years ago, and we don’t think it is appropriate to be revisiting that, because that is not, we don’t think, within the scope of this application. But to keep it simple, we intend to comply with the scope of the existing permit [meaning the 2008 permit] and we’re not asking you for some type of permit that we don’t have. We’re not asking you for a philanthropic organization permit or any other type of permit, whether it be Grace Farms Foundation or anyone, any individual or any entity, if anybody wants to do something that needs a new and different permit, then either that permit is sought or that activity doesn’t get done. “

[And shortly after that comment, he continued...]

“One other quick thing I wanted to mention is last time – and by the way, again, the Superior Court, in the decision we got last January, said you can’t assume that a zoning violation will be created. You don’t assume noncompliance, and, again, I think that’s what you’re being asked to assume. Grace Farms Foundation, you know, has a representative on site as the overseer as the manager of the construction project of the property.

“You know, again, if somebody happens to get a piece of mail in their mailbox for a nonprofit institution that they’re involved in, that’s not a zoning violation. Does the fact that somebody lists a street address on a filing somewhere, is that a zoning violation? Of course it’s not. The fact of the matter is that the other lot, which Grace Farms Foundation owns, doesn’t even have a street address.”

12/18/12 at 57:7 to 58:9 and 59:3-19

As to the activities of the Foundation, contrary to the assertions made by counsel in the current Application, the record from the 2012-2013 Special Permit application process makes clear that the Applicant wanted to avoid any and all scrutiny of the proposed activities of the Foundation and expressly denied any intent to operate the Foundation as a separate philanthropic enterprise at

the subject property. Contrary to the notion that the record clearly reflected the Foundation's intent to operate from the Property, the applicant's representatives portrayed the Foundation's activities as being limited to one employee and a mailing address and contended that any consideration of its activities beyond that was out of order. The assertion that "the Foundation, through its affiliate Grace Property Holdings LLC, and not Grace Community Church ... was the applicant in 2012," cannot be taken seriously given, the substantial efforts to minimize or deny that there was any difference between the religious mission of Grace Community Church and that of the Foundation.

[4 Applicant] At the same time the Foundation acknowledges that the distinction between its activities and those of the Church have become blurred since 2013, and needs to be clarified. The goal of the Application is to set forth again the activities and the scope of approvals for the Foundation, this time under principal use(s) of a club and philanthropic institution, separate from the Church's religious institution use. The hope is to remove the uncertainty about the distinction, and to allow the Foundation to continue confidently on its course of serving the New Canaan community for years to come.

[4 Neighbors] Contrary to the assertion that the distinction between the Foundation activities and those of the church have become "blurred since 2013", the Foundation has undertaken a substantial campaign to seek to reverse the impression it created for purposes of obtaining the "Religious Institution" Special Permit -- that the Foundation was formed merely to support the efforts of Grace Community Church. In calendar year 2014 alone, at least 10 months prior to the opening of the facility, Grace Farms Foundation spent \$323,986 on marketing and communications (according to its Form 990 tax filing). And immediately upon opening in October 2015, as part of that PR campaign they announced that Grace Farms was "not a church." See, for example, the following quotes attributed to Mrs. Prince:

- "It is not a church" *The Guardian*, October 9, 2015
- "We are not building a church" *The New York Times*, October 16, 2015
- "It is for people of all faiths, or none at all." *New Canaan Advertiser*, October 17, 2015

Not long after the opening, Mrs. Prince and Michael Chen, the Foundation's Strategic Partner to the President, spoke to the New Canaan Advertiser for an article that was published as part of a special supplement on December 23, 2015. The article says "Chen contrasted Grace Farms to traditional church communities. He said 'Unlike others where faith is first, here it is only if you want to' include it in the experience. The other parts of Grace Farms can be first and primary, Chen said."

Due to the substantial resources and efforts devoted by Grace Farms Foundation to this campaign, many New Canaan residents now believe that Grace Farms Foundation's Special Permit is what allows Grace Community Church to operate on the site. In fact, to the contrary,

were it not for Grace Community Church, there would be no special permit at all as the specially permitted use is solely for a “religious institution” as defined in New Canaan’s zoning regulations and absent such permit, the only permitted use on this lot located in a residential zone is a residential use

[5 Applicant] As stated, many of the founders of the Church were founders of the Foundation, and both entities share a vision to do good and to help the community. A comparison of the materials in Appendix E and Appendix G reveal that this strong bond still exists. It was thought in 2013 that the single principal use previously granted reflected the unique alliance between Church and Foundation and would facilitate the activities of both. In candor and in hindsight, it must be said that the suggestion P&Z made of separate uses for each should have been more critically considered. But it was made clear that the Foundation and Church were separate legal entities, pursuing separate activities.

[5 Neighbors] While it was made clear in 2013 that the Foundation and the Church were separate legal entities, it was not made clear that the Foundation was providing the Church with only a revocable operating license and, as demonstrated particularly by the statements of Mr. Prince, above, it was not at all clear the Foundation would be pursuing separate activities. The fact that the relationship between Grace Community Church and Grace Farms Foundation can be “revoked” by the Foundation supports the premise that the Applicant deliberately misled the Commission.

[6 Applicant] In 2012-13, details of the nature and planned activities of the Foundation as a charitable institution were not discussed in the public hearings to the same extent or detail as the site-specific construction issues. Indeed, the Foundation did not have a home, and had not yet taken occupancy of the Grace Farms site. Nor is it any surprise that construction and site-specific detail took up so much time in the hearings and terms of the Special Permit. In other words, one can see how the confusion arose. The Foundation sincerely hopes this Application, filed with program information more clear, the site completed and occupied, and the Foundation in operation for nearly a year, can provide the needed fix.

[6 Neighbors] A thorough review of the record for the 2012 - 2013 application and approval process makes clear how disingenuous it is for the Applicant to now claim that the Commission was confused about the Foundation’s proposed activities. There was no confusion. There were extensive discussions, written submissions by neighbors and written responses by counsel for the applicant regarding the activities planned for the Property.

In his January 18, 2013 memorandum to the Commission , Attorney Hammer wrote “The claims made as to the potential activities by Grace Farms Foundation exceeding the scope of the existing permit [meaning the 2008 permit] are not only flatly wrong and speculative, but they are completely irrelevant to this proceeding.” [page 4]

The Applicant refused to declare any intended activities beyond those permitted under its 2008 amended Special Permit. It is clear from the record that the Commission was led to believe that the activities of the Foundation would be minimal and solely related to the development, operation and maintenance of the River Building complex and related grounds, and supporting ancillary religious activities of Grace Community Church. This was the import of Commissioner Goodwin's question and conclusion that "it was important to verify that." 12/18/12 at 20:18. The Applicant now seeks to "come clean" to the Commission with their vision for the property, after they succeeding in misleading the Commission, the surrounding neighborhood and greater New Canaan community to get their project built, and then reshaping public opinion in the interim. This is the precise "bait and switch" that has been commented on in the media and the community.

