



**TOWN OF OXFORD**  
S.B. Church Memorial Town Hall  
486 Oxford Road, Oxford, Connecticut 06478-1298  
[www.Oxford-CT.gov](http://www.Oxford-CT.gov)

## Planning & Zoning Commission

Minutes approved by  
Planning & Zoning  
Commission on  
\_\_\_\_\_ 2012.

### REGULAR MEETING MINUTES

August 21, 2012

7:30 PM, Main Meeting Room  
Oxford Town Hall

### CALL TO ORDER

Chairman Bill Johnson called the meeting to order at 7:30 PM.

### PLEDGE OF ALLEGIANCE

### ROLL CALL

**Present:** Alternate Joe Dempsey, Alternate Edna Cruz, Harold Cosgrove, Wayne Watt, Vice Chairman Bonnie Bartosiak, Chairman Bill Johnson, Secretary Pat Cocchiarella and Tanya Carver.

**Also Present:** Attorney Peter Olson, Town Planner, Brian Miller and Jessica Pennell, Administrative Secretary.

**Not Present:** Commissioner Alan Goldstone and Anna Rycenga, ZEO.

**Alternate Joe Raspberry** arrived at 7:45 PM.

Chairman Bill Johnson seated **Alternate Edna Cruz** in Commissioner Alan Goldstone's absence.

### EXECUTIVE SESSION

#### MOTION:

Secretary Pat Cocchiarella moved to enter into executive session at 7:32 PM regarding discussion with possible action on the Timberlake Appeal.

Second by Vice Chairman Bonnie Bartosiak.

### DISCUSSION:

Chairman Bill Johnson invited Attorney Peter Olson and Town Planner, Brian Miller into executive session.

**VOTE:**

**All Ayes.**

**MOTION PASSED UNANIMOUSLY.**

***Joe Rasberry arrived at 7:45 PM and joined the executive session.***

**MOTION:**

**Secretary Pat Cocchiarella moved to come out of executive session at 7:55 PM. Second by Vice Chairman Bonnie Bartosiak.**

**All Ayes.**

**MOTION PASSED UNANIMOUSLY.**

**Chairman Bill Johnson stated for the record that no action taken in executive session.**

**MOTION:**

**Secretary Pat Cocchiarella moved to schedule the settlement agreement as drafted by the Commission's counsel for discussion and action at the next meeting, 9/4/2012 and ask staff to specifically list the settlement agreement for action on the agenda. Second by Harold Cosgrove. All Ayes.  
MOTION PASSED UNANIMOUSLY.**

**Chairman Bill Johnson stated that a copy will be available to the public.**

***Alternate Joe Dempsey left the meeting at 8:00 PM.***

**CHAIRMAN'S REPORT**

**Chairman Bill Johnson briefly discussed the following items:**

- (1.) Informed the commission that he was invited to the groundbreaking for the Oxford High School Fields and in the absence of the ZEO he held a pre-construction meeting on site.

**DISCUSSION/ACTION on P&Z MATTERS OF CONCERN**

- (1.) Meadow Brook Estates – Letter from Kathy Ekstrom - Re: Setbacks

**Secretary Pat Cocchiarella read a letter dated 8/20/12 from Kathy Ekstrom, Project Executive of Haynes Development.**

**Secretary Pat Cocchiarella read a memorandum dated 8/21/2012 from Town Planner, Brian Miller.**

**Secretary Pat Cocchiarella read a letter dated 8/21/2012 from Town Engineer, Jim Galligan.**

**Secretary Pat Cocchiarella read CGS. Sec. 8-13(a) – Nonconforming buildings and land uses which was provided to him by Attorney Peter Olson.**

**Secretary Pat Cocchiarella stated that from what he has read tonight, the interpretation of separation is up to the Commission and it is not retroactive.**

**Vice Chairman Bonnie Bartosiak stated that this has been previously discussed.**

**Secretary Pat Cocchiarella** stated that the reason for the 30' separation is a safety issue for emergency vehicles.

**Town Planner, Brian Miller** stated that he believes it was originally discussed for the golf course community. He commented that but because it was a different zone, because there was a lack of definition, you interpreted that you could have overhangs. He stated that he thinks it was a 20' separation between single family homes in RGCD.

