

## MEMORANDUM

To: New Canaan Planning & Zoning Commission  
From: Amy E. Souchuns, Esq.  
Attorney for Jennifer Holme & David Markatos, 1328 Smith Ridge Rd.  
Date: December 16, 2016  
Re: Grace Farms Foundation Special Permit Applications

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Grace Farms Foundation (“Foundation”) has realized *ex post facto* that the existing Special Permit approval for a Religious Institution does not authorize the extensive and intensive use to which it has put the property known colloquially as Grace Farms. Yet, the Foundation attempts to justify its position by stating that the Foundation was transparent in 2012-13 and that the Commission’s 2013 approval encompasses the myriad activities it conducts on its property. In fact, that approval only contemplated and approved a religious institution based upon the testimony and evidence presented to it by the current Foundation leadership. Despite artful wording and a carefully crafted message, the current application seeks to obtain special permit approval for uses that have been ongoing for more than a year without a valid approval. This Commission should not be persuaded.

### **I. Approval History**

As the Commission is aware, it granted special permit approval in 2007, as amended in 2008 and then again in 2013 for a “Religious Institution” for the property known as 365 Luke’s Wood Road (“Parcel 1”). The 2013 amended special permit (“2013 Approval”) documented the Commission’s findings and articulated 45 conditions, which undoubtedly reflected the use of Parcel 1 as a religious institution by Grace Community Church (“Church”) with ancillary accessory uses. The 2013 Approval was issued to Grace Property Holdings LLC (“Holdings”), the entity that was the owner at the time and the applicant to this Commission, and did not encompass the second parcel owned by the Foundation (“Parcel 2”). With respect to Parcel 2, the Foundation notes that it is not included in the scope of the 2013 Approval. It has, however, engaged in unpermitted work on Parcel 2 by installing a sculpture that meets the definition of a “structure” under New Canaan’s zoning regulations (“Regulations”). The Foundation also utilizes Parcel 2 as an integrated part of Parcel 1, repeatedly identifying, publicizing, and marketing Grace Farms – including during the Commission’s November 12, 2016 site visit – as an 80 acre site.

During the proceedings in 2007, 2008 and 2012-13, the Commission, in each instance and to its credit, questioned Holdings and its principals extensively on the planned activities for the site, requesting, for example, the Church calendar, representative examples of their events, and parallels between that programming and that of other local religious organizations. During each such proceeding, Holdings, its representatives and principals continuously and consistently represented to the Commission, the surrounding neighborhood and the broader New Canaan community that its intention was to develop Parcel 1 by building a sanctuary for the Church. *See Exhibit A, 2007, 2008 and 2013 Press and Editorial re. Development of Windsome Farm;*

*Exhibit B*, Excerpts from 2012 Special Permit Application Hearings (1/29/13 Statement of Sharon Prince that “the 48 acres is for Grace Community Church”). Notably, in 2012-13, the Chair and other members of the Commission directly asked representatives and principals of Holdings, who were also acting on behalf of the Foundation, whether it intended to conduct any activities at the property other than the ancillary activities generally consistent with other local religious organizations. Without qualification, Holdings and the Foundation, through both its attorney and its President, answered no. Yet three years later, the Foundation now asserts that the Commission is precluded from denying the Foundation use of the site because the Commission was aware of the Foundation’s existence and activities from that hearing process. This position, tenuous at best, is undermined entirely by those proceedings as detailed below.

## **II. Operational Issues**

In issuing the 2013 Approval, the Commission imposed a set of operating conditions predicated on the continuing representation since the original 2007 application that the development was for the Church as a Religious Institution under the Regulations. Thus, the conditions of approval were tailored specifically to the operations of a local community church. The Commission never contemplated a scenario in which the entire 80 acre site would be transformed into a multi-purpose venue with retail space and frequent programming attractions that is open to the general public six days a week. Now, the Foundation’s activities have become the principal uses on the property, with the Church holding only a revocable license, and those approval conditions have been disregarded with impunity by the Foundation since Grace Farms’ opening. With the Foundation’s repeated misrepresentations now exposed, the Foundation is not entitled to any benefit of the doubt by the Commission in the context of this new application. Put simply, the Foundation has intentionally abused the permissive “honor system” under which the Regulations are predicated and ignored this Commission’s request not to schedule additional seminars or conferences during the pendency of this application. This Commission should demand that the Foundation come into compliance with the Regulations immediately.

