

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008**

Place: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Spain, Hutchison, Grimes, Finke, Bigelow

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Mr. Conze read the public hearing agenda item:

Continuation of Public Hearing regarding Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #262, Land Filling & Regrading Application #211, Amendment to the Town Plan of Conservation & Development, Christopher & Cynthia Hamer, 26 Oak Crest. Proposing to construct 10 residential condominium units (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking, and to perform related site development activities. The applicant is requesting the establishment of a new HOD zoning district; an amendment to the zoning map rezoning the property to HOD; and corresponding changes to the Town Plan. The subject property is located on the southeast side of Oak Crest approximately 1,000 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #15 as Lot #101 and Parcels X-1 and X-2, in the R-1/2 Zone.
PUBLIC HEARING OPENED ON 9/9/2008. DEADLINE TO CLOSE PUBLIC HEARING IS 10/14/2008, UNLESS EXTENSION IS GRANTED BY APPLICANT.

Mr. Conze noted that the Environmental Protection Commission had not yet rendered a decision regarding this matter, and it would therefore be likely that the Planning and Zoning Commission would need to continue the Public Hearing into November so that the EPC could submit a report to the Planning and Zoning Commission

Robert Buch, Fire Marshal, explained that he has served in that capacity for the past 12 years. He expressed several concerns regarding the proposed development. These concerns included: the existing capacity of the 6 inch water main leading to the site has not been verified as being sufficient to fight a fire in the proposed building, the flow rate of the pipe must be checked; a turn around area for emergency vehicles needs to be provided, or a second means of access and egress needs to be provided; and he questioned the adequacy of space on and adjacent to the site for emergency vehicles such as police cars, ambulances and fire fighting equipment; and the rescue windows that are required for each bedroom must be verified. Mr. Buch said that some sites in town are very difficult for the Fire Department to access because they have narrow streets or have long, narrow driveways. An example of narrow streets is within the Delafield Island Road area, but that is a pre-existing condition.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 2

Mr. Spain asked how close emergency vehicles need to get to the proposed buildings. Mr. Buch replied that they try to get the lead engine within 50 feet of the entrance door of a building that is on fire. He said that the tower truck, as high as an extendable ladder, will try to get as close as possible without being in harms way. That tower truck needs an 18 foot wide spread for the outriggers that provide stability for the vehicle when the ladder is to be extended. They try to stay out of the collapse zone. He said that there are published national standards and guidelines for safety provisions at multi-family structures. He said that the distances and access requirements depend on the type of construction and the specific users within the building. For example, if elderly residents are involved, the specifications will be different.

Mr. Conze asked how many trucks and vehicles would report to a site like this if there were a fire. Mr. Buch responded that depending on the severity of the fire, during the week there could be up to 10 pieces of equipment plus 10-12 volunteer vehicles plus the Chief of the Fire Department plus the EMS vehicles plus the police vehicles. He also noted that he does not have any data from Aquarion (the water company) on the water pressure in the area. Mr. Conze noted that the paved portion of Oak Crest is approximately 22 feet wide instead of the recommended 26 feet minimum paved width. He asked if fighting a major fire would be problematic at best due to the narrow access. Mr. Buch confirmed that it would be problematic. Mr. Buch said that the developer should go to Aquarion and request a pressure and fire flow testing. This would measure the volume of water in gallons per minute to determine if it would be adequate to fight a fire. He said that if the volume is not adequate, then it is possible that installing sprinklers within the building and adding extra fire walls to isolate each unit and create fire safety areas could be another way to deal with that issue.

Mr. Spain asked if the access and egress issues are concerns for emergency fire equipment and for the emergency medical technicians. Mr. Buch said that the access is a concern for both departments. He said that vehicular access through the grass from Granaston Lane is not feasible due to the uncertainty of the ground stability.

At about 8:20 P.M., Matt Ranelli said that the applicant has a series of responses to issues brought up at the last Public Hearing session, but will defer to the public if the Commission wants the public to speak before it gets too late. Mr. Conze thought it would be best if the public gets an opportunity to speak.