[7 Applicant] The Foundation respectfully incorporates by reference the transcript of the 2012-13 public hearings on the Special Permit, for completeness and ease of reference, and because the Letter and the correspondence of certain neighbors who have also inquired to P&Z about the Foundation's activities invoke excerpted aspects of the hearings. However, P&Z should be mindful, as its counsel will advise, that it is the terms of the Special Permit itself, and not the transcript of the proceedings or even the deliberations of P&Z itself--- or its "consensus" four years later---- that constitute the operative approval. The law is clear that, while the degree to which an issue was addressed in a public hearing or in the deliberations of a land use agency may be instructive, it is the terms of the actual approval document by itself that are paramount. *RYA Corp. v. Planning & Zoning Commission*, 87 Conn. App. 658, 675 (2005). In this regard, Resolution Paragraph 4 and Condition 12 of the Special Permit, quoted at the outset of this Response, stand alone. Nowhere in these provisions or elsewhere in the Special Permit are the Foundation or its purpose and activities referred to as either "outreach" of or "ancillary" to the Church.

[7 Neighbors] Once again, the Applicant seeks to rewrite the Special Permit to suggest that the introductory recital referring to the Foundation and its initiatives has operative effect. There are no Resolutions in the Special Permit -- nothing that operates to give rights or privileges under the Special Permit -- that make any reference to the Foundation or its activities. And the current attempt to claim that the Foundation was really the applicant is not supported within the text of the Special Permit or the record related thereto. The discussion of the Foundation's activities during the 2012/2013 proceedings was not initiated by the Applicant. Instead, the discussion arose in response to concerns from neighbors and questions from the Commissioners which the Applicant sought to suppress as irrelevant.

The Applicant also claims, in effect, that the Commission's failure to expressly limit the Foundation's activities to "ancillary" or "outreach," means that the Foundation can operate in pursuit of its broad and vague initiatives with impunity. The fact that the Foundation may now be the owner of the Property does not give the Foundation any right to operate on the Property. The only permitted use on the Property is as a Religious Institution. No other Special Permit

has been issued.

[8 Applicant] Even if the Town Planner had not sent his Letter in June, it was the Foundation's intention this year to seek to amend the Special Permit. This is because it has become clear that, as closely allied as the Foundation is with the Church in vision and mission to serve the community, and as proud as it is of its ability to make Grace Farms a home for the Church, the Foundation's activities as a charitable foundation need to be recognized and understood as distinct from those of the Church. There are a myriad of reasons for this, and they range from the long-term goal of establishing an endowment for the Grace Farms site to maintain and repair its physical plant, to the need to be seen as an independent institution in order to pursue the core initiatives that the Foundation was established to pursue.

[8 Neighbors] There is no evidence that, absent a threat of enforcement, the Foundation had any intention of coming before the Commission. In a New Canaan Advertiser article posted on June 7, 2016, Mrs. Prince is quoted as follows:

“We’re just now learning about some of these things, and we’re going to go through the process one would normally take,” she said. “We haven’t heard from the [Planning and] Zoning officer yet about the issues they want to address, and we want to meet with the neighbors to hear first-hand.”

Prince said several of the unhappy neighbors, whom she has met previously, have agreed to attend, with no attorneys present for either side.

While she chose not to provide her opinion on individual issues, she was clear in saying Grace Farms had not done anything wrong.

“We believe we are absolutely operating within our Special Permit,” she said.
“All the activities that are at Grace Farms are within the scope of the permit.”
(emphasis added)

Of course, it is easy to see the reasons why the Foundation might wish to come back to the Commission to obtain the kind of broad expansion of usage for a range of activities they are now seeking. The current Application seeks such an expansive set of activities with so few limitations that it is in essence seeking formal approval to convert Grace Farms from a home for a Church, under the existing Special Permit, into an operation with virtually unrestricted capacity to pursue a myriad of non-profit and for profit and revenue raising initiatives, that happens to be home to a Grace Community Church as well (for so long as the Foundation chooses not to revoke its license). Indeed, Grace Community Church has become the ancillary use.

If taken together, the Applicant’s various assertions make it clear that they are trying to create

the impression that the Commission knew in 2012/2013 (or should have known) that the scope and intensity of the Foundation activities would overtake those of Grace Community Church. They have twisted the introductory language of the Special Permit in an attempt to argue that it already permits the existing Foundation activities. All to suggest that somehow the Commission owes it to the Foundation to grant them greater latitude now, since this application is a *pro forma* exercise to make it easier for the Foundation to fundraise.

The Commission owes them no such obligation. As the owner of Parcel 1, Grace Property Holdings LLC applied for and received the right to build and operate a church. The Foundation built that church on the basis of that approval. The Foundation then chose to operate illegally and at a much greater scale at the site. The Foundation took the risk to spend the reported \$125 million without having secured the necessary zoning approvals that it now seeks. The Foundation chose to hire a large staff and build out a large infrastructure. If in fact, the Foundation waited until 2016 to determine that they needed broader authority from the Commission to achieve their master plan, then they waited far too long. They should have sought that approval before making the investment. The fact that the Foundation made the risky investment in a project – one that Mr. Prince described in the public hearing as being “way too big for a church” -- without the proper approvals does not now obligate the Commission to approve any amendment at all to its existing Special Permit. 12/18/12 at 18:24-25

In separate conversations with various neighbors, Mrs. Prince indicated that the Foundation has developed a “100 year master plan” for the site. She indicated that they would continue to try new and different things until the master plan was realized, and that significant development activities are planned for Parcel 2 which the Foundation is currently holding out to the community as “dedicated open space”. Given this applicant’s mendacity, we believe it imperative for the Commission to review the Foundation’s master plan for all parcels to understand when it was developed, what Special Permit use conditions are relied upon, what the intensity of use would be under that plan if achieved, and the role of Grace Community Church in that plan.

The current application puts the Commission at the crossroads of a major decision relative to the future of the site. Grace Community Church was at the center of the original rationale for the development of the site. Its role in relation to the site has already been marginalized and overtaken. It has become ancillary by stealth. If the Foundation succeeds in obtaining the flexibility it seeks under the current application, they may never need to come before the Commission again, and the gamble the Foundation made by hiding behind the Religious Institution application will have paid off. Simultaneously, the citizens of the Town of New Canaan will have had foisted on them, through their good intentions to support good causes, a major new institutional use of property in a residential area in a most inappropriate and haphazard manner.

1. Additional Use(s) Designated for the Foundation

[9 Applicant] The Application seeks to have P&Z designated additional principal special permit uses, as a "club /organization " and "philanthropic /eleemosynary institution," under Section 3.2.C.16 and -C.17 of the Zoning Regulations, and without prejudice to or abandoning the religious institution use it was granted in 2013. The Church will continue to operate as a "religious institution" special permit use, as approved by P&Z in 2007 and 2013 under Section 3.2.C.14. There is no legal impediment to P&Z recognizing more than one principal special permit use for a single site.

The Foundation concedes at the outset that it did not appreciate this distinction and the impact of being designated a religious institution use the same as the Church when the Special Permit was first amended. Even so, it was stated during the 2012-13 hearings – and continues to be true today- that the Foundation's operations would not exceed the intensity of use from the stated religious use by the Church that P&Z had already approved. Thus, this Application is brought to make the zoning regime under which the Foundation operates consistent with what it has experienced in actual operations for nearly a year: The activities of the Foundation and Church, while in many ways intertwined because both seek to advance good, are nevertheless distinct uses and it is preferable that they be designated as such.