**Chairman Bill Johnson** stated that Meadow Brook has a 30' separation and Oxford Greens has a 20' separation.

**Town Planner, Brian Miller** stated that the commission did have an interpretation that allowed overhangs of over 18 or 24 inches.

**Wayne Watt** stated that overhangs should not be an issue unless it is a safety factor.

**Secretary Pat Cocchiarella** stated that for the separation, porches, decks, etc., would be included but roof overhangs should not be included unless it is a safety issue.

**Chairman Bill Johnson** stated that Kathy Ekstrom asked Anna Rycenga, ZEO for an opinion on overhangs, and the opinion that Kathy received from Anna Rycenga, ZEO was that overhangs are included in the separation. He noted that Kathy Ekstrom asked for a clarification on the ZEO's interpretation. He commented that the question was how all the other homes were approved, if this was always the case.

**Secretary Pat Cocchiarella** stated that just because you have done something wrong in the past, that doesn't mean you should keep doing it wrong. He commented that "we've always done it that way" is not an excuse.

**Attorney Peter Olson** stated that he, Town Planner, Brian Miller and Town Engineer, Jim Galligan all believe there is a distinction in the zoning regulations between a setback and a separation. He noted that a setback specifically states that it includes any overhangs, steps, porch or other projections. He commented that separation does not have any definition at all, and therefore it is up to the commission to interpret how they would like to proceed. He stated that the commission should not worry too much about what is already on the ground, but whatever interpretation the commission makes tonight, they should immediately proceed to amend the regulations to include it. He stated that if it is not identical to the setback, there is always going to be confusion and an argument that you are treating them in different ways based on an interpretation.

**Chairman Bill Johnson** allowed a resident to speak at this time.

**Andy Bucci, 521 Heatherwood Court** stated that he is here tonight because he is concerned about the setback, which he thought was 30', but are not 30'. He commented that some of the houses have been built on distances less than 30'. He noted that when he moved here, he received a document from the builder stating that these houses were RES-A and the setback was classified as 30'. He stated that he was also given a document that the houses were built to conform to Oxford Zoning Regulations. He questioned the commission, if he wants to sell his house, does he have an obligation to tell the buyer that it is a nonconforming residence, and does it affect the resale on his house.

**Chairman Bill Johnson** stated that as Attorney Olson stated, there is a difference between a setback and a separation.

**Andy Bucci** referred to the zoning regulations in regards to setbacks.

**Chairman Bill Johnson** stated that the separation is the distance between buildings.

**Vice Chairman Bonnie Bartosiak** stated that setbacks are measured from the property lines.

**Chairman Bill Johnson** reiterated that Town Planner, Brian Miller stated that "separation" is not defined at all in the zoning regulations.

**Commission members** and Town Planner, Brian Miller discussed briefly whether Meadow Brook is zoned RES-A.

**Attorney Olson** reiterated that setback is clearly defined in the regulations, and separation is not, therefore the commission can interpret its own regulations. He stated that his recommendation is for the commission to interpret the regulations and then amend the regulations to include the interpretation of separation.

**Andy Bucci** questioned if he has a conforming piece of property.

**Attorney Peter Olson** stated that he does not know enough to answer that.

**Kathy Ekstrom, Haynes Development**, stated that she does not believe that what Mr. Bucci just told the commission is accurate because he is making the claim that his unit is nonconforming. She commented that all units that have been built at Meadow Brook have been accompanied by an as-built and they show a 30' separation between homes. She stated that Mr. Bucci has made a comment that is not factual. She noted that for the two homes being built, applications have been submitted and building permits have been issued and they are showing 30' or greater between the units. She stated that she has no knowledge of his unit being non-conforming. She noted that she looked at Mr. Bucci's as-built and has slightly over a 30' separation.