Pursuant to Regulation § 8.2.B.6.b, a special permit only authorizes the particular use specified in the application. Condition 1 of the 2013 Approval states clearly and explicitly that the approved use is for a Religious Institution as defined in the Regulations. The Foundation has also gone to great lengths over the past year to distinguish itself from any identification as a Religious Institution in its own publicity materials and in the press. *See Exhibit C*, Samples of Grace Farms in the Press. Moreover, the Foundation cannot meet the definition of a Religious Institution in the Regulations: “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.” Regulations § 2.2. The Foundation has been abundantly clear to the public, the press & this Commission that it owns and controls the property. Therefore, any assertion by the Foundation or its counsel that it can continue to operate under the Religious Institution approval is blatantly false and would maintain the existing zoning violation.

As the Foundation itself acknowledges, Holdings never obtained a club or philanthropic organization approval during the earlier applications despite such urging from the Commission. In fact, the Foundation disclaimed any such use of the property, instead relying on the apparent breadth a Religious Institution use might provide. *See Exhibit B* (testimony from Holdings’ attorney on December 18, 2012, that “[w]e’re not asking you for a philanthropic organization permit, or any other type of permit ....” p. 57-58); *see also Exhibit D* Day Pitney

LLP January 18, 2013 Memorandum to the Commission (declaring on page 3 that “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.”) (emphasis added).

Despite the knowledge that the 2013 Approval was solely for a Religious Institution, the Foundation began its operations by instantly violating at least five conditions of that approval within the first 30 days of its operations. Per Regulation § 8.2.B.3.f, any conditions of approval remain in full force and effect for the duration of the approved use and regardless of any change in ownership.<sup>1</sup> These violations included Condition 12 (prohibition on “the use of the property for multi-organizational conferences and/or usage as a conference center”); Condition 23 (mandate to prevent erosion and sedimentation to protect the wetlands and watercourses); Condition 35 (requiring “motion sensors that shut off interior lighting due to inactivity”); Condition 36 (directing that all exterior lighting be turned off by 11pm); and Condition 39 (banning the “outdoor use of bullhorns, loudspeakers, or other noise amplifying devices”). Among the most visible and flagrant violations was a multi-day symposium in early November 2015 involving multiple outside organizations and over 800 attendees.

These violations, among others, have been well-documented by my clients and other adjacent neighbors, as demonstrated by the extensive correspondence submitted to the Town Planner, Town Attorney and this Commission over the course of the last year. *See Exhibit F*, Letters from D. Markatos et al to J. Goodwin, dated May 13, 2016, May 21, 2016, June 20, 2016, and July 5, 2016; *see also Exhibit G*, Letter from R. Lyman, Town Supervisor of the Town of Pound Ridge, to J. Goodwin, dated July 27, 2016; *see also Exhibit H*, enforcement timelines and e-mail correspondence with S. Kleppin and I. Bloom re. conferences and lighting. These issues were also raised with the Foundation leadership itself, who refused to acknowledge that they constituted violations of the 2013 Approval. *See Exhibit I*, enforcement timeline and e-mail correspondence with Roy Medile re. “sound sculpture.” It was not until eight months later, when Mr. Kleppin issued his June 2016 letter, that the Foundation took even the smallest step toward addressing these violations or that my clients’ repeated requests for enforcement were considered in a meaningful fashion. *See Exhibit J*, Letter from S. Kleppin to Foundation, dated June 24, 2016. Only then did the Foundation finally acknowledge that its current application is necessary.

Thus, the issue for this Commission on the pending application is not – as the Foundation suggests – “clarity of the Foundation’s use” but rather the intensity and nature of the Foundation’s use of Parcels 1 and 2. The Foundation’s track record of flagrant and repeated disregard of the existing conditions, paired with overwhelmed town staff without sufficient time or resources to investigate and engage in proper enforcement actions, must be considered heavily by this Commission. With this new special permit use application, an entirely distinct special permit analysis to evaluate the club and philanthropic organization uses is required.