[9 Neighbors] As stated previously and as evidenced by the Letter of the Town Planner that led to this proceeding, the intensity of use by Grace Farms Foundation at the Grace Farms site already greatly exceeds that of Grace Community Church. Put simply, Grace Farms Foundation is operating illegally at the site. The approval they seek to obtain would permit the Foundation's operations to dominate, rather than complement, Grace Community Church's activities at the site.

[10 Applicant] The Foundation seeks to be transparent about its activities as related to its clearly stated mission. Under the single principal use designation as a religious institution, the Foundation's independent activities from the Church are not clearly understood, and the Letter from the Town Planner recites the confusion that has been wrought. This confusion has also proven to be an impediment to the Foundation's philanthropy under the five initiatives in its mission. Simply stated, many non-profits with which the Foundation could collaborate, and governmental agencies whose mission compliments the Foundation's core initiatives, especially justice, are constrained by law from working with a non-denominational charitable institution over a specific religious institution.

[10 Neighbors] Once again, this is a problem of the Foundation's own creation. To the extent that activities the Foundation wishes to pursue are separate and distinct from those of a Religious Institution, the Foundation is free today to pursue those initiatives at a different location. The fact that the Foundation chose to co-locate its expanded operations at a site in a residential zone that is subject to a Special Permit to operate only a Religious Institution means that it needs to restrict its operations there to permitted activities. During the hearings in January

2013, Mrs. Prince indicated that they had no intention to operate the Foundation from the Grace Farms site.

“The other thing that’s important to note is Grace Farms, the web site that says gracefarms.org, the differentiator, that is a place. Its different than – we’re just calling the – like it was Windsome Farms. It’s called Grace Farms. We know there’s two. We know the 48 acres is for Grace Community Church. The 27 acres has been preserved for open space, and its just called Grace Farms is the name of an area that was formerly Windsome Farms and we’re really just – We realize that, and we’re very careful tin noting that the 48 acres is what we’re applying for.” (emphasis added).

[After a brief discussion of open space, Mrs. Prince continued:]

“Also, the question about 365 Lukes Wood Road operating as a foundation out of there. I think Joe mentioned there’s one person there who has to be on site, because we’re trying to, you know, do the design. As you can tell, it’s been an enormous effort. We have someone on site to meet with all the contractors, the design team, and it’s been years and years of planning, and we need someone there to do that. We need someone on site to preserve the security of the site, too.

“That’s another element. My office is not – as the president, I am not at 365 Lukes Wood Road. I am in a different place, which is – I don’t want to say -- I mean – anyway, it’s moot. It’s at my – I have a home office which I work at probably 20 hours, many hours a day for many, many years. So anyway, I just want to clear up those things.”

1/29/13 at 50:4-17 and 51:8-24

When given the opportunity to clarify the Foundation’s goals and objectives and its intention to conduct activities at the Grace Farms site, Mrs. Prince declared no such intention and sought to minimize any possibility that the Foundation would have any operations at the site, saying the 48 acres was for Grace Community Church. Once again, there are no restrictions on the Foundation operating in downtown New Canaan or any other location, and conducting its activities for good at another location.

Although we wish that the June 24, 2016 letter from Mr. Kleppin to Grace Farms Foundation had been more declaratory and binding in relation to the specific violations of the Special Permit, we see nowhere in the letter where Mr. Kleppin “recites the confusion that has been wrought.” Again, there was no confusion on the part of the Commission in 2013 as to the very limited role

that the Foundation would play in assisting Grace Community Church in fulfilling its religious mission. The only confusion that might exist is on the part of the public as a result of the well-orchestrated campaign by the Foundation to give the impression that Grace Community Church was now at the mercy of the Foundation, rather than the other way around.

[11 Applicant] This amendment for designation of additional distinct special permit use(s) for the Foundation will alleviate confusion about the Foundation's operations. Indeed, the confusion described in the Letter on this issue has likely arisen because, when the Special Permit was first granted in 2007 and then amended in 2013, the Church was already in existence and well-known in the community, whereas the Foundation, while in existence, was not yet operational.

Attached as Appendix I from 2012 are the press release issued by the Foundation when the Special Permit was filed, articles in the local and national press about the Foundation's plans, and a brochure that it distributed within the New Canaan community and on its website (gracefarms.org) at the time. These documents describe to the public, at the same time the Foundation was presenting its application for the Special Permit to P&Z, its activities as separate from those of the Church.

[11 Neighbors] The interesting twist here is that counsel for the Applicant has said that “the terms of the Special Permit itself, and not the transcript of the proceedings or even the deliberations of P&Z itself... that constitute the operative approval” and yet they seek to reference a press release -- a document that Grace did make not part of the formal record in 2012 and 2013 (it was referenced only in a neighbor's letter) -- to support its position that the Commissioners either knew or should have known that the Foundation intended to operate at the site.

[12 Applicant] It should also be pointed out that the Foundation in 2013 did not seek to prescribe to the Town Planner or P&Z how to draft the Special Permit, nor was it ever given opportunity to review it in draft before it was adopted. It is understandable that the Foundation would receive only cursory reference in its provisions, with the focus at the time on construction and design issues that are always paramount in any real property development application. But it was P&Z's choice as to how to craft the Special Permit, and the language it chose in 2012 should not be twisted in hindsight today to suggest that the Foundation activities were not mentioned, or not important, as some of the criticism suggests.

[12 Neighbors] Shockingly, it is the Applicant who claims that, in effect, a literal reading of the Special Permit that recognizes that the Foundation is not referenced at all in the operative provisions of the document is twisting it in hindsight. The only way that Applicant's reading of the existing Special Permit can be supported is by ignoring an enormous amount of testimony that is contrary to their reading (which itself requires some creative repositioning of recitals with resolutions to change their perceived meaning) and to bring in evidence not presented on the

record.

[13 Applicant] In sum, even though it was not yet operational in 2012, the Foundation laid out for P&Z in testimony and in documents the various types of activities that would occur at the Foundation- all activities that are currently occurring. Indeed, the purpose of the 2012 application, in addition to obtaining specific approvals to begin construction, was to introduce the Foundation and to explain its mission, in addition to that of the Church, which had been approved in 2007.

[13 Neighbors] On the contrary, in his January 18, 2013 memorandum to Commission , Attorney Hammer stated that “As Grace [Property Holdings LLC] has stated in this proceeding, it intends to abide by the special permit that it holds, and it does not seek an expansion of that permit or any different permit. Grace will not use the property in any manner different than contemplated and approved in 2007 and 2008. It does not seek a special permit for a park, a philanthropic organization or a club. Nor does Grace seek a special permit for the adjoining lot known as Lot 76 [owned by Grace Farms Foundation]. If Grace were to seek to conduct any activities requiring further zoning approval, then it would either obtain such approval or not undertake the particular activity.” [Pages 3-4]

While testimony and documents were provided in 2012 with regard to activities to be undertaken by Grace Community Church at the Grace Farms site, there were no submissions covering activities that would occur “at the Foundation.”