**Andy Bucci** stated that the 30' is only foundation to foundation.

**Kathy Ekstrom** stated that the separation has always been 30', that has been the protocol at Meadow Brook from day one and they have submitted foundation as-builts on every unit from day one.

Discussion ensued between the commission members about the separations at Oxford Greens versus the separations for Meadow Brook.

**Kathy Ekstrom** stated that she doesn't wasn't to mix the two, but as the commission may or may not know, Meadow Brook was the first high density development approved. She stated that they were given a 30' separation, and Oxford Greens, from her knowledge is only 20'.

**Vice Chairman Bonnie Bartosiak** stated that the 20' is only between the single family homes.

**Kathy Ekstrom** stated that they have single family homes at Meadow Brook, attached and detached and they have a 30' between all of them, irrespective of if they are attached or detached. She stated that the restrictions that were applied to Meadow Brook were far greater than those applied to Oxford Greens.

**Vice Chairman Bonnie Bartosiak** stated that one has nothing to do with the other.

**Kathy Ekstrom** stated that the question that she asked Anna Rycenga, ZEO, was if an eave was an overhang. She stated that from day one it has always been a 30' foot separation, and they have been

consistent with that throughout the project. She requested clarification from the commission because she has two foundations on hold.

**Secretary Pat Cocchiarella** stated that they should formulate an interpretation and amend the regulations to define "separation".

**Wayne Watt** questioned if the building permits were issued?

**Kathy Ekstrom** stated that she was issued the building permits for two of the foundations.

**Wayne Watt** stated that if the building permits were issued, then they should be able to build the homes.

**Attorney Peter Olson** stated that for every house that was constructed, a building permit was received and a certificate of occupancy was issued. He stated that along with the building permit and certificate of occupancy is a zoning permit, and zoning certificate of compliance. He noted that both the building permit and the certificate of occupancy are orders of the ZEO that to approve the issuance of the building permit and the issuance of the certificate of occupancy. He stated that those orders are subject to appeal within 30 days, he commented that there has been no appeal of any of those orders. He stated that as far as he is concerned, every single one of those building permits and certificates of occupancy for those units is completely legal under the interpretation applied at the time. He also referred to CGS 8-13(a). Once a new regulation is formulated for the definition of "separation", it will only apply to the new buildings.

**Chairman Bill Johnson** questioned the two building permits Kathy has obtained.

**Attorney Olson** questioned when she obtained the building permits.

**Kathy Ekstrom** noted that she obtained them about 2 months ago.

**Attorney Olson** stated that there has been no appeal; therefore the ZEO will sign off on the Zoning Certificate of Compliance and the certificates of occupancy will be issued.

**Wayne Watt** stated that he believes that the two units that are in question can be built until regulations are drafted.

**Vice Chairman Bonnie Bartosiak** stated that if that is the way it has been, and at least in the process of building these two buildings, as long as they are within the 30' separation, it should be okay.

**Attorney Peter Olson** stated that if you adopt a new regulation, it is probably not going to apply to Meadow Brook. He stated that the plans do not show separation distances between the homes.

**Town Planner, Brian Miller** stated that on the cover sheet of the plans for Meadow Brook it states required separation is 30' and proposed separation is 31'.

**Attorney Peter Olson** stated that it is uncertain to him as to whether there is an approved separation for every building; therefore the text amendment may apply to Meadow Brook. He commented that to the commission that if they interpret the regulations consistent with the way they have been doing it, then they will be fine until the commission gets an amendment in place.

**Harold Cosgrove** asked that the commission state that 30' is acceptable between foundations.

**Kathy Ekstrom** stated that they typically do foundation to foundation, decks and porches are included in the 30' separation. She told the commission that where they are at Meadow Brook at this point is that they have 7 more foundations to put in the current phases. She requests that they stay consistent with what they have currently.

**Mr. Bucci** stated that he would like to leave here tonight with some idea of what the rule will be regarding this issue. He questioned if it 30' including porches and decks.

