ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF OCTOBER 7, 2010

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on October 7, 2010 in the First Floor Conference Room of the Honorable John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield. The Public Hearing was recorded on disc and is available for review at the Plan and Zoning Department.

PRESENT: Robert Brennan, Chairman, James Hamilton, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Linda Snelham-Moore, Alternate, Edward Cheffetz, Alternate, sat in for Donald Cafero

ABSENT: Donald Cafero

1. **Minutes of September 2, 2010:** Kevin Coyne *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously*.

2. **Approval of Secretary's Fee:** James Hamilton *moved* and Edward Cheffetz *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously*.

This portion of the Executive Session started at 2:56 and continued into Public Hearing.

Kevin Coyne, Secretary

Josephine M. Keogh

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GENERAL DOCKET

1. 75 Kings Highway Cut-Off, Map 80, Parcel 172. Petition of Clear Wireless, LLC for a variance of the Zoning Regulations; Section 31.2.16 to increase the maximum height of roof top equipment from 5 feet to 9.4 feet. **Permission to establish new roof top equipment. Premises: DCD Zone**

Attorney Jennifer Herz presented the application for a variance of the Zoning Regulations. The applicant proposes to install a rooftop wireless telecommunications facility. The installation is comprised of a twenty-foot (20) radio-frequency transparent flagpole with three (3) panel antennas and two (2) microwave dishes installed inside the flagpole. The flagpole complies with Fairfield's regulations.

Attorney Herz noted at the base of the flagpole, on the rooftop of the building, will be a seven-foot (7) tall equipment cabinet on a proposed ten-foot by ten-foot (10' x 10') steel frame. The equipment cabinet meets Fairfield's setback requirements for rooftop equipment.

The applicant requests an increase in the maximum height allowed for rooftop equipment to accommodate the size of its equipment cabinet. The equipment cabinet is a total of nine feet-four inches (9'-4") above the rooftop. The equipment cabinet itself is seven feet tall (7) and it sits on a steel platform that is raised two feet-four inches (2'-4") off of the rooftop.

The applicant chose this building due to its elevation and proximity to both interstate 95 and the Black Rock Turnpike. Whenever possible they utilize existing structures for its installations to avoid the proliferation of towers. If an existing structure cannot be found, a new tower must be constructed. Also, the applicant was able to obtain the legal authority to locate at this site.

Attorney Herz also noted in order to support its network, they must provide adequate coverage and achieve a Line of Sight with adjacent sites to provide coverage and capacity to its customers in this area of Fairfield.

Petitions of support from the neighbors were submitted.

GRANTED: James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

2. 1876 Black Rock Turnpike, Map 76, Parcel 172. Petition of Miro 1876 Associates, LLC for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces from 43 to 34. **Permission to establish outdoor dining area. Premises: DCD**

William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicant is the owner of a commercial building located at the northwest quadrant of the intersection of Black Rock Turnpike and Katona Drive. The commercial building contains two tenants, on the west, which occupies approximately three-quarters of the building, and Tomato & Basil, a restaurant which occupies the remaining easterly portion of the building. The property contains 29,229 square feet and is located in the Designed Commercial District. The applicant is seeking to create a small outdoor dining area in front of the Tomato & Basil Restaurant. The proposed outdoor dining area will encompass approximately 275 square feet and will be segregated from the automobile parking by the utilization of removable bollards.

Attorney Fitzpatrick noted this matter was the subject of an earlier variance application which was heard by the Zoning Board of Appeals on August 5, 2010. The Board expressed concerns over the possible reduction in sidewalk area resulting from the placement of the proposed patio directly opposite the existing restaurant entrance. The revised plan presented here addresses this issue by relocating the entrance to the patio dining area to the easterly side of the patio. As a result, the existing sidewalk width remains intact and is not reduced or negatively affected by the proposed outdoor dining.

The proposed outdoor seating area will encompass an area which formerly served as two parking spaces. The parking requirement for the site is 36 parking spaces, and the parking provided was 36 spaces. As the result of the proposed creation of outdoor seating, the parking available is now 34 spaces. The parking requirement for restaurant seating under the regulations is one space for every 40 square foot of patron floor area, resulting in a parking demand of 7 spaces.

The net result is a variance request to reduce the parking required under Section 28.6 of the Zoning Regulations from 43 parking spaces to 34 parking spaces. Outdoor dining has become a basic component of restaurant service in the Town of Fairfield, including some outdoor seating in the least likely areas. The Town Plan of Conservation Development, adopted by the Plan & Zoning Commissioner in 2000, recommended that consideration be given to permitting outdoor seating without requiring addition parking.