Ms. Stephanie Paul of 15 Oak Crest read aloud from her five-page letter. She said that the proposed development poses a safety threat to children living on the street due to the added traffic. She said that there are now 32 children under the age of 16 that live on Oak Crest. The children frequently play in and run across the street from yard to yard. She explained that this is an old-fashioned, unstructured play that is very desirable. Mrs. Paul said that many people, mostly children, walk on the street to get to Mansfield Avenue for the school bus or to walk or ride to Royle School or to the playground. She said that it is an unimaginable threat to add 20 more cars on the dead end street. (This assumes that there would be two cars for each unit.) She said that concerned parents have placed traffic cones in the street to protect the children and to remind everyone to drive very slowly. She noted that obstructing vegetation has been removed so that people can see the children. She believed that the risks posed by 10 more dwelling units and the vehicles operated by the new residents outweigh the potential benefit of three affordable housing units.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 3

Joe Canas, Consulting Engineer from Tighe & Bond hired by the Town, said that the applicant needs to do a gutter flow analysis to assure that the water will not bypass the catch basins. He said that the September 6th rain storm that was a remnant of Hurricane Hannah dumped approximately 3.2 inches of rain in two hours. This is much more severe than the same amount of rain in 24 hours. He said that this was graded as a Two Year Storm Intensity. Mr. Canas said that the applicant has recently proposed more catch basins to be installed in the area in order to avoid the bypass of rainwater over the catch basins. Mr. Spain said that like the other Commission members, he had received the DVD from the neighbor Mr. Adams, and wants a follow-up letter to specify who took the video and when. Mr. Canas said that the video indicates that a 10 Year Design Storm results in flow in the Goodwives River that is above the top of the pipe. He noted that the September 6th storm was less than a Ten Year Design Storm, and it did not reach the top of the pipe.

Joe Adams of 10 Granaston Lane noted that a cover letter was submitted to accompany the DVD. He also mentioned that the Darien Land Trust submitted a letter dated September 30, 2008. He then submitted a letter from the Adams family with photographs. He submitted it to the Planning and Zoning Commission today, but it was previously submitted to the Environmental Protection Commission. The photographs show the River in much more serious flood conditions.

Chris and Liz Whitney of 20 Oak Crest addressed the Commission and read a one-page letter that was sent on Saturday via regular mail and dated September 24, 2008. They also distributed copies to the Commission members. Mr. Whitney said that they have a mentally retarded child who, like other kids, plays in the street, but he cannot react to cars the way other children can. Mr. Whitney explained that there are only four houses on the street past their house, and the proposed development would add 10 more dwelling units that would substantially increase traffic past his house by more than three times its current volume.

Gregory Harmer of 24 Oak Crest noted that his letters was previously distributed. He interprets the Town Counsel's opinion to be that the application is defective due to the Town's property right interest in a portion of the site. He said that the application needs to be withdrawn because it is not properly before the Commission.

Bill Golden of 8 Granaston Lane said that he has formally intervened in the Environmental Protection Commission procedure. He submitted a copy of that intervention letter. He believed that there are two threshold issues that ought to be addressed by the Planning and Zoning Commission. He said that the application is incomplete due to an incorrect site plan and because of who is behind the application and the fact that they cannot build the proposed development. He said that the application is made by one LLC (Limited Liability Corporation) and the applicant at that LLC is controlled by another LLC, and the second LLC is controlled by Mr. Hamer. He said that the Commission has a right to know precisely who is behind each LLC. He claimed that full disclosure is needed, and to determine if there is any intention of actually building the affordable housing.

Mr. Golden submitted a document of complaint against the LLCs and Mr. and Mrs. Hamer. He said that a November 20, 2006 letter was sent to the neighbors to discuss the possible subdivision of the subject Hamer property or the alternative development. He said that the neighbors quickly found out that the alternative development was a threat by the Hamers to propose an affordable housing project. He said that this was intended to convince the neighbors to support the subdivision application. He believed that the affordable housing application was not made in good faith. He

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 4

also noted that the signature on the application form is not legible, and that there is no real plan to actually build the housing. He asked if there was any financing for the construction, and he referred to Kaufman case that stands for the proposition that the Commission is entitled to have assurance that the affordable housing would actually be built.