### **III. Scope of Special Permit Request**

This Commission may only issue a special permit subject to the standards set forth in the Regulations and “conditions necessary to protect the public health, safety, convenience and property values.” Conn. Gen. Stat. § 8-2(a). “The conditions specified in the zoning ordinance

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<sup>1</sup> *See Exhibit E*, Organizational Chart of the Foundation and affiliates.

for granting a special permit ... may not be altered by the [Commission].” 9 R. Fuller, *Land Use Law & Practice* § 5:2 (4th ed.). The Commission “cannot deny a special permit which meets the standards in the zoning regulations, but it has discretion to determine whether the proposal meets the standards contained in the regulations.” *Id.*, § 5:4. In other words, “[i]t has reasonable discretion to decide whether a particular section of the zoning regulations applies in a given situation and how it applies, but it cannot construe the special permit regulations beyond the fair meaning of their language.” *Id.* Moreover, “because zoning regulations are in derogation of common-law property rights, they must be strictly construed and not extended by implication.” *Graff v. Zoning Board of Appeals*, 277 Conn. 645, 652 (2006).

In reviewing issues related to the interpretation of the Regulations, the Connecticut Supreme Court has held that any use not expressly permitted by the Regulations is prohibited. In *Heim v. Zoning Board of Appeals of Town of New Canaan*, 289 Conn. 709, 717 n.8 (2008), the Court held:

“The New Canaan zoning regulations are permissive, rather than prohibitive, in nature. Specifically, the regulations provide: ‘No building or structure shall be erected, altered or used nor any land used for any other than a purpose or use permitted by these regulations in the zone in which such building or land is located.’ New Canaan Zoning Regs., c. 60, art. I, § 60–1.4. Permissive zoning regulations require that ‘[t]he uses which are permitted in each type of zone are spelled out. Any use that is not permitted is automatically excluded.’” *Gordon v. Zoning Board*, 145 Conn. 597, 604, 145 A.2d 746 (1958); see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 4.10, p. 64 (“a use is automatically excluded unless it is expressly permitted in the zoning regulations”).”

*See also City of Stamford v. Ten Rugby St., LLC*, 164 Conn. App. 49, 56 (2016) (“Where [t]he regulations are permissive in character ... [t]he uses which are permitted in each type of zone are spelled out. Any use that is not permitted is automatically excluded.”).

The Foundation can only maintain one principal use on the property pursuant to the Regulations. As detailed above, if the Regulations do not expressly allow a use, that use is prohibited. *See Heim*, 289 Conn. at 717. Section 2.2 of the Regulations defines principal use as “the primary or predominant use of any lot or building.” (emphasis added). The phrase “the primary or predominant” signifies that only one use can be primary and, most notably, it does not expressly allow for multiple primary uses on one property. This approach comports with well-established principles of statutory and regulatory construction that “words and phrases shall be construed according to the commonly approved usage of the language.” Conn. Gen. Stat. § 1-1; *see also Heim*, 289 Conn. at 718 (“zoning regulations are local legislative enactments and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes.”)<sup>2</sup> In seeking more than one primary use on the property, the Foundation’s application clearly runs afoul of this regulatory requirement. *See, e.g., Sun Co., Inc. v. Zoning Board of Adjustment of the Borough of Avalon*, 286 N.J. Super. 440, 444–448, 669 A.2d 833 (1996)

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<sup>2</sup> The Merriam-Webster Dictionary defines “primary” as “of first rank, importance, or value” and defines “predominant” as “having superior strength, influence, or authority.”

(holding that the zoning regulations did not permit two principal uses on the same property because use of the word “principal” throughout the regulations implied only one main use); *see also* 9 R. Fuller, *supra*, § 4:10 (citing *Sun Co., Inc.*, *supra*, for the tenet of zoning law that “the phrasing of the zoning regulations controls whether or not two permitted uses can be maintained on the property at the same time, and it may provide expressly or by implication that only one of the uses may be allowed as a principal use.”). The Commission, therefore, cannot legally sanction the Foundation’s request to operate three principal uses on its property.