Attorney Fitzpatrick also noted another relevant factor to consider in evaluating this application is the fact that this restaurant and accompanying outdoor dining are likely to be

the busiest during the evening when the other tenant, Citibank, is closed. At the time the restaurant is busiest, the entire 34 parking spaces will be available to service this small restaurant and outdoor dining area.

GRANTED: Duncan Keith *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion passed unanimously.*

3. 937 Post Road, Map 141, Parcel 50. Petition of Brian Cunningham for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 9. **Permission to establish the use of the rear patio for year round additional seating. Premises: DCD Zone**

Attorney James Walsh presented the application for a variance of the Zoning Regulations. The applicant requests a variance of Section 28.6.12 of the Zoning Regulations order to legitimize a pre-existing dining area in the restaurant. The applicant is seeking one (1) variance: a variance of Section 28.6.12 of nine (9) parking spaces. The applicant entered into a lease with the property owner, in 2005, and established the restaurant. It is the same premises previously occupied by Café Rafael. The applicant seeks to validate and legitimize with this variance was in use by Café Rafael, who presumably created it during its tenancy. The applicant assumed the premises complied with local regulations and has operated the restaurant, including the additional dining area, successfully for more than five (5) years. The applicant would like to continue to invest in downtown Fairfield and continue its efforts to maintain revitalization of the downtown area.

This restaurant harmonizes with and compliments the Designed Business District. With respect to the variance sought pursuant to Section 28.6.12, the patron floor area of the additional dining area as shown on the plans submitted herewith is 351 square feet. This establishes a requirement of nine (9) parking spaces. The property has 26 on site parking spaces. Another tenant of the premises was granted a variance pursuant to Section 28.6.12 of four (4) parking spaces in December 2002**,** following which the building was deemed to be in compliance. The applicant is seeking a variance for nine (9) parking spaces, in order to comply with the requirements of Section 28.6.12 to validate and legitimize its pre-existing non- conformity as to parking. The application is consistent with prior approvals and precedents established with regard to the granting of parking variances for restaurant uses in the Center Designed Business District and Designed Commercial District. These important economic areas in our community and the entire Town of Fairfield have benefited substantially due to the vibrancy and activity created by these various restaurants, which now operate successfully in Fairfield.

The hardship of accommodating commercial uses in the downtown area in light of parking regulations, particularly those for restaurants, is inherent to this and to many other properties. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to parking spaces.

It should be noted that in numerous other applications where restaurants have been granted similar variances in Fairfield a finding of hardship sufficient to form the basis for the granting of a variance was due to the fact that the buildings wherein the restaurants were located were non-conforming as to the existing parking requirements. The property where the restaurant is located has been in its current size and shape for more than

fifty (50) years, and the addition of more on site parking is not possible. The applicant's restaurant has been an exciting, unique and upscale addition to our downtown business district and dining scene. It provides Fairfield residents with another unique and attractive dining option. As with other restaurants in the Designed Business District, the proposed restaurant has and will contribute the energization, revitalization and excitement in our downtown business district benefiting the interests of all downtown merchants and residents of the Town of Fairfield. The granting of the variance will have no negative impact whatsoever, in that the restaurant will continue to operate consistent with the permitted use of a restaurant in the Designed Business District.

In summary, the applicant's restaurant is a friendly, comfortable, community oriented restaurant offering a unique and exciting concept in fine dining. I t provides another quality component to Fairfield's economic base in these difficult economic times. The application meets the technical requirements of Connecticut General Statutes 8-6, is consistent with the precedents of past decisions of this Board and the Town Plan & Zoning Commission and the goals and policies adopted in the Town Plan of Conservation and Development.
For all the above referenced reasons, it is respectfully requested that the application be granted.

It is important to note that the owner of the premises at 937 Post Road occupies one of the two residential apartments on the top floor and has indicated that the other apartment is vacant and will remain so. The owner is a native of Greece and spends a significant portion of each year in Greece, leaving both residential units on the top floor vacant for the majority of the year.

For all of the aforementioned reasons, the applicant respectfully requests that the Zoning Board of Appeals grant a variance, allowing the additional dining area to be utilized without requiring the creation of the nine parking spaces that would be necessary for its use in accordance with the regulations. It is clear and apparent that there is no potential to create additional parking spaces on the property at issue, but that adequate parking is available for its hours of operation on adjacent property, and this business has operated successfully under these circumstances for more than five years.