Dick Bollman of 29 Granaston Lane read aloud his five-page letter which was previously submitted. He said that the minimum requirement of the proposed HOD Zone is 37,500 square feet of minimum land area. He noted that the site could not meet that requirement if the Town acquires the land for the turnaround. He said that second issue is the traffic at the very busy intersection of Oak Crest and Mansfield Avenue. He mentioned that the traffic study submitted by the applicant for Mansfield Avenue notes approximately 6,700 average daily traffic, but this count might not include the traffic on the lower portion of Mansfield Avenue that bypasses the downtown area just to the south of Oak Crest. He said that this translates to 15 vehicles per minute or one every four seconds. He said that adding 10 more dwelling units and the traffic associated with those units results in a conclusion of not if there is an accident, but when and how often. He said that the new units would generate approximately 10 vehicles trips in or out each day for each unit. He said that the level of service (LOS) of traffic is a measurement of free-flowing traffic, but it is not related to the safety of pedestrians. He said that the many people who walk in the area and the children who play in the area would be at risk, and the increased risks do not justify the proposed project.

Holly Russell of 11 Prospect Avenue submitted a letter dated September 30, 2008 in opposition to the application. She said that a set of condominiums being constructed at the end of this dead end street is not a good match for the street, and it will be disruptive and dangerous.

Bill Bowman of 12 Oak Crest referred to his five-page letter of September 15, 2008. He said that the application was not made in good faith, and that the project is not economically feasible. He explained that he has been involved in commercial real estate for many years, and he has calculated that the project would lose approximately 1.4 million dollars due to the cost of the property, the site improvements, and the cost of construction. He noted that the applicant or developer would likely scrimp on construction quality or on the environmental protection measures. He explained that the environmental protection measures are a very intricate system of drainage and environmental systems and cannot be installed or maintained improperly. Mr. Bowman said that the affordability of the units would be in serious doubt because the units would need necessary on-going maintenance. He said that the expensive maintenance will make the affordable units not affordable due to condominium fees for maintenance and repairs. He noted that other condominiums in town generally have a \$5,000-\$6,000 maintenance fee per year. He explained that this type of fee would make the affordable units much more expensive than the occupants could afford.

Three neighborhood children from Roland Drive then spoke in opposition to the application. They said it is not fair to have 10 more families live at the end of the street and endanger all the other children who live on the street.

Richard Windels explained that he is a resident, the President of the Friends of Goodwives River, and is very familiar with the site and with the Goodwives River. He then submitted a four-page letter dated 9/30/2008. He said that he spent February, March and April working on cleaning a portion of the river for the nearby Merritt property. The storm of March 1, 2008 occurred with frozen ground, and the several inches of rain melted some of the snow that had already

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 5

accumulated. He said that a storm of that type is not unusual, and it caused the bridge/culvert of Granaston Road to back up with water from the Goodwives River. He explained that the roadway is being undercut, and the additional runoff water from the proposed development will have a negative impact on the drainage condition and the Goodwives River. He said that there is too much proposed ground coverage (62% impervious surface), and that adding impervious surface increases the water in streams and rivers because less water is allowed to percolate into the ground. This results in higher peak flows within rivers and streams and during the wet times, and much lower flows in the rivers and streams during the dry times. He said that the proposed project eliminates much of the natural infiltration area. He said the catch basins in the area are already overwhelmed. He said that adding a large turn around and other impervious areas makes the drainage conditions even worse. He said that the areas that are upgradient of the Hamer site have been ignored in the drainage studies. Mr. Windels said that chemical pollutants from the site would set back the efforts to clean up the Goodwives River that have been made over the past 10 years. He said that the storm water from the development will be pumped directly into the Goodwives River and bypass the potential infiltration areas. (It was later noted that there were no mechanical pumps involved in the drainage flow from the site to the Goodwives River.) Mr. Windels said that the culvert under Granaston Lane is already a problem, and that all the water from the proposed development traveling through a 12" diameter pipe would then be fed into a 16" diameter pipe that has already reached its capacity. He said that in a large storm, the area will not be able to drain and the water will be flushed out of the upper parts of the drainage system and carry with it the pollutants that the cleansing system is supposed to remove. He believed that the proposed drainage system won't work as intended. He said that the maintenance of this drainage system will be very expensive to implement, and the enforcement of the maintenance of the drainage system would also be a problem. Mr. Windels said that snow removal would result in snow being plowed downhill to the easterly end of the site. He said that snow could not be piled high enough in that small area and would eventually be shoved into the storm water detention basin. During the freeze/thaw cycles of the winter days that snow will partially melt and then refreeze at night. This will form an ice bed at the bottom of the detention system, which will then mean that there will be no infiltration, and therefore the drainage system will fail.