**Secretary Pat Cocchiarella** stated that it will be 30' from porches and decks.

**Chairman Bill Johnson** stated that there is already pre-approval on the next phase.

**Kathy Ekstrom** stated that they are approved.

**Vice Chairman Bonnie Bartosiak** questioned the distance on the 2 foundations that she has obtained permits for recently.

**Kathy Ekstrom** stated that she doesn't have the as-builts with her, but she believes one is 30.2.

**Vice Chairman Bonnie Bartosiak** stated that if you look at the first page of the plans, Meadow Brook proposed the separation at 31'.

**Kathy Ekstrom** stated that the approval was 30'.

**Town Planner, Brian Miller** stated that the approval was for 31'. He stated that zoning said 30', but Meadow Brook's proposal was 31'. He commented that technically the approval is 31' between foundations.

**Vice Chairman Bonnie Bartosiak** stated that Meadow Brook needs to follow the plans, and the plans say specifically 31'.

**Wayne Watt** questioned the plans stating 31' and zoning states 30', where that information was obtained.

**Town Planner, Brian Miller** stated that for some reason, the site plan that was submitted by the applicant and approved by the commission says minimum separation of 31' on the zoning table. HE suggested that if Meadow Brook does not want it to be 31', then they need to come in with a site plan amendment requesting that the zoning table be altered to reflect 30'.

**Attorney Peter Olson** stated that the plans do not show the 30' separation between homes, he stated that contributes to the issues.

**Town Planner, Brian Miller** stated that they weren't intended to show the specific footprint of different models.

**Edna Cruz** questioned if Kathy knows the distance for the eaves and overhangs. She stated that she would like to know what they are so she can take them into consideration when they amend the regulations.

**Kathy Ekstrom** stated that she believes it is approximately 8 inches.

**Wayne Watt** moved to allow Meadow Brook to move ahead with their two units that they have currently obtained permits, and then for them not to proceed with anything until the commission comes to a decision.

**Attorney Peter Olson** stated that the commission does not have to be that specific. **Wayne Watt** withdrew his previous motion.

**Attorney Peter Olson** stated that this will cover any permits they have received to date, but the next one that comes in will have to show the 31' separation.

**MOTION:**      **Wayne Watt** moved that no portion of any building or structure including any overhangs, steps, porches or other projection from said building or structure not including any eaves up to 12" shall extend into any separation, required elsewhere in these regulations. **Second by Chairman Bill Johnson. All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

**(2.)      Randall Drive – Reports from Jim Galligan, Town Engineer**

**Secretary Pat Cocchiarella** read a letter dated from Town Engineer, Jim Galligan.

Commissioners discussed this item briefly. This is an ongoing issue and they need more information from the Town Engineer, Jim Galligan and Anna Rycenga, ZEO.

**MOTION:**      **Chairman Bill Johnson** moved to table this item and place it under Old Business for the September 4, 2012 Regular Meeting. **Second by Secretary Pat Cocchiarella. All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

**(3.)      Enforcement of Sign Regulations on weekends**

**MOTION:**      **Harold Cosgrove** moved to table this item until the September 4, 2012 Regular Meeting. **Second by Secretary Pat Cocchiarella.**  
**All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

**AMENDMENTS TO AGENDA** - NONE

**AUDIENCE OF CITIZENS**

**John Harkabus of Meadow Brook Estates** informed the commission of a way that homes that have emergencies can be better detected. He demonstrated for the commission a blinking light bulb and lighted switch that is used in Meadow Brook to identify homes to emergency personnel. He stated to the commission that the bulbs are sold at the hardware store in Southbury for approximately \$20.00. He commented that as a firefighter he knows that sometimes it is very difficult to identify house numbers on homes in Oxford. He concluded that this is a good way to inform emergency personnel of what home is in need of assistance.

The commission thanked Mr. Harkabus for his time and information.