GRANTED: James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

4. 68 Sky Top Drive, Map 26, Parcel 57. Petition of Maurizio, Benny and Melissa Viselli for a variance of the Zoning Regulations; Section of 5.2.5 to increase the maximum lot coverage from 15%, proposing 15.9%. **Permission to legitimize a construction error for a new dwelling. Premises: R-2 Zone**

Melissa Viselli, daughter of the owners, presented the application for a variance of the Zoning Regulations.

She noted when the Town of Fairfield came out at her request for a CO they determined that the house is over the allowed land coverage by .8. She noted it was an honest mistake.

GRANTED: Duncan Keith *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed unanimously.*

5. 675 Mill Plain Road, Map 179, Parcel 59. Petition of Stephen Boccarossa for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required sum of the side setbacks from the two side property lines and to reduce the minimum side yard from 25 feet and10 feet; currently 19.5 feet and 5.5 feet, proposing 19.5 feet and 5.5 feet. **Permission to construct a 2nd floor over the garage. Premises: R-2 Zone**

Stephen Boccarossa, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a 2nd floor over the garage.

Regarding the hardship, the property is uniquely irregular shaped as well as non-conforming.

GRANTED: James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

6. 2123 Fairfield Beach Road, Map 234, Parcel 74. Petition of Charles and Sophie Urbain for a variance of the Zoning Regulations; Section 11.13.1 to reduce the street line setback from Fairfield Beach Road from 45 feet, currently 31.3 feet, proposing 15.2 feet. **Permission to construct a new two story dwelling. Premises: BD Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The applicant seeks a variance in order to construct a new two story dwelling.

The property is a legally protected preexisting nonconforming lot. The existing dwelling located on the property is significantly nonconforming to the present requirements regarding side property lines and the setback from one side property line. It is also nonconforming regarding the present requirement of the Regulations pertaining to the setback from Long Island Sound of 25 feet, being setback only 13 feet from the Sound. The proposed new home will eliminate these nonconformities and will be compliant with the current requirements of the Regulations with regard to the side property line setback and the setback from Long Island Sound. The existing lot coverage of 31.6% will be maintained and no variance with respect to coverage is required.

The survey confirms that in addition to its nonconforming status with regard to lot area, the property is uniquely shaped, being long and narrow. In addition, the demarcation for the VE(16) FEMA zone line at elevation 7.3 bisects the property in it's southerly portion. The current residence to be demolished does not conform with FEMA Regulations and is constructed in the flood zone. The new dwelling to be constructed is compliant with the FEMA Regulations and all improvements will be located above this FEMA zone line and elevation. This fact regarding compliance with the FEMA requirements directly implicates the need for the variance requested of Section 11.13.1.

With regard to the matter of hardship, the hardship which justifies a zoning board of appeals to grant a variance must be one that originates in the zoning ordinance and arises directly out of the application of the ordinance to unique circumstances pertaining to the lot in question. In essence, the applicant must show that because of some peculiar characteristics of the property, strict application of the Zoning Regulations results in such unusual hardship.

GRANTED: Duncan Keith *moved* and James Hamilton *seconded* to approve the proposed application. *Motion passed unanimously.*

7. 536 Mine Hill Road, Map 173, Parcel 7. Petition of Les Byelas for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the street line setback for an accessory structure from 60 feet, proposing 27 feet. **Permission to locate air conditioning units and generator next to garage. Premises AAA Zone**

Attorney Larry Weisman presented the application for a variance of the Zoning Regulations. He noted the owner wishes to install two (2) air conditioning units and an emergency generator along side the garage. They will be within the street setbacks for accessory structures.

The property is located on a corner lot. A variance was granted to allow the house to be built 27 feet from the Golden Pond Road. Because the air conditioning units and emergency generator will be installed along the side of the garage, the street setback will be over the 60 feet. All of the units will be screened from the street with landscaping.

GRANTED: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application with condition. *Motion passed unanimously.*

Condition: Conditioned upon no additional screening around air conditioner and generator.

8. 109 Cummings Avenue, Map 183, Parcel 209. Petition of Celie Campbell for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 30%, currently 22.2%, proposing 31.3% and Section 5.2.4.2 to reduce the street line setback from 9 feet, proposing 5 feet. **Permission to construct an open front porch and stairs. Premises: B Zone**

Chris Hellthaler, builder, presented the application for a variance of the Zoning Regulations. He noted the owner wishes to construct a new front covered porch.

The existing front stairs are concrete, which is deteriorating and not up to code. The bottom step was incorrectly constructed by the previous owners to 10 ½ inches and the condition poses a threat to the homeowner and visitors, some of whom have already tripped and fallen.

Mr. Hellthaler presented photographs to the Commission for the record.