Greg Harmer of 24 Oak Crest then filed a six-page Petition for Intervention Under Connecticut General Statutes Section 22a-19(a) dated September 30, 2008.

John van der Kieft mentioned that he formerly lived on Oak Crest and now lives on Hanson Road. He said that Oak Crest is a wonderful neighborhood street, and he thinks of it more as a wide country lane. He did confirm that people in the neighborhood walk everywhere. He said that 10 additional dwelling units being constructed at the end of the street would be a 50% increase in the dwelling units on the street. He said that the Commission should consider the safety factors and deny the application to preserve this wonderful neighborhood.

At about 9:55 P.M., Matt Ranelli submitted packets of material with maps. He gave one set of all the materials to Mr. Harmer because he is now an intervenor in the application process. Mr. Ranelli said that there was mention of the September 12, 2008 letter from the Town Attorney regarding the fact that the Town can acquire Parcel X2 that is currently owned by Mr. Hamer. He explained that the Town can acquire that area and use it as a turn around, but the Town has opted not to exercise that right at this time. He said that applicant originally designed a full-circle turn around, but decided to modify the design to use a hammer head design in order to reduce the amount of

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 6

pavement. He said that if the Town takes the property, they will need to build a full cul-de-sac or circular turn around. The applicant has proposed the construction of a hammer head turn around in private property for the use of the private residents. He said if the Town acquires the turn around and builds a full circular turn around, it will fit on the site and there will be only a small increase in the amount of runoff due to the increased impervious surface. He claimed that no cul-de-sac or circular turn around is required unless the Town chooses to build it. They would install the subsurface units to accommodate the cul-de-sac.

Mr. Ranelli referred to the Kaufman case that was mentioned by Mr. Golden. He disagrees with Mr. Golden's characterization of that case and noted that Mr. Golden's private lawsuit has no place before a Planning and Zoning Commission. He said that the ownership of the applicant LLC is controlled by a different LLC, and the second LLC is controlled by Mr. Hamer alone. He said that is no mention of any shares being left open or available to anyone else.

Mr. Bigelow asked about the management of the construction of the project and the continuing management for the maintenance of the project. Mr. Ranelli said the construction would be managed by a developer who will bring in experts as needed. Then, the condominium owners will be responsible for the maintenance of the facility, and most likely they will hire a professional management company. Mr. Ranelli said that the affordability plan (Tab 9 of the original submission) concerns the three dwelling units that would be affordable under Section 8-30g. Those units would be managed by the homeowner's association and their professional management team to assure continuing compliance with the affordable statutes. Whoever is hired would be administrator of the affordability plan for the 40 year time period specified by the State Statutes. They would need to report to the Town each year to assure that they comply with the statutory requirements. He explained that the Town would not be involved in the day-to-day process. He noted that the applicant does not have any experience constructing or managing affordable units, but his firm, Shipman & Goodwin, has and will use that expertise to prepare all the appropriate documents to be filed on the Land Records, and to establish a program with continuing compliance. Mr. Bigelow noted that the enforcement issue would eventually be a Town burden, and that the applicant may or may not be the developer, and then the applicant may or may not handle the first round of sales or any future sales. Mr. Ranelli replied that the applicant or the homeowners' association will need to appoint an administrator, and if there is ever a change in the responsible party, they will need to inform the Town of the new administrator. The administrator will likely change from the applicant to the condominium owners' association, and they will need to report to the Town each year how the project is in continuing compliance with 8-30g of the Statutes. He said that under that statute, there is a difference between the affordable benefits of a rental unit vs. a sales unit. He said for "sales" units, the owner of the affordable unit only needs to meet the income criteria when they buy the unit. Then they must pay their fair share of the condominium fees. Their income level may change over time, but they are still eligible to maintain their ownership of the affordable unit because they bought it at a time when they qualified. He said that for rental units, the occupant must continuously comply with the income criteria. Each year they must meet the income criteria, and the total cost for the unit, including rent and maintenance fees and other items, are regulated.