**DISCUSSION ON AFFORDABLE HOUSING WITH ATTORNEY PETER OLSON**

Attorney Peter Olson handed out a document to commission members. He commented that this is basically an introduction that he has prepared for the commission. He discussed 8-30(g) applications. He stated that it is not possible to draft zoning regulations that will prevent 8-30(g) applications. He explained each item on his handout to the commission briefly. **(Attachment A)**

**ACCEPTANCE OF MINUTES:**

- a. August 21, 2012 Regular Meeting Minutes

**MOTION:**

Chairman Bill Johnson moved to *approve* the August 21, 2012 Regular Meeting minutes as presented.  
Second by Tanya Carver. All Ayes.  
MOTION PASSED UNANIMOUSLY.

**CORRESPONDENCE (a) & (b)**

**NO ACTION REQUIRED – ON FILE IN PLANNING & ZONING DEPARTMENT**

Secretary Pat Cocchiarella noted Correspondence (a) and (b), and stated that all the documents are on file in the Planning & Zoning Department.

- (a.) Letter dated 8/10/2012 to Jennifer Gaudet from CT Siting Council  
(cc: Oxford Planning & Zoning Commission)  
Re: **EM-CING-108-120723 – Facility located at 20 Great Oak Road**
- (b.) Letter dated 8/10/2012 to Douglas Talmadge from the CT Siting Council  
(cc: Oxford Planning & Zoning Commission)  
Re: **EM-CING-108-120726 – Facility located at 106 Willenbrock Road**

**OLD BUSINESS**

1. **Z-02-209 - Jensen Farms Estates Section I & Z-03-301 - Jensen Farms Estates Section II**  
(Request for Release of Maintenance Bonds)  
**(Referred to Town Engineer) (TABLED)**

**NEW BUSINESS**

1. **Z-12-104 – 7 Fox Hollow Road – (Owner & Applicant): Entrepot, BUI, LLC – Matthias Neidhart (Use Permit)**

Ben Matthias, represented the applicant, Entrepot BUI, LLC. He explained the commission that Anna Rycenga, ZEO asked them to come before the commission for this application. He stated that this is a non change of use. He commented that he believes some people thought that their intention is to do a brew pub at the brewery at some point. He stated that is not the case.

Jessica Pennell, stated that Anna Rycenga, ZEO wanted this item to come before the commission, but she is not aware of the specifics of the application.



**Ben Matthias** stated that they need to put a kitchen/laboratory in the mezzanine.

**Chairman Bill Johnson** questioned the reason for the application because he believes there was a concern that they would be serving food.

**Ben Matthias** commented that there are two reasons why they are not serving food; one is that the liquor permit that they plan on obtaining is just a manufacturer's permit. The second reason is that they are out of space in the 33,000 sq. ft. building.

**Secretary Pat Cocchiarella** questioned if this is a kitchen or a laboratory.

**Ben Matthias** stated that it is more of a laboratory. He submitted a letter/approval from Pomperaug Health Department.

**Secretary Pat Cocchiarella** questioned if they would be serving food to the public.

**Ben Matthias** stated that they will not be serving food to the public.

**Chairman Bill Johnson** stated that the concern is that they will come back and ask for a restaurant at some point.

**Ben Matthias** stated that the only people who will be visiting the brewery are wholesalers.

**MOTION:**        **Secretary Pat Cocchiarella** moved to authorize Anna Rycenga, ZEO to issue the use permit for **Z-12-104. Second by Wayne Watt. All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

**UPCOMING PUBLIC HEARING:**

**SEPTEMBER 4, 2012 – 8:05 PM**

- (1.)    **Z-12-086 (Owner): Ziat, LLC – (Applicant): 2<sup>nd</sup> Street Leasing, LLC – 315 Riggs Street, Unit 7, Building B** (Use Permit - Special Exception - Article 9, Section 3.16)

**ZONING ENFORCEMENT**

**Chairman Bill Johnson** stated that he did not have a chance to speak with Anna Rycenga, ZEO about the reports; he will plan to do that before the next meeting.