DENIED WITHOUT PREJUDICE: Edward Cheffetz *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion was denied without prejudice unanimously.*

9. 1215 Post Road, Map 180 Parcel 14. Petition of Brick Walk Associates, LLC for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 7. **Permission to convert existing outdoor patron floor area to enclosed year round dining area. Premises: CDD Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations He noted the applicant seeks a variance in conjunction with a request to convert the existing previously approved outdoor patron floor area of 276 sq. ft. to an attractively enclosed area to be used on a year round basis at Molto. Molto has proven to be a most exciting and popular restaurant that provides high quality causal dining with an emphasis upon convenience and reasonable prices. This combination of quality food, ambiance and value has made Molto extremely successful and a welcome addition in our downtown area where it has had a major role in the Downtown's continued energetic revitalization.

The response of patrons to Molto has been so positive that the applicant wishes to provide the benefit of this small additional patron floor area of 276 sq. ft. on a year round basis. In order to accomplish this for the benefit and convenience of patrons this application seeks permission to enclose the current outdoor dining area with an attractive facade and enclosure that will provide the opportunity to use this patron floor area on a year round basis. The enclosure is exciting and attractive and will have a very positive aesthetic impact upon the street scape and scenic presence of the Downtown Business District.

In order to accommodate this conversion of the seasonal outdoor patron floor area to year round use a variance of Section 28.6.12 is required. In November of 2009 the Board granted this variance on a seasonal basis in order to accommodate utilization of the patron floor area of 276 square feet for outdoor dining. Molto has operated this seasonal area in accordance with the variance received and the Certificate of Zoning Compliance received from the Town Plan & Zoning Commission throughout the spring, summer and early fall. The entire restaurant, including this outdoor dining area, has been extremely popular and well received. The utilization of this small additional patron floor area has no problems with respect to parking since abundant parking is available within the Brick Walk and Patriot Plaza Centers which have available 65 1 parking spaces.

Attorney Fallon also noted with regard to hardship, as the Board found it to exist in November 2009, initial emphasis must be placed on the fact that the 276 sq. ft. area in question has already been approved under a variance as patron floor area for seasonal outdoor use. The area has been used over the past year as a dining area with no issues regarding parking arising from this use.

The reason that this is the case and will continue to be so is due to the operational patterns of the restaurant as it has and will continue to exist as well as the abundant on site parking available in the Brick Walk and Patriot Plaza Centers. During luncheon hours it has been a consistent experience of Molto and other restaurants within the downtown that the vast majority of customers will be pedestrian in nature arriving from surrounding business and office establishments. Any demand for parking occasioned by the restaurant has and will continue to occur during evening hours at which time there is very substantial availability with regard to onsite parking in the Brick Walk and Patriot Plaza.

Molto has been a most exciting and vibrant addition to our downtown dining options that has been extremely well received by its patrons. It has brought vibrance and activity to our retail center. The conversion of the previously approved outdoor dining area to year round use will provide a desired convenience for patrons. The experience of Molto with regard to utilizing this small additional patron floor area has proven that it can be utilized without any adverse impact due to the very significant available parking at the

Brick Walk and Patriot Plaza Centers. Molto is anxious to have the opportunity to continue to provide and make available this additional patron floor area for its patrons. The conversion of this area to year round use by construction of the attractively designed enclosure will benefit the area, the merchants of the downtown and the residents of the downtown as a whole.

DENIED: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion denied unanimously.*

10. 65 Mayweed Road, Map 126, Parcel 250. Petition of Lisa Freeman for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback 0and rear property line setback from 7 feet and 30 feet, currently 7.2 feet and 34 feet, proposing 6.1 feet to 26.3 feet. **Permission to remove existing garage and rebuild new two story addition. Premises: A Zone**

Lisa Freeman, owner, presented the application for a variance of the Zoning Regulations. She wishers to construct a two story addition. The first floor will consist of stairs, a hallway, storage room and one car garage. The second floor will have a bedroom, bath and landing.

With respect to the hardship, the shape of the lot angles towards the house in the very corner where the addition is to be constructed. The rear right corner section of the proposed addition exceeds the setback minimum limits by just over one foot and just under one foot in areas of this corner section of the addition.

Petitions of support from the neighbors were submitted.

GRANTED: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application with condition. *Motion passed unanimously.*

CONDITION: Conditioned upon no exterior stairs, no kitchenette and no tenants.