And once again, for the Applicant to suggest that “the purpose of the 2012 application ... was to introduce the Foundation and explain its mission” is really quite extraordinary. When the only discussion of the Foundation was initiated by letters of concern from the neighbors and questions from the Commission, and the Foundation’s principals and representatives only sought to minimize the Foundation’s role, it strains credibility to try to claim that the Foundation was forthcoming with information about its plans.

At the first P&Z hearing that discussed the project, October 23, 2012, Mrs. Prince was the only person to address the function of the Foundation. She “introduced” the Foundation as follows: “I’m president of Grace Farms Foundation and current planning member of Grace Community Church. In 2009 individuals from Grace Community Church established the foundation. It’s a nonprofit charitable organization, and we’re directing and managing the project that’s before you this evening.” 10/23/12 at 10:10-16. Shortly after that, when addressing issues raised by neighbors, she said “I anticipate responding further to those inquiries and talk about those, exploring, you know, those solutions if this matter continues to another hearing.” 10/23/12 at 12:25 to 13:1. The only other uses of the word “foundation” in the entire transcript of that hearing was to describe the search for the project’s architect and to identify a speaker as a member of the Foundation’s board.

If, as this application states, it part of the purpose of the 2012 application to introduce the Foundation and to explain its mission, why was there no discussion of the Foundation's mission? As part of the well-orchestrated initial presentation of the project – the project that Attorney Hammer in his opening statement described as “the development of church facilities for Grace Community Church and related improvements on the property at 365 Lukes Wood Road” – the only mission that was attributed to the Foundation was the management of the construction of the church buildings. 10/23/12, 4:12-15.

Why was there no discussion of the Foundation's mission in the first hearing, when the applicant did not know if the matter would be continued to another hearing? The answer was provided in Attorney Hammer's statement that “the use of the property...have been carefully determined and examined by the court and cannot properly be revisited in this proceeding.” 10/23/12 at 6:5-12. And following Attorney Hammer's lead, Mrs. Prince said later: “We have shared some potential solutions [with neighbors] regarding design inquiries, design inquiries regarding parking and additional screening, I noted that you had some usage issues, too, but we're keeping that to design issues...” 10/23/12 at 12:19-23. So the clear position that was adopted was to avoid any discussion of the Foundation or its mission, lest there be scrutiny of its mission, resulting in a broadening of the scope of P&Z's review and risk getting the project denied. Once again, the Applicant 's statement that the purpose of the 2012 hearings was explain the Foundation's mission is a completely false statement for the purpose of completely distorting the history of the 2012 proceedings.

2. *Statistical Information Corroborates the 2013 Record*

[14 Applicant]The Town Planner discusses in the Letter a document submitted by the Foundation into the 2012-13 record, entitled "2012 Typical Usage" chart (Appendix D). The Letter states that the number of Church activities listed therein exceed those of the Foundation, while, based on a 2016 review of the website, the activities for both entities appear to be equal. To conclude from this that the Foundation has grown is misleading, in terms of actual activity. First, this document was not intended 2012 to predict the extent or scope of the activities of the Foundation, but simply to show the type of activity. Second, that the Town Planner has counted the activities to compare with the Foundation's and the Church's at present is his choice. That his count, showing Church activities greater than the Foundations by a ratio of 3:1, is consistent with the actual use over the last year, as shown in the "Frequency of Events Measured by Visitor Attendance" chart in Appendix C, and is as enlightening today as it was unintended in 2012.

The point to be made is that real impact for zoning purposes and special permit consideration is the intensity of use and its impact, (as distinct from the number of events on a chart or calendar).

[14 Neighbors] It is interesting that the Applicant would make the point (with which we

agree) that intensity of use and its impact is most relevant, but then provide data in Appendix C that is only focused on the events and meetings that are held at the site. In Appendix C they have provided statistics only related to events and attendance at events.

They have completely ignored the attendance by the general public, even though (as stated on Page 7 of Enclosure I of their Application) the site “is open to the public without admission charge or membership requirement.” It is certainly relevant to consider the statistics related to attendance at events, but as abutting neighbors, our concerns include the significant level of foot traffic on the site that is not related to events. The Applicant has provided no statistics on total attendance other than those that can be inferred from traffic reports. Even those reports are limited to specific times and dates sampled.

According to a New Canaan Advertiser article published on December 23, 2015, Grace Farms, by its own admission, was attracting an average of 3,000 visitors per week during November and December of 2015. And on February 26, 2016, the Foundation issued a press release stating that from the time they opened they had had “more than 50,000 visitors,” which would be at least 2,600 people per week since they had opened. Assuming the level of attendance continued at 2,600 per week, attendance through August 31, 2016 would have been approximately 115,000 people. This would be approximately 135,000 on an annualized basis – more than ten times the 13,000 annual attendees at the Glass House – (per the 1/27/16 newcanaanite.com article). Therefore, the data presented in Appendix C, which has a breakdown for an estimated 59,498 visits related to specific events, captures only about half of the actual use of the site. How can that be said to measure “the intensity of use and its impact?”

The other attendees not counted in the Appendix C data are undoubtedly there as visitors and guests of the Foundation and are not there for church. Access to the Grace Farms site is controlled by the Foundation and the Foundation, not Grace Community Church, advertises and encourages the general public to visit. Notwithstanding the Applicant’s assertion on page 7 of Enclosure I, that Grace Church is open to the public, there is no general invitation or posted hours of operation on the Grace Community Church website. The Grace Community Church website addresses only its own scheduled programs with specific times and dates of those programs, some of which take place at other locations. In order to learn the hours of operation at the property, one must follow a link to the Foundation’s website. The Foundation’s website states that: “Grace Farms is a gift of open space to the community. Admission is free.” The Foundation’s Facebook page features posts such as the one on June 19, 2016, which stated “Happy Father’s Day. Invite your dad for a walk around Cattail Pond, to shoot hoops in the Court or for lunch at the Commons at Grace Farms, CT!” And as mentioned previously, the Foundation has made an extensive effort through its PR campaign to attract attention to its architecture and sought to distance itself from religious activities of Grace Community Church in press interviews and elsewhere. Therefore, it is difficult to contend that the non-event visitors reported are related to Church activities or that, given the substantial number and frequency of visitors, they do not

count toward the intensity of use.

The other important data that is ignored in the analysis in Appendix C is the presence of 60 full – and part-time Foundation staff (See page 7 of Enclosure I) as well as approximately 8 members of the staff for the church. They also do not include maintenance workers and repair contractors and utility personnel. From the perspective of the neighbors, these additional 68+ people now required to support the growth of the Foundation activities certainly add to the intensity of use. The failure to account for the comings and goings of these 68 people (about 800 comings and goings per week, more than 40,000 per year) further contributes to a distortion of any analysis of the intensity of use.