**OTHER BUSINESS**

- (a.)    **Invoice # 266-12 from Nafis & Young Engineers**

**MOTION:**        **Secretary Pat Cocchiarella** moved to approve payment of Invoice # 266-12 from Nafis & Young Engineers.  
**Second by Harold Cosgrove.**

**DISCUSSION:**

**Harold Cosgrove** stated that he does not see the road report (pictures or videos) of the road before the beginning of construction from Phase 4.

**Chairman Bill Johnson** asked Jessica Pennell to contact Jim Galligan to make sure that the road was videoed or photographed before the construction began.

It was noted by commissioners that this invoice will be deducted from the application fees from Oxford Greens Phase 4.

**All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

(b.) **Invoice # 267-12 from Nafis & Young Engineers**

**MOTION:** **Secretary Pat Cocchiarella** moved to approve payment if Invoice # 267-12. **Second by Vice Chairman Bonnie Bartosiak.**

**DISCUSSION:**

Commission members discussed the items on the invoice and also noticed that the amount per hour has changed.

**RESCINDED MOTION:** **Secretary Pat Cocchiarella** rescinded his motion to approve payment. **Vice Chairman Bonnie Bartosiak** rescinded her second of the original motion.

**MOTION:** **Secretary Pat Cocchiarella** moved to *table* Invoice # 267-12 from Nafis & Young Engineers until there are more details and information about the dollar amount per hour. **Second by Harold Cosgrove.**  
**All Ayes.**  
**MOTION PASSED UNANIMOUSLY.**

(c.) **Invoices from Land Use Attorney Peter Olson**

**MOTION:** **Secretary Pat Cocchiarella** moved to **approve** payment for Land Use Attorney Peter Olson's invoices. **Second by Chairman Bill Johnson.**

**DISCUSSION:**

**Chairman Bill Johnson** stated that when he spoke to First Selectman Temple, he made it very clear that Planning & Zoning did not have funds in their budget to pay Attorney Olson. He stated that anything that has to do with affordable housing goes directly to the Selectmen. He commented that First Selectman Temple agreed upon that. He stated that after that, he was told that Planning & Zoning is getting a Land Use Attorney, for any items necessary.

**Vice Chairman Bonnie Bartosiak** stated that most likely this invoice just needs to be forwarded to the Selectmen's office for payment.

**AMENDED MOTION:** **Secretary Pat Cocchiarella** *amended* his motion to state- the Planning & Zoning Commission acknowledges the charges shown on the invoice and to forward to the Selectmen's Office for payment. **Second by Vice Chairman Bonnie Bartosiak.**

All Ayes.

MOTION PASSED UNANIMOUSLY.

(d.) Transfers for FY 2011-2012

MOTION:

Secretary Pat Cocchiarella moved to **approve** the transfers for fiscal year 2011-2012 and authorize the chairman to sign the transfer sheet.

Second by Vice Chairman Bonnie Bartosiak.

All Ayes.

MOTION PASSED UNANIMOUSLY.

(e.) Any other business the commission deems necessary for discussion.

MOTION:

Tanya Carver moved to authorize Jessica Pennell, per her job description, to sign off on sheds and decks as necessary in the capacity of Assistant Zoning Enforcement Officer. Second by Wayne Watt.

DISCUSSION:

Harold Cosgrove stated that he thinks the commission needs to check with Anna Rycenga, ZEO to see if Jessica is authorized by education and that she can do this.

Jessica Pennell stated that she is fine with not signing off on any permits, but in light of the possibility of opening on Friday's, had wanted to be able to better serve the public.

Joe Rasberry questioned verification from the state that Jessica is capable of doing this job.

Jessica Pennell stated that she is not certified, and if the commission is not comfortable doing this, that is fine. She is letting the commission know that without their approval, she will not sign off on anything even though it is in her job description.

VOTE:

All Ayes.

MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

MOTION:

Harold Cosgrove moved to **adjourn** the meeting at 10:07 PM. Second by Chairman Bill Johnson. All Ayes.