As detailed extensively in the Planning, Land Use and Zoning Analysis of the Grace Farms Foundation Special Permit Application prepared by Donald Poland (“Poland Report”), attached as *Exhibit L*, this interpretation of a principal use limitation is not only consistent with general planning principles, but also consistent with New Canaan’s comprehensive plan<sup>3</sup> and Plan of Conservation and Development. As the Poland Report documents, the intensity of the use proposed by the Foundation is entirely inconsistent with this area of New Canaan. While the individual uses of Religious Institution, Club, and Philanthropic Organization are each individually allowed by special permit, the combination of these uses creates a heavily used site incompatible with the intent of the Four Acre Residence Zone. This dichotomy between the surrounding residential homes and Grace Farms simply does not promote the best interest of New Canaan. To be clear, the Foundation’s application is not, and cannot be, for a mixed-use development under the Regulations. Permitting expanded uses at Grace Farms creates an inharmonious neighborhood and fails to manage the encroachment of institutional uses within the Town’s residential zones.

#### **IV. 2016 Annual Traffic and On-Site Parking Study**

Frederick P. Clark Associates, Inc.’s September 2016 Study (“Clark Study”) is deficient in a number of material respects, and we hereby request that the Commission affect an independent peer review of the Clark Study per existing Condition 33.<sup>4</sup> Of particular concern are the following deficiencies:

1. Grace Farms was open as of 9am for substantially all of their first year of operations, yet the Clark Study’s weekday morning measurement period is shifted to 10am to 2pm (as opposed to a weekday morning measurement period of 8am to

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<sup>3</sup> “The concept of a comprehensive plan has been described broadly by the courts. A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties. . . .The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community. . . .It is established that the comprehensive plan is to be found in the zoning regulations themselves and the zoning map, which are primarily concerned with the use of property. . . .” *Konigsberg v. Board of Aldermen of City of New Haven*, 283 Conn. 553, 584-85 (2007).

<sup>4</sup> Condition 33 provides that “[t]he Commission reserves the right to retain the assistance of its own traffic consultant to conduct an independent peer review of the traffic report, at the Applicant’s expense, in accordance with section 8.1.E.2 of the Regulations....”

11am in 2015). To be meaningful and relevant, any comparison study must be on a like-for-like basis or data must be submitted to support the conclusion that the peak hour has shifted.

2. Related to the peak hour shift, the Clark Study lacks any discussion of the traffic impact of the Foundation's and Church's staff (collectively, 68 employees) and various service providers. Table 4 to the Clark Study documents 69 persons on site at Grace Farms as of 10am on Wednesday, September 14, 2016 – the equivalent to 39 vehicles<sup>5</sup> – but does not document when those vehicles arrived at the site.
3. The Clark Study should be amended to address the traffic impact of the Church's Sunday afternoon "ModernLife" religious service.<sup>6</sup> No measurement is taken of traffic flows to and from Grace Farms between 4pm and 6pm on Sundays, a time at which members of the general public might also be visiting the property.

## V. Comments on Requested Amendments

In connection with the Foundation's request for Club and Philanthropic Organization approvals, it has also sought this Commission's approval to amend certain existing conditions. These proposed amendments, however, radically alter the intensity of the site's usage and should not be approved. Each of these requests is discussed in turn below.

### A. *Space Grants*

Recent press materials posted to the Foundation's Grace Farms website reveal that the Foundation has awarded at least 58 space grants through November 2016 and is actively seeking additional grantees. The Foundation's description of its facilities usage implies that there is no violation of Condition 12<sup>7</sup> because the Foundation itself is involved in the activities being hosted. Notwithstanding the Foundation's attempt to artfully describe its activities as not violative of Condition 12, its award of "space grants" – where global, national, and local not-for-profit organizations can hold events and programs at or utilize the resources of Grace Farms – is in direct contravention to the limitation in Condition 12. Condition 12 expressly prohibits any conference center type use, such as the two day United Nations University workshop held at Grace Farms this past July. Allowing these types of "space grants" undoubtedly transform a facility approved as a Religious Institution into a conference center or other office/event space – entirely inconsistent with the underlying residential zone and surrounding uses.