[15 Applicant]The Statistical Data in Appendix C tracks actual attendance at Grace Farms, by people, not by cars, over the past 11 months. This information has been collected by the Foundation's safety personnel, who are on site twenty-four hours each day. The chart entitled "Estimated Total Visits from Events and Meetings" shows that the Church is by far the predominant use at Grace Farms, at 72%, trailed by the Foundation at 28%. In addition, the Chart entitled, "Proportion of Events by Estimated Attendance per Event" shows that fully 63% of all Grace Farms events involve less than 20 people, and the 92% of all events held involve less than 100 people. Of the remaining 8% of all activity, three-quarters is ascribed to the Church and its worship activity, consistent with what is allowed in the Special Permit. This demonstrates that, for Grace Farms' 80 acres and 236 parking spaces, the use by the Foundation and Church is (1) of a very low intensity and (2) overwhelmingly Church-related.

[15 Neighbors] As noted above, this analysis is not based upon total attendance. It is limited to events and estimated attendance at events. If you add the more than 55,000 visitors (out of the conservatively estimated 115,000 attendees during the period through August 31, 2016) who would have attended the site for purposes other than attending an event, the proportion of the attendees who would be attending for Grace Community Church declines from 72% to 37%. Thus, when you use a proper denominator in the calculation (even one that still ignores the impact of staff usage), this data no longer supports the contention that “the Church is by far the predominant use at Grace Farms”, nor is it “overwhelmingly Church-related.”

Clearly the Applicant has used deceptive math in their analysis. But the distortions do not end there. The data in Appendix C presents data from the initial opening of the site through August 31st. During the earlier part of this period, the Foundation’s programming had just begun. As an example, according to its press release on February 26, 2016, the Foundation had only then completed its first 25 space grants to organizations it chose to support. Today, according to the Foundation’s website, that number has expanded to more than 50 space grants. And there is a 3-minute promotional video that is advertising the program and a process outlined with application forms to participate in the third round of space grants. Looking at the entire 11 month period and including the first several months when the Foundation held very few events only serves to obviously distort the current activity level. Considering the data from just the past few months

and estimating the normalized “run rate” from anticipated space grants and other program modifications would be a more reasoned and appropriate way to assess relative activity levels under current operations. But the Applicant has provided none of the data necessary to do this analysis. As a result, the Commission should place no weight on any of the statistics that are presented. Instead, the Commission should insist on receiving disaggregated raw data with which it can perform its own independent analysis.

As noted by the Town Planner in his Letter, there have been no reported traffic problems associated with the site, meaning activities by the Church and the Foundation.

3. *Activities of the Foundation*

[16 Applicant] The Foundation respectfully submits that its activities do fall within each of the five initiatives of the nature, arts, justice, community, and faith that form its core mission. Included in Appendix E, "Grace Farms Foundation History & Current Overview" is a description of the Foundation's five initiatives, and list of its non-profit partners and space grant recipients.

The Foundation in 2012 repeatedly stated, and its plans manifest, its intention to preserve the natural setting at Grace Farms for the enjoyment of the New Canaan community. Grace Farms has not been held out or operated as a "public park," nor will it be. The Foundation is committed to operating Grace Farms with a balance of activities, respecting its stated purpose of creating a place for reflection and peace.

[16 Neighbors]The claim that Grace Farms has not been held out as a “public park”, when it advertises to encourage people to come walk their trails, eat at their restaurant and experience nature at their site, seeks to create a distinction without a difference. A link for gracefarms.org appears as the eighth item returned from a Google search for “Public Parks New Canaan” as well as “New Canaan Parks.” Three of the seven results that preceded the Foundation’s site belonged to the Town of New Canaan, others belonged to connectnewcanaan.com, newcanaananswerbook.com and a patch.com article and [mapquest](http://mapquest.com) link to Mead Park. As Google clearly recognizes, as it is currently operated and promoted, Grace Farms has all the key elements of a public park.

[17 Applicant] As stated, the Foundation takes responsibility for the confusion that has arisen from its sharing the Church's religious institution principal use designation. That confusion will be relieved with the added principal use of club / philanthropic institution sought in the Application, for the Foundation, and in addition to the existing use the Church enjoys as a religious institution. Thus, while any "consensus" described in the Letter by the Town Planner about a "robust outreach," or the "common sentiment" expressed about "ancillary" Church use, as regards the Foundation, may stem from this confusion about principal use, they must be rejected, because the ideas are nowhere to be found or suggested in the language of the Special Permit or the Foundation's statements in 2012. The language of Special Permit Resolution Paragraph 4 and Condition 12 relates to the Foundation alone.

[17 Neighbors] We agree that the notions of “consensus” or “common sentiment” expressed in the Letter by the Town Planner are misplaced. But, once again, Condition 12 makes no reference to permitting the Foundation to conduct any “philanthropic or eleemosynary” activities on the site. And specifically with regard to the consideration of the Foundation’s activities, the term “ancillary” was a term that the applicant was quite comfortable referencing in his submissions to the Commission. Attorney Hammer noted in his January 18, 2013 memo, that Grace Property Holdings LLC was already the holder of “a valid special permit allowing it to establish a religious use on its property ... with ancillary and accessory uses similar to those of other churches.” The record is clear that the Commission simply acknowledged the Foundation as the title holder of abutting Parcel 2 and that ancillary religious uses are permitted on Parcel 1.

[18 Applicant] The Letter also suggests that the Child Trafficking Symposium and Modem House Day Symposium events violate Condition #12. These were not "multi-organizational conferences" for outside entities, but workshops in which Foundation personnel participated. Each is specific to core initiatives of justice and arts, respectively. So, too, were each of the "bullet list" items at the bottom of page 2 in the Letter. Indeed, the Foundation receives many requests for rentals as a conference center, and has no intention of seeking to change the Special Permit prohibition of such a use. Like everything at Grace Farms, the events are carefully thought through by the Grace Farms staff who hosts all of their events and ensures that the purpose is to advance good in furtherance of one of the core initiatives. The justice initiative, in particular, as involved as it is with law enforcement, the criminal justice system, and diplomacy, will involve activities frequently offsite. But that does not mean that a place like Grace Farms cannot play a role, as it did recently, in providing a training location for local police, or a quiet place where a workshop of U.N. University, in each instance to focus on different aspects of combatting human trafficking.

[18 Neighbors] To suggest that what is otherwise prohibited by Condition 12 (i.e., a multi-organizational conference) becomes permissible merely due to the participation of Foundation staff, fails to recognize the plain and simple definition of the word “multi-organizational”. Once again the Applicant seeks to weave a narrative that doesn’t exist. Whether the multi-organizational conference is related to one of the Foundation’s core initiatives is irrelevant to whether it is permissible pursuant to the existing Special Permit for Religious Institution Use. A clear reading of Condition 12 flatly prohibits any such conferences.

[19 Applicant] The Letter opines further that some of these activities could be better conducted downtown. The Foundation disagrees, but, respectfully, that question was in fact resolved when the Special Permit was granted, recognizing the Foundation, its core initiatives, and its activities. As the Letter concedes, the Special Permit allows Grace Farms to be open to the public and to be used for community gatherings.

[19 Neighbors] The Letter does not concede, as the Applicant contends, that Grace Farms is allowed to be open to the public. Instead it simply states that in Mr. Kleppin’s opinion, it

would be permissible to hold community events connected to the Church's religious mission. In his June 24, 2016 letter, Mr. Kleppin writes: "I understand that as part of the Church's mission it is your intent to be active in the community and for this property to be an asset to the community but it is my opinion that at the time of the approval that the Commission did not intend for the site to be use as a public park or community center." Once again, the Applicant seems unwilling to give words their plain meaning. Mr. Kleppin only referenced his view of the Foundation's intent and the Commission's intent.