Mr. Spain said that he has read the cases that have been referred to and wants to see that the applicant has the intent and financial backing to achieve the actual construction of affordable housing units. He wondered whether the applicant was committed to actually making this project

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 7

work and if there was a detailed business plan in place and if there was financial and practical support to implement the affordable housing development. Mr. Ranelli believed that the Kaufman case does not stand for that proposition, and that the intent question was not properly before the court. He said that the application has provided all the information required by Section 8-30g, whereas in the Kaufman situation there was no site plan submitted (just a text change and a map change). He said that this application is complete with all the details of how the proposed development can be implemented. Mr. Spain said that he needs a meaningful commitment. Mr. Ranelli explained that all the elements of the submission constitute a meaningful commitment to go ahead with the project. Mr. Conze noted that the applicant has no experience or resources to make sure that this affordable housing is built. Mr. Ranelli replied that the Commission needs to stick to statutory standards, and that the applicant is entitled to the same process as a builder of a single family residence. He said that some applicants he has worked for were also doing their first affordable housing application. He said that the affordability plan that has been submitted will handle the administration of the implementation and maintenance of the affordable units in accordance with the statutes. He said that if the Commission wants to change the details of the affordability plan, they can just let the applicant know and they will work on addressing that issue.

Mr. Ranelli then referred to Tab 2 in his materials submitted earlier in the evening. This is a portion of the State Plan of Conservation and Development. It notes that the area of the application and much of the surrounding area is classified as the "Neighborhood Development Area." He submitted a summary of information provided by the Connecticut Office of Policy and Management regarding their definition of a "Neighborhood Development Area." Mr. Ranelli said that he needs to correct one piece of information. He said that apparently that in Tab 3 of one report it was mentioned that some of the units would contain more than three bedrooms. He said that the correct information is that none of the proposed units will contain more than three bedrooms.

Mr. Ranelli said that information about the traffic data is submitted to verify any questions the Commission had at the last hearing. He said that they also contacted the Aquarion Water Company last April, and they had the water pressure tested. He said that the pressure test was satisfactory with a reading of 118 pounds per square inch. He said that they have requested from Aquarion that a flow test be conducted, but the results of that test have not yet become available. Mr. Ranelli said that the distances measured in the previously submitted information were intended to be general and not very specific. He did note that the previous exhibit indicates the distance to the CVS store as 0.67 miles. He said he drove from the site to the CVS store, and the odometer on his car read that it was 0.7 miles. He said that many other amenities are located within one mile of the site, and their information is not intended to be very specific. He did say, however, that plans of snow storage areas are shown in detail on the submitted application material in Tab 7.

Mr. Bill Carbone, P.E., said that he originally studied the potential for a circular cul-de-sac at the end of Oak Crest. He said that the design works, but he has reduced the design to minimize the amount of paving by using a hammer head design. He noted the difference is approximately 2100 - 2800 square feet less paved area. He said that the drainage design that is submitted is large enough to include the increase paved area if the Commission requires that a full circular turnaround/cul-de-sac be utilized. He said that the drainage design will actually reduce both the rate and the amount of runoff from the site. He said that there will be no storm water discharge for the first 1.6 inches of rain. This covers 90% of all storm events.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 30, 2008
PAGE 8

Mr. Carbone explained that snow storage will be accommodated in three areas. He said that the snow storage area immediately uphill from the detention basin is ideal because as it melts or as rain melts the snow it will travel into the detention basin. He said that there is no pumping of water from the site. All the water will flow by gravity. No mechanical pumps are necessary. Mr. Spain asked about the expense of maintaining the drainage system. Mr. Carbone said that he has not estimated the cost of the maintenance, but that a storm drainage maintenance plan has been prepared. He will do a cost estimate of the maintenance. With respect to questions about how long this drainage system will last, Mr. Carbone said that the concrete structures to be installed will last more than 50 years.

Matt Ranelli said that in accordance with the Environmental Protection Commission request, the plans have been modified to increase the size and number of catch basins. He understands that the Planning and Zoning Commission will need to wait until they get a report from the Environmental Protection Commission, and therefore he is willing to grant an extension of time to keep the Public Hearing open until November 6, 2008.

Mr. Ginsberg said that the Environmental Protection Commission meets on October 22, 2008, and even though they may not make a formal decision by that November 6th date, they will try to get a report to the Planning and Zoning Commission by the November hearing. He said that the latest the Planning and Zoning Commission can conclude the Public Hearing is on November 21st.

The Commission agreed that it would be appropriate to continue the Public Hearing at 8 p.m. on November 6, 2008 in the Town Hall in a meeting room to be determined, likely the Auditorium.

There being no other business, the meeting was then adjourned at 11:03 P.M.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director