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<sup>5</sup> The number of vehicles is based on the Clark Study's established metric of 1.77 persons per vehicle.

<sup>6</sup> See *Exhibit L*, September 2016 Grace Community Church calendar

<sup>7</sup> Condition 12 provides that "While the Commission acknowledges that as part of its religious mission, the Applicant, among other activities, pursues interfaith meetings and charitable initiatives, the use of the property for multi-organizational conferences and/or usage as a conference center is not part of this approval." (emphasis added).

### *B. Commons Restaurant*

With respect to the use of the Commons Restaurant for meal service, the Foundation suggests it is an “ancillary use many cultural institutions provide.” This characterization flies in the face of the Class 4 Food Service License that Grace Farms holds with the New Canaan Department of Environmental Health – the same license level that notable town restaurants, such as Elm, Sole, Gates and Chings Table, hold. *See Exhibit M.* Interestingly, no church or other religious institution in New Canaan holds a food service level at any classification level. Moreover, this Commission has never approved a “cultural institution” or “retail business” on this property, demonstrating yet again that the Foundation has conducted its operations as it sees fit, rather than within the parameters established by the Regulations and this Commission’s 2013 Approval.

The Foundation’s suggestion that the food service use can be controlled by the prohibition of any profit is simply preposterous. Whether or not the Foundation derives a dime from its commercial kitchen bears no rational relationship to the zoning issues a restaurant use presents. As Pound Ridge Town Supervisor Richard Lyman makes clear in his August 1, 2016 letter to the Commission (*see Exhibit H*), the reality is that the Foundation’s active marketing and promotion of the Commons Restaurant as an amenity at Grace Farms has served only to attract more members of the general public to the property.

### *C. Foundation Events*

The Foundation also seeks to host numerous large events well beyond those ever anticipated by the original approvals. Its proposed condition only requires review and approval for events over 700 people. Advance notice for events of 400-700 attendees fails to recognize the impact such usage of the property would have on surrounding neighbors. My clients’ activities log documents more than 85 unpermitted events of varying scale and intensity occurring at Grace Farms over the Foundation’s first 10 months of operations. *See Exhibit N.* Moreover, the result of these “limitations” would allow the Foundation to host unlimited events throughout the year with up to 399 people, again well beyond the type of facility use anticipated in the earlier approval discussions and a drastic contrast to, and significant adverse impact upon, the surrounding residential uses. As the Commission may recall, the minutes from the previous zoning proceedings speak repeatedly to “900 people on a Sunday” as the most significant usage impact to the surrounding neighbors, and it was largely on the basis of this representation that the Commission became comfortable with issuing the 2013 Approval. *See Exhibit O* Commission Minutes, dated October 23, 2012 and November 27, 2012.

The Foundation’s own representations about visitors to the site demonstrate the sheer impact additional event uses would create. Based upon the current usage of Grace Farms (as documented by the Foundation’s own traffic report and my clients’ visitation spreadsheet below), more than 166,000 visitors are already using the site annually. With moderate assumptions for the users associated with the Foundation’s pending request, this volume skyrockets to more than 294,000 annual visitors to Grace Farms in year one and more than 429,000 annual visitors by year five. *See Exhibit P.* These staggering figures demonstrate

exactly how inappropriate the scope of the Foundation’s request is and the dramatic impact this would have on my clients’ quiet enjoyment of their home.