[20 Applicant] Further, the truly important question for a special permit, whether the Foundation's activities have had any deleterious impact on the neighborhood, on traffic, or on property values, is answered in several places in the Letter, in the negative. It is also important to note that far from competing with other entities, Grace Farms seeks to support and enhance the activities of organizations in New Canaan who are also seeking to advance good in the world. Some examples include the ability for Arts for Healing to expand its services; the ability to support a local church when its facility could not be used; most recently, the ability of Voices of September 11th, with its deep New Canaan connections, to host its first commemoration in the State of Connecticut.

The Letter also discusses the use of Parcel2, which is not part of the Special Permit and which this Application does not seek to bring under the Special Permit. This parcel is being used for open space, allowed under the Zoning Regulations without a special permit. The Foundation has no plans for its use other than open space. The Foundation, as legal owner of the site, has repeatedly stated its intention to preserve the land at Grace Farms as a gift to the community. As for the "sound structure" at the pond, it is an art installation, not a structure. As with all of the art installations on site, it is open and free to members of the public to enjoy. Moreover, it is in conformity in all respects with the Town of New Canaan's noise ordinance. Most importantly, after hearing from a neighbor, the Foundation has reduced the volume to ensure that it is not audible from their home, and assured the neighbor that it would work with him or any neighbor to make further adjustments, so that it remains inaudible, particularly as the seasons change.

[20 Neighbors] Notwithstanding the repeated references and descriptions on all of the Grace Farms promotional materials, which describe the site as being 80 acres, provides maps to visitors that include Parcel 2 and uses features of Parcel 2 (including Cattail Pond) to attract visitors, the Applicant seeks to maintain the position that Parcel 2 cannot be regulated under the Special Permit. Contrary to the conciliatory tone the Foundation takes above, we are aware that its initial response to questions raised about Parcel 2 was that the Special Permit did not cover Parcel 2, so that none of the conditions of the Special Permit had any bearing on the use of the property – thus refusing adjust the volume of the structure. It was not until after their issues of compliance with the Special Permit made their way to the Commission's agenda did the Foundation adopt a more accommodating stance.

The neighbors have a right to be concerned about the activities on Parcel 2 in light of the close proximity of neighbors' properties and the regularity of foot traffic from the Foundation's

visitors whose presence encroaches on their security and privacy. The Foundation should have the same obligation to provide the same level of security and monitoring procedures for visitors to Parcel 2 as for Parcel 1. Today visitors to Grace Farms can arrive, park in the lot and wander every inch of the “open space” that comprises the 80 acres site, without being monitored, particularly as they travel further away from the River Building. The neighbors find it unacceptable that adequate measures are not taken to protect their security and privacy. Again, for nearly a decade, repeated representations were made that the property would only be for Grace Community Church, and that the maximum usage impact to the neighborhood would be “900 people on a Sunday”. Many usage conditions proposed in previous Commission hearings – including that the property would not be a public park -- were rejected based upon those fraudulent misrepresentations.

[21 Applicant] The Application itself discusses activities of the Foundation, such as tours and the limited food service that are sought to be added to the Special Permit, and proposes a way in which they can be addressed as ancillary uses to the principal use as a charitable institution. These activities arose for reasons that relate to the core initiatives of the Foundation.

[21 Neighbors] The Application states that its “food and beverage service is another activity that is often ancillary to religious or other institutions... that this service does not compete with downtown restaurants. ... This is not a restaurant use, and the Foundation does not seek approval for restaurant use; rather it is sought as a use ancillary to the Foundation’s role...” Enclosure I, page 8. Yet the Foundation applied for and received the same restaurant license under which all the downtown restaurants operate. No religious institution in New Canaan operates any similar facility or holds such license. The Applicant seems to distinguish its service from that of a restaurant by suggesting that it has community style tables – similar to those you find at Le Pain Quotidien in New Canaan – convert the restaurant at the Commons into merely a place “to encourage the interaction between people sharing food.” Neither does the Applicant’s statement that “surplus bread and vegetables are donated to local food charities” do anything to distinguish it from restaurants in town. Many restaurants in town do the same thing. The Commons restaurant has all of the key elements of a commercial restaurant (i.e., food service in return for payment).

The fact that the Applicant offers to demonstrate that this commercial activity will not result in a profit is not germane to the question of its character. In the perception of the community, the Commons is clearly a restaurant and Grace Farms is most definitely a destination that is in competition with New Canaan’s downtown commercial district. All you need to do is look at reviews on the Grace Farms Facebook page to determine the public’s perception. On October 30, 2016, Andrea P posted “perfect spot solo or lunch with friends or a trail hike with kids”. On February 12, 2016, Gigi P posted “The lunch was the best I had the homage tomato soup and chicken grilled cheese sandwich...”

The Applicant rightly comments that the conduct of food service and tour operations would need

to be added to an amended Special Permit in order to be compliant. By implication, this is an acknowledgement that these activities are today being conducted in violation of the existing Special Permit. The operation of the commercial restaurant was definitely not discussed at the in connection with the application for the existing Special Permit. The closest reference to such activities on the record in 2012 or 2013 was Mrs. Prince's statement that "We have the right to have a beautiful – I think every church has, you know, they have picnics. They're outside. People can sit down on their property, too." 1/29/13 at 50:23 to 51:1. These activities far surpass anything that the Commission could possibly have envisioned in light of the applicant's testimony in 2012 and 2013. They are in clear violation of the existing Special Permit and should not be allowed to continue.

4. Neighbors' Letters

[22 Applicant] While two letters have been submitted by neighbors critical of the Grace Farms site and the Foundation's activities, the Letter from the Town Planner sets forth essentially the same questions. The Foundation respectfully submits that its Application and response to the Letter address the points raised by neighbors. Clearly there has been a misperception that the Foundation and its activities are the same as the Church, one that the separate uses sought in the Application, if allowed, should alleviate. Again, as demonstrated in Appendix C's "Proportion of Events by Estimated Attendance per Event" chart, all activity on the Grace Farms site is in fact very low: Fully 63% of all events held involve less than 20 people, and the next 92% of all events held involve less than 100 people.

[22 Neighbors] The neighbors have indeed submitted several letters, including those addressed to Chairman John Goodwin dated May 13, 2016, May 21, 2016, June 20, 2016 and July 5, 2016. Each of these letters, among other things, documented clear violations of the Special Permit by the Foundation. These letters were not based upon any misperception as to what the Foundation claimed or what was documented in connection with the issuance of the existing Special Permit. The neighbors have been well informed and have diligently researched the public record concerning the Applicant, its activities and the terms of the Special Permit. Once again, the misleading statistics the Applicant uses do not alter the facts surrounding these clear violations.