MOTION PASSED UNANIMOUSLY

Respectfully submitted,



Jessica Pennell

Administrative Secretary  
Planning & Zoning Commission

1 WM CLERK

12 AUG 29 PM 4:28  
T. H. R. D. CT  
C. 976-564-4444



## LAND USE & CONSERVATION COUNSEL

### MEMORANDUM



TO: William O. Johnson  
FROM: Peter S. Olson  
DATE: August 21, 2012  
RE: Workplan for Affordable Housing Issues

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Bill:

The Planning & Zoning Commission has engaged this firm to assist it in developing and implementing a strategy to address the impact that the Affordable Housing Appeals Act, Conn. Gen. Stat. § 8-30g is having on the Town of Oxford.

Based on our preliminary discussions, I have prepared this detailed Workplan for discussion with the Commission. The intent is for the Commission to consider authorizing work on any or all of these items, and then carrying them out.

### BACKGROUND

The Affordable Housing Appeals Act, which I will refer to in this memorandum as the Act, changes the burden of proof in administrative appeals taken from decisions of land use boards on "affordable housing applications", as defined by the Act. The land use board, rather than the applicant, has the burden of proof, and must establish that its decision and the reasons cited for the decision are supported by sufficient evidence in the record. The commission must also prove that the decision is necessary to "protect substantial public interests in health, safety, or other matters which the commission may legally consider", that such public interests "clearly outweigh the need for affordable housing", and that such public interests cannot be protected by reasonable changes to the affordable housing development. Conn. Gen. Stat. § 8-30g (g).

This means that an affordable housing application that meets the criteria of the Act need not comply with the provisions of the zoning regulations that apply to the Property, such as minimum lot size, setbacks, height restrictions or other dimensional criteria. The cases decided since the Act was adopted have found very few examples of regulations which survive the burden shifting of the Act.

Except as enumerated in the Act, it is not possible to adopt zoning regulations which will prevent the use of the Act in future development in the Town.

The Act only applies to municipalities in which less than ten per cent of all dwelling units are affordable. "Affordable" in this context means that the units are (1) assisted housing; or (2) financed



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by CHFA mortgages, (3) subject to affordable deed restrictions, or (4) mobile manufactured homes or legally-approved accessory apartments subject to deed restrictions.

According to the 2011 Affordable Housing Appeals List published by the State of Connecticut Department of Economic and Community Development, the Town has 4,746 housing units based on the 2010 census. Of those housing units, 45 are considered “assisted housing”, and none are considered “deed restricted”. The total percentage is 0.95%.

DECD compiles the List on an annual basis, and bases the total number of dwelling units on the most recent census. In order to be completely exempt from the Act, the Town would need to have 475 affordable units, or an increase of 430. Obviously, this would, in turn increase the total number of dwelling units, so approximately an additional 50 units would be required.

I have identified four avenues which the Commission may consider to ameliorate the impact of affordable housing development, and will address each in turn.

### 1. Industrial zoning districts

The Act specifically exempts areas which are “zoned for industrial use and which [do] not permit residential uses” from the application of the appeals procedure. Conn. Gen. Stat. § 8-30g (g) (2) (A). The industrial zoning districts are the economic engine of many towns, and frequently are the location of sewer service, which makes them attractive targets for affordable housing developments. In order to ensure that the industrial zones in the Town remain industrial, I suggest a comprehensive review of the industrial and commercial regulations and zone map. The Commission looked at this a few years ago, but another look would be beneficial.

Suggested Action: (a) review the zone text of the industrial and commercial zoning districts to ensure that there are no residential uses permitted in industrial zoning districts; (b) review the zone map to ensure that all areas which are intended for industrial uses and which have sewer service are properly mapped to an industrial zoning district which does not provide for residential uses; (c) consider the creation of new industrial zoning districts to permit low intensity industrial uses, and map them where appropriate; and (d) consider the creation of new commercial zoning districts to permit some housing uses, and map them where appropriate.