Volume of Activity	Approved 2013 Permit	Grace Farms Reported Figures		First Year Usage	GFF Proposed Usage	GFF Proposed Usage	GFF Proposed Usage Year 5
	Approved attendance based upon March 2013 special permit (annualized)	Reported Attendance Figures (October 15, 2015 thru August 31, 2016) - Appendix C, Chart 2	Annualized Attendance Figures	Annualized Attendance Figures (current) + additional unreported visitors due to actual usage.	Annualized Attendance based upon proposed application - LOW ESTIMATE (Year One with new permits) 10% Increase	Annualized Attendance based upon proposed application - MODEST ESTIMATE - (Year One with new permits) 20% Increase	Year 5 with a 10% year over year increase (Modest Estimate used as source)
<b>Church Related Uses</b> - Sunday Services, Ancillary Use (church Sponsored Events (AA Meetings, Pickup basketball, Bible Study), Church Staff (8FTE)	73,625	42,820	48,405	73,625	80,806	90,326	132,247
<b>Ancillary Uses - Non Church Related</b> (Arts for Healing, Architecture Tours, Non Profit Board Meetings, Foundation Use (Concerts, Earth day, Wildlife Series etc.). Figure also includes conferences.	0	16,678	19,023	19,023	27,121	35,750	52,341
<b>General Public Grace Farm Usage - Examples:</b> Restaurant Use, Park Use etc., includes GFF Staff FTE (60) (Avg.178 visitors 6 days a week and 60 FTE)	936	0	0	74,256	81,058	86,923	127,264
<b>Total</b>	<b>74,561</b>	<b>59,498</b>	<b>67,428</b>	<b>166,904</b>	<b>188,984</b>	<b>212,999</b>	<b>311,852</b>
<b>Additional Stated Uses Sought:</b>							
<b>Non Profit Usage</b> - Lectures, General Meetings, Usage for programming and additional space grants, additional requests for use of space such as gymnasium	0	0	0	0	30,900	54,200	79,354
<b>Foundation Programming</b> - Includes large Events (700+), Events (400 to 700), Incremental Events (>400 people)	0	0	0	0	15,400	19,900	27,836
<b>Commercial for profit rentals</b> - (Weddings, Corporate offsites, photo shoots, movie filming, Training)	0	0	0	0	4,800	7,200	10,542
<b>Grand Total</b>	<b>74,561</b>	<b>59,498</b>	<b>67,428</b>	<b>166,904</b>	<b>240,084</b>	<b>294,299</b>	<b>429,584</b>

Note: The figures above as based on estimates. See Exhibit P for greater detail. The Foundation has no constraints placed on it currently and as per its Application, except for the large foundation events (2,800 people), all other usage can be for an unlimited number of events and attendees.

It is clear that unlike traditional New Canaan foundations, such as the Tow Foundation, the Louis Calder Foundation or the New Canaan Community Foundation, all of which (including associated staff) are located in downtown New Canaan and operate by means of monetary grants to fund their missions/initiatives, the Foundation is modeling itself after non-traditional foundations such as The Getty Foundation in Los Angeles. Similar to the Foundation, the Getty has a 110 acre campus with three restaurants, an auditorium, an art gallery, a research facility, gardens and walking trails, robust educational programming and a commercial store. Just like the Getty, the Foundation’s master plan for Grace Farms is for the property to become a year round event destination in itself – essentially privately owned public space with various temporary/seasonal and permanent programming attractions designed to bring repeat visitors back on numerous occasions. While appropriate in the context of a city of the size and scale of Los Angeles, such an intensity of use is incompatible with the intent of New Canaan’s Four Acre Residence Zone and does not promote the best interests of New Canaan. Grace Community Church, with its revocable license, has served as an effective Trojan horse for the Foundation in executing its master plan.

#### *D. Foundation Fundraising*

With the catchphrase “sustainability planning,” one would believe the Foundation is seeking to ensure the long-term environmental benefits of its vast facility. Instead, the Foundation seeks to sustain itself by hosting third-party events with no limitation on their number or frequency. Closely tied to the event limitation discussed above, the Foundation radically expands the use of the property from just a Religious Institution to a facility designed to be open to the public and utilized intensely throughout the year. Since the original 2007 approval, the Commission has been consistent in mandating that the facilities at Grace Farms not be rented or used by outside commercial or for-profit organizations. While it has become clear that Mr. Kleppin improperly authorized the use of the basketball court by other non-profit organizations on various occasions since October 2015, even this use pales in comparison to the Foundation’s current request.

The proposed condition is vague and overbroad. Its suggestion that the commerciality purpose will act as an operative limitation is a blatant red herring. Given the Foundation’s broad missions of nature, arts, justice, community and faith, virtually every third party use – photography of the meadow, a couture fashion shoot, an international event focused on environmental justice in developing nations, an interfaith wedding, or hundreds of others – could be appropriately categorized to meet one of those purposes. The Foundation’s application reveals a self-serving business plan by which, contrary to the representations made in the 2012/2013 hearings, the Foundation sustains itself financially through the visiting public and requires an ever-growing number of programming attractions to meet even its most basic operational costs. Staff alone has more than doubled since Grace Farms opened, with an initial Foundation staff of 25 to now 60 employees reflected in the application materials.