The unfortunate fact is that the activities of the Foundation have been allowed to commence and continue for over a year without them ever being held in check by the town's enforcement officials. When, even before October 15, 2015, which the Applicant claims was the official opening date, the founders were quoted as saying they were "not a church," alarm bells should have been going off at Town Hall. From the time that the first impermissible events started occurring, neighbors were in communication with zoning officials expressing concerns and asking them to make a determination on various issues. No determinations were forthcoming.

As early as November 5 and 6, 2015, less than a month after the facility was opened to the public, when the Foundation held a Child Trafficking Symposium and there was considerable attention to the event in the media, there was no enforcement. It wasn't until, at the urging of the Commission, Mr. Kleppin issued a letter on June 24, 2016, that this was identified as a violation. Only then did Mr. Kleppin provide an opinion that "I believe ... the Foundation has directly violated Condition #12" which expressly prohibits "multi-organizational conferences." It has also now become clear that the certificate of occupancy was issued without requiring Grace to remove the parking lot by the gate house in order to conform to their approved site plan. In these situations and likely many others, it was clear that the town zoning officials turned a blind eye to the Foundation's activities, leaving the neighbors to continue to try to call out the violations that were clear and recurring.

In addition, there is no evidence that upon publicly initiating their initial "space grant" initiative, which effectively transforms the space into a conference center for nonprofit entities, there was any critical analysis by Mr. Kleppin of the program and its compliance with Condition #12 which expressly prohibits use of the facility as a conference center. Presented with a regulatory vacuum, the Foundation charged ahead and announced in February 2016 the issuance of 42 space grants to organizations, only a handful of which are affiliated with the ministries of Grace Community Church or the local New Canaan community. And recently, the Foundation announced that that number of space grants has grown to more than 50 and that they are actively soliciting applications for "round three" of its space grant program -- all in direct contravention of the Commission's directive at the June 28, 2016 public hearing that "Grace Farms ... be asked not to plan any significant new activities before its application is heard in September." The failure to make a critical determination as to the validity of this space grant program that obviously creates a multi-organizational conference center in direct contravention to Condition #12 has led the Foundation to assume that its actions are condoned by town authorities, and their ambitions can continue to be realized.

Similarly, statements to the press have given the Foundation some encouragement that the neighbors' concerns would be put in their place. In New Canaan Advertiser article dated June 26, 2016, Mr. Kleppin is quoted as saying:

"In all fairness to Grace, they're not even a year old. Things always evolve. It's a question of if what they are doing is negatively impacting the neighbors and the town.

"People always complained about the YMCA any time the Y wanted to expand. And then when they listed their house for sale it was 'walking distance to the Y.' They always do that. And the same people that complained I see at the Y.

“My two cents is that I think a lot of the activities at Grace Farms are good for the town.”

The suggestion, as in this quote, that the neighbors are implying that Grace Farms doesn't do good, fails to take into account the role of a zoning enforcement officer to enforce explicit usage conditions that the Commission approved when granting the existing special permit for a “religious institution.” Such enforcement should not be based upon the question of whether the party violating the conditions is doing good for the community. Even the Town of New Canaan is subject to its own zoning rules and conditions.

It is indeed quite unfortunate that the past leniency by Mr. Kleppin has made the Commission's job of enforcing the usage conditions they imposed even harder. Clearly, the Applicant now views the current application process not as an opportunity to seek clarity on the terms of the existing Special Permit and to conform their conduct to it, but rather as an opportunity to fully realize their hopes and dreams, notwithstanding their history of clear violations and disregard for the usage conditions that they agreed to live by when the Special Permit was issued.

[23 Applicant] The Foundation, as it indicated in a letter to P&Z, reached out to and met with the neighbors in June to see how their concerns can be resolved directly. It takes its neighbors' concerns very seriously, and remains open to discussion of any aspect of its operations that impact the neighbors' ability to use and to enjoy their property and neighborhood streets. The Foundation has spent considerable sums to screen its activities in real time with a berm and mature trees in several locations. It has commissioned a real estate market study, to allay rumor and concerns about diminution in value.

[23 Neighbors] Many of the neighbors, including those on whose behalf this submission is being made, do not find it credible for the Applicant to claim that they take the concerns of the neighbors very seriously. The Foundation's clear and consistent violations of the Special Permit conditions demonstrate that they don't really take seriously the concerns of the Commission either. If the Applicant had respect for its obligations, it would immediately come into compliance with the terms of the Special Permit and discontinue the charade that there was just a bunch of confusion regarding the Foundation's mission.

The only history that Applicant has of effectively resolving conflicts with its neighbors is to buy their properties. Witness their purchase of 82 Puddin Hill Road in New Canaan (where the neighbor had proposed a cell tower) and 4 Puddin Hill Road in South Salem (where the resident had properly predicted that the Foundation's activities would overtake the activities of the Church and Attorney Hammer's January 18, 2013 memorandum brushed aside).

Although the Foundation may have spent substantial sums on screening, the relevant question is not how much money has been spent, but ‘how effective is the result?’ In addition, there is undoubtedly one standard of screening for what would be appropriate for a church that holds

services on Sundays and holds occasion events for members of the local community and another standard entirely for the kind of attractive nuisance that Grace Farms has become.

In Appendix F, page 4, in addressing suitability for use, the Applicant states that: “A significant portion of the site is open space principally comprised of meadows, woodlands and extensive landscape screening.” This is intended to support the assertion that “The Proposed modifications will neither diminish the suitability of the existing use by the Church or the foundation use nor will it disrupt the general harmony of the surrounding residential neighborhood.” Appendix F, page 3. Those Commissioners who attended the November 12, 2016 site visit, would have seen for themselves that the “extensive landscape screening” was not adequate at all in light of the Foundation’s current and proposed use.

The real estate market study commissioned by the Applicant is materially flawed and must be disregarded. It relies heavily on a single transaction – the July 2016 sale of 347 Lukes Wood Road. Among other errors, it makes no adjustment for the substantial improvements to the property during the period from August 2011 and July 2016 and fails to account for the fact that the property was only offered for sale and closed during the summer months, offering the buyer little opportunity to evaluate the level of screening prior to the closing of the sale.

[24 Applicant] These meetings with the neighbors, however, were unfortunately not successful in resolving the neighbors' concerns. They confirmed that the single religious institution use issue, more than any specific activity or event impact on their use and enjoyment of their property, is the source of the confusion and frustration that the Town Planner mentions in his Letter, and which the Application seeks to clarify. At times the meeting topics returned to site plan issues regarding screening that the 2013 Special Permit resolved, and that the 2016 ZBA decision put to rest. Further, citing to narrow excerpts from the public hearings in 2012-13, to support the conclusion that the Foundation is doing something it did not reveal to P&Z ----a conclusion the Foundation rejects as unfair and inaccurate---- are discussions without the prospect of agreement. Thus, the meetings turned to debates about use, not about something site-specific that can be changed or adjusted to relieve a concern. The Foundation felt it more productive to file the Application, as suggested in the Letter, and address these issues to P&Z.