### 2. Adoption of procedural requirements to provide protection against abuses of the Act.

The Zoning Regulations contain a section concerning affordable housing applications which essentially mirror the statute and regulations. However, the Zoning Regulations do nothing to address some of the issues which arise from affordable housing developments. While the preference should be to avoid such developments, if they are to be proposed, developers should not be permitted to thwart the spirit of the statute. As such, some of the following should be considered.



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- Regulations concerning “comparable size and workmanship” between the affordable units and the market rate units. This prevents a substantial disparity in the size of the units, which can cause stigmatization of the affordable units.
- Regulations concerning the location of the affordable units within the development. Affordable housing developments should not have “ghettos” where all of the affordable housing units are located.
- Regulations concerning the order in which building permits and certificates of occupancy are issued for affordable units. This prevents the construction of all of the market rate units and then the later failure to construct the affordable units.
- Regulations concerning the administration of the affordable units – whether it should be controlled by the Town or by the developer. The Town should ensure the deed restrictions are being complied with.
- Regulations concerning the application process, including the submission of conceptual plans.

### 3. Application procedures

One technique which is frequently used by affordable housing developers is to write a new zoning district text amendment in conjunction with their development. The adoption of the new text is subject to the Act, and thus can only be denied for the normal health and safety reasons. However, they frequently only provide for site plan approval – not a special permit approval. As such, the Commission loses the discretion provided by the special permit process.

It would be advantageous to provide for a “multi-family overlay zone” which is required for, and only permitted for, affordable housing developments. This prevents the zoning regulations from being cluttered by a new zone for every application, and gives the Town the control of the contents of the zone.

Further, the Town can adopt a formal application process which includes a conceptual plan as permitted by the Act, followed by a full site plan and special permit application, as well as detail all of the information which must be submitted as set forth in the current Regulations.

This is best accomplished in conjunction with the overlay district discussed below, but need not be.

**Suggested Action:** Provide for a new zoning overlay district to govern all affordable housing applications.

### 4. Provide for a multi-family cluster development overlay zone with an affordable component

An overlay zone which provides for cluster development is an excellent tool by which the Commission can review and permit developments which are of higher density than one housing unit per two acres, but still preserve the rural character of the Town through reduction in land



## LAND USE & CONSERVATION COUNSEL

disturbance. Such an overlay zone can provide for an increased density in exchange for the provision of affordable housing units which count towards a moratorium and outright exemption.

For example, an overlay zone could permit the development of a twenty acre parcel of land, in a cluster configuration, but at the underlying density, for ten units total. The clustering allows the preservation of more undisturbed land. The zone could permit a density bonus of 50% (15 units total), if 20% of the total units were affordable units at 80% of median income (3 units). The Town gets the three units to count towards a moratorium or an exemption, the developer gets a modest increase in density (2 market rate units), and does not have to build any units at 60% of median income as it would under an affordable housing application.

This type of density increase is not appropriate everywhere in the Town, and as such, the overlay zone would only be mappable in certain areas of the Town. It should be noted that the adoption of such an overlay district can be used to assist in resolving pending litigation.

**Suggested Action:** Consider an overlay zone which permits increased density in exchange for affordable housing units.

### 5. Accessory Apartments

The Regulations contain provisions for accessory apartments to count as affordable units. However, the DECD list shows no accessory apartments in Town. An effort should be made to catalog all existing legal (and illegal) accessory apartments, obtain deed restrictions for each unit, and encourage the creation of such accessory apartments to provide for additional affordable housing units.

The Act defines an “accessory apartment” as a separate living unit that (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, (B) has a full kitchen, (C) has a square footage that is not more than thirty per cent of the total square footage of the house, (D) has an internal doorway connecting to the main living unit of the house, (E) is not billed separately from such main living unit for utilities, and (F) complies with the building code and health and safety regulations.

**Suggested Action:** Review accessory apartment regulations to ensure they comply with the Act, streamline the process to apply for an receive permission for an accessory apartment, and develop an accurate inventory of existing accessory apartments which are in full compliance with the Act.