#### *E. Use of Parcel 2*

The Foundation states that Parcel 2 will remain as open space, a use allowed in the zone without any type of approval. However, open space, as permitted without a permit by Regulations § 3.2.A, states that it is allowed “without structures of any kind.” The Foundation asserts that the “art installation” is not a structure under the Regulations, but this position is incongruous with the definition of structure under the Regulations:

Anything constructed or erected, the use of which requires location on, in or under the ground or attachment to something having location on, in or under the ground including, but not limited to, buildings, swimming pools, tennis and other game courts, towers, paddle or platform tennis courts, docks, balconies, open entries, porches, decks, handicap ramps, signs, a gas or liquid storage tank that is principally above ground, transformer or signal box that is above ground, ground-mounted antennas, ground-mounted solar panels and satellite dishes and fences or walls more than six (6) feet in height, including retaining walls and deer fences.

See Regulations § 2.2. It is our understanding that the “art installation” includes at least 3 tree-mounted speakers that triangulate one-another and project the “sound sculpture” across and around the large pond on Parcel 2. *See Exhibit Q*. Even if this installation was found not to be a structure, the Foundation’s position also ignores the fundamental principle of zoning detailed

above that any use not specifically allowed is prohibited. The Foundation cannot point to any provision of the Regulations that authorizes a noise producing art installation.

While the Foundation suggests that it complies with the New Canaan noise ordinance, that logic presupposes that it is reasonable to install such an amplified device in a residential zone without even so much as a zoning permit. As the Commission is aware, the New Canaan noise ordinance lacks any specifics or limitations as to the permissible decibel levels at a neighboring property line and the Foundation increases the volume of the “sound sculpture” at the request of visiting dignitaries<sup>8</sup>. Moreover, the New Canaan Police Department, the entity charged with enforcement of that ordinance, has already acknowledged that it has no one trained to enforce any those limitations. *See Exhibit I above*. Therefore, to resolve any continuing noise issue, the neighboring owners would be forced to institute private nuisance litigation against the Foundation. For this reason and the absence of any authorization for this type of art installation in the Regulations, the Commission should impose a condition that the existing “art installation” be turned-off permanently and dismantled, and finding that any further “art installations,” whether on Parcel 1 or Parcel 2, are subject to the issuance of a Zoning Permit in accordance with the Regulations.

#### *F. Traffic Monitoring*

Beginning with the original 2007 special permit for a Religious Institution, there has always been an operating condition requiring the presence of police officers to control traffic flows at the property during Sunday services, holidays and special events.<sup>9</sup> The fact that no traffic incident has occurred at either the Luke’s Wood Road entrance to Grace Farms or at the intersection of Rte. 123 and Puddin Hill Road, given the volume of cars coming and going from the property on these high traffic occasions, is testament to the effectiveness of this condition. Moreover, as the Applicant is well aware, the Rte. 123 and Puddin Hill Road intersection is located in New York State, and New York’s Department of Transportation has its own flagger certification process & requirements.

### **VI. Conclusion**

Through its current application, the Foundation is seeking a total of three special institutional use permits at Grace Farms, a property embedded within New Canaan’s Four Acre Residence zone. The Regulations, the comprehensive plan and the Plan of Conservation and Development simply do not permit multiple principal institutional uses in a residential zone. The Foundation’s application seeks to override this well-established framework. This is not a situation in which an otherwise primary use becomes ancillary to a new principal use – the Foundation clearly intends for each of these three uses to operate equally and principally on the site. Approving the Foundation’s request would have a multiplier effect on the intensity of the usage to the surrounding neighborhood.

For the foregoing reasons, we respectfully request that the Commission deny the Foundation’s current application.

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<sup>8</sup> Statement of Adam Thatcher during the Commission’s November 12, 2016 site visit.

<sup>9</sup> See Condition 2 to 2007 Special Permit and Condition 31 to 2013 Special Permit Amendment