[24 Neighbors] It is actually no surprise that the meetings between representatives of the Applicant and the neighbors were not successful at resolving the neighbors’ concerns. For nearly a decade now, abutting neighbors have tried to work reasonable solutions with the principals of Grace Farms Foundation. The neighbors’ concerns have been well articulated in prior communications with the Applicant and in letters to Chairman Goodwin. Put simply, the intensity of use has far exceeded the uses that Grace Property Holdings LLC requested and what has been provided for in the Special Permit, the Foundation has routinely violated numerous conditions of the Special Permit, and the Town has failed to meet its obligations to enforce the conditions and

cause the violations to cease or be remedied. In connection with its 2012-2013 application, representatives of the Foundation were not just speaking to the Commission, they were speaking to the neighbors and members of the community. The neighbors heard what they said and expected them to be a Church and only a Church. As with this Application, the Foundation has sought to alter and re-characterize events to deceive the public, who they expect to have short-term memories and look only to the good that they do and the perceived benefits to the community. Do the ends really justify the means here, especially when it has become abundantly clear that the ambition and focus for the Foundation is on the global stage – think the annual Davos World Economic Forum or annual Clinton Global Initiative, by way of example – as opposed to local initiatives that truly benefit the immediate New Canaan community?

As evidence of the Applicant’s attempts to deceive and obfuscate, it is quite untrue that the 2016 ZBA decision “put to rest” issues concerning screening, as the Applicant claims. The only thing that was put to rest was that, as procedural matter, the certificate of occupancy was validly issued. During the hearing on March 7, 2016, Chairman Yanicelli spoke about Grace Farms:

“I love it. I love going there. It’s a freeing experience. But being in the backyard of the neighbors [at 1218 Smith Ridge Rd] today was a real shock, because it is so visible and if that were my backyard, I am not sure I would feel that way. Because they don’t look at the beauty of it. They look at the parking lot and the people walking by. And I feel like something can be done to [make it] better for both sides.”

In the Planner’s Memo dated March 2, 2016, Mr. Kleppin told the Zoning Board of Appeals “In hindsight, different wording on Condition #5 allowing both parties to review landscaping at the conclusion of the project as well as prior to the issuance of the zoning permit might have provided [Curt/Bissonnette] with the option to further request additional plantings.” But as a result of the specific wording of Condition 5 of the existing Special Permit, the ZBA found that as a procedural matter the zoning officer “reasonably believed that” an agreement had been reached relative to the Applicant’s 2013 offer of screening.

At the May 16, 2016 ZBA hearing, Attorney O’Hanlan, counsel for the Applicant specifically recognized that the 2013 offer of screening provided to Mr. Curt and Ms. Bissonnette ‘appeared to offer robust screening.’ But based upon the evidence presented and the Applicant’s subsequent actions it is clear that the screening set forth in the Applicant’s 2013 proposal was wholly ineffective.

Based upon their statements at the meeting, it was clear that the ZBA members took no pleasure in finding against Mr. Curt and Ms. Bissonnette. In response to questions from ZBA members, there was considerable discussion during the May 16, 2016 meeting about whether the

Foundation's activities had exceeded the terms of its Special Permit and whether its activities would trigger a review by P&Z. Mr. Kleppin confirmed that he had spoken extensively with Attorney Bloom regarding the activities at the Grace Farms site and "that is a discussion that will have to happen at the Planning and Zoning Commission. I have spoken to the chairman about it, as recently as last week and we are all in agreement."

As reported in the newcanaanite article on May 18, 2016, "Though they denied the appeal, members of the ZBA noted that if Grace was using the property in more robust ways than what had been approved, then that could trigger the need for more screening." And as reported in the New Canaan Advertiser (5/17/16), ZBA "Member Jeanne Rozel voted against denying the appeal, because she felt more screening needed to be placed between the properties. "

At that hearing Attorney O'Hanlan had reiterated an offer by Grace Farms to provide additional screening. He stated that his client was happy to be judged by the community as to how well they lived up to their commitment as being a good neighbor, but stated that the proper disposition of the matter was for the ZBA to vote on a procedural basis to reject the appeal by Mr. Curt and Ms. Bissonnette. Subsequent to the May 16, 2016 hearing, Attorney O'Hanlan contacted counsel for Mr. Curt and Ms. Bissonnette on behalf of his client and reiterating their commitment to make things right. A final proposal was then sent to Attorney O'Hanlan on behalf of Mr. Curt and Ms. Bissonnette on May 26, 2016. There has been no response to that proposal.

As these facts clearly demonstrate, it is absolutely false to say that the 2016 ZBA decision "put to rest" issues of screening. But, as can be seen throughout this submission, the Applicant makes statements and representations in a manner that suits their case, perhaps under the assumption that no one will go back and check the actual facts.

In light of the Applicant's clearly misleading assertions, it is also quite ironic that the Applicant claims that references to narrow excerpts of the public hearings in 2012-2013 are unfair. As detailed extensively herein, the statements and representations by the Applicant and its officials regarding the activities of the Foundation were remarkably consistent in the extent to which they deliberately mischaracterized and diminished those activities relative to those of Grace Community Church.

[25 Applicant] As stated already, any complete reading of the Special Permit and the entire transcript and record from 2012-13 under applicable law, will show that the Foundation sought to be included in its own right as a charitable foundation, with activities of its own, and was in fact expressly approved as such in the Special Permit. Further, its experience to date has corroborated the Foundation's expectations and any statements in 2012 as to the intensity of its and the Church's use.

[25 Neighbors] The Applicant's reading of the Special Permit and the record from 2012-

2013 – suggesting the “Foundation sought to be included in its own right as a charitable foundation, with its own activities and was expressly approved as such in the Special Permit” – requires one to imagine that they are living in a fairy tale. The record flatly contradicts these assertions.

It is under these circumstances that the Applicant seeks to assure the Commission that, among other things, it

- “is committed to a low intensity of use at Grace Farms, consistent with its presence in a residential zone,” (page 2 of the cover letter to the Application)
- would limit its revenue raising and for profit events to those that are “small in size and duration, and would have no impact on the neighboring residential zone,” (page 11 of Enclosure I)
- would, presumably, fairly interpret the term “strictly limited basis” when it chose to provide access to for-profit entities (proposed Condition 16)
- and would comply with outdoor audio amplification limits under the New Canaan Noise ordinance, if existing Condition 39 is modified, notwithstanding its history of violating that condition and the fact that the New Canaan Police Department has no means by which to measure noise (and therefore enforce) the ordinance (proposed Condition 42).

As a result of the Applicant’s history of non-compliance and its well-documented mendacity, the Commission should be wary of assurances from the Applicant that once they receive a new amended special permit, they will begin to tow the line and cooperate with the neighbors and the town. Ordinarily, it is not good practice to reward bad behavior.

[26 Applicant] For all these reasons, the Foundation respectfully requests that P&Z find that the Town Planner's questions have been responded to fairly and in good faith by the Foundation, between the Application and this Response. The Foundation respectfully requests that P&Z grant the modifications to the Special Permit sought, and put in place a Second Amended Special Permit that recognizes the Foundation and its activities as distinct from the Church, and at the same time respects the integrity of the residential neighborhood in which Grace Farms is located.

[26 Neighbors] The neighbors for whom this submission is made respectfully request that the Application for a Second Amended Special Permit for Grace Farms Foundation be denied, and that the terms and conditions of the existing Special Permit for a “religious institution” be strictly enforced.