11. 1770 Kings Highway, Map128, Parcel 123. Petition of H.H. East Parcel, LLC for a variance of the Zoning Regulations; Section 29.10.1 to increase the number of wall signs from 2, proposing 3, and to increase the square footage for each sign from 72 square feet, proposing 183 square feet, and Section 29.12 to increase the number of ground signs from 1, proposing 2 to increase in height for each ground sign from 15 feet and 15 feet proposing 15.4 feet and 20.4 feet and to increase the square footage from 50 square feet and 50 square feet , proposing 120 square feet and 170 square feet, and Section 29.8 to reduce the street setback for the Grasmere Avenue sign from 25 feet, proposing 15 feet. **Permission to construct multiple signs. Premises: DCD Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicant requests the following variances pertaining to proposed signage for the retail center under construction at 1770 Kings Highway: a variance of Section 29.10.1 to permit an increase in the number of wall signs from two signs to three signs and to increase .the permitted square footage for each of the three wall signs from 72 square feet to 183 square feet; a variance of Section 29.12 to permit an increase in the number of permitted ground signs from one to two, to permit an increase in height for the ground signs from the permitted 15 feet to 15 feet, 4 inches and 20 feet, 4 inches

respectively, and to permit an increase in the ground sign area from the permitted 50 square feet to 120 square feet and 170 square feet respectively; and a variance of Section 29.8 to permit a reduction in the street setback for the Grasmere Avenue sign from the required 25 feet to 15 feet.

Attorney Fitzpatrick noted the proposed property was formerly the site of the Handy & Harman metal refining plant. The site was the subject of a massive environmental remediation. The site remediation has been completed and construction of the retail center is underway. The retail center, as approved by the Conservation Commission acting as the Inland Wetland Agency, and the Town Plan & Zoning Commission, will consist of three separate buildings totaling 86,160 square feet and 43.1 parking spaces. This property is located in the Designed Commercial District and contains 10.47 acres. Building #2, located to the east of the property, at the Vermont Avenue end of the property, will contain a Whole Foods Market. Whole Foods is proposing to utilize three wall signs for the Market, one facing Kings Highway East to the south, one facing Grasmere Avenue to the west and the third wall sign facing Kings Highway Cutoff to the north. The variances requested relative to these wall signs for Whole Foods Market are as follows: a variance of Section 29.10.1 to permit an increase in the number of wall signs from two signs to three signs and to increase the permitted square footage for each of the three wall signs from 72 square feet to 183 square feet. In evaluating the wall sign variance request, it should be noted that the Design Commercial District mandates, in Section 12.7.2 of the Zoning Regulations, a minimum lot area of 10,000 square feet and, under Section 12.7.5 of the Regulations, permits lot coverage of 75%. As such, a 10,000 square foot lot could accommodate 7500 square feet of building coverage. The property here contains over 10 acres and the Whole Foods Market building has a footprint of over 45,000 square feet. The size and mass of the Whole Foods Market building requires wall signs larger than the 50 square feet of area that may well be appropriate for a much smaller building. Also of relevance is the fact that the Whole Foods Market building is located a significant distance from both Kings Highway East and Grasmere Avenue.

This application also requests approval for several variances pertaining to ground signs, specifically, a variance of Section 29.12 to permit an increase in the number of permitted ground signs from one to two, to permit an increase in height for the ground signs from the permitted 15 feet to 15 feet, 4 inches and 20 feet, 4 inches respectively, and to permit an increase in the ground sign area from the permitted 50 square feet to 120 square feet and 170 square feet respectively; and a variance of Section 29.8 to permit a reduction in the street setback for the Grasmere Avenue sign from the required 25 feet to 15 feet.
The retail center has two primary entrances, one on Grasmere Avenue and one on Kings Highway East. The application request for two ground signs reflects the fact that this is a large site and each entrance warrants appropriate signage. The ground signs will include Whole Foods Market, the tenant for Building #2 to the east, as well as CVS, the tenant for Building #3 located adjacent to Grasmere Avenue, Building #1 will contain various retail tenants, which are yet to be determined. The ground sign proposed for the Kings Highway East entrance is smaller in height and area than the Grasmere Avenue entrance sign because the public will be able to see Building #I, which will include wall signs facing Kings Highway East, and therefore not every retail tenant need be identified. The proposed ground sign for the Grasmere Avenue entrance is higher, and larger in area, because it must identify each retail tenant of Building #1, in addition to Whole Foods Market and CVS, because Building # 1 will likely not be readily visible from the Grasmere Avenue entrance.

The significant drop in grade at the Grasmere Avenue entrance to the retail center also results in the placement of the ground sign closer to Grasmere Avenue than the street setback.

GRANTED: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion passed unanimously.*

There being no further business to come before the Commission, Robert Brennan, Chairman, adjourned the meeting at 5:20 p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

ROBERT BRENNAN, CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK