

**MINUTES FOR THE MEETING OF THE  
PLANNING & ZONING BOARD  
HELD TUESDAY, APRIL 6, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the April 6, 2010 meeting of the Planning and Zoning Board at 7:32 p.m.

**A. PLEDGE OF ALLEGIANCE**

**B. ROLL CALL**

**Members Present:** Ed Mead, Mark Bender, KathyLynn Patterson, Kim Rose, Janet Golden, Victor Ferrante, Kevin Liddy, Susan Shaw, Chair, Greg Vetter (7:34), Robert Dickman (8:24)

**Staff:** David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner; Phyllis Leggett, Board Clerk.

**Also Present:** Thomas Ivers, Fair Housing Officer, Department of Community Development, City of Milford

**C. NEW BUSINESS**

1. **81 MILFORD POINT ROAD (ZONE R-7.5)** Petition of Brett Howell, for Coastal Area Management Site Plan Review approval to construct a single family residence on Map 6, Block 84, Parcel 3, of which Brett Howell is the owner.

**Joseph Codespoti, Codespoti & Associates, 504 Boston Post Road, Orange, CT.** His company designed the site for Mr. Howell and prepared the Coastal Area Management Site Plan Review application. The left hand side of Sheet SP-1 showed the existing conditions on the site. The site is approximately 49 feet in width on Milford Point Road. It goes back approximately 250 feet to Long Island Sound. There is an existing dwelling that will be removed. On the west side of the property is a paper street which is an extension of Sand Street. On the north is Milford Point Road and on the east is another single family residence and then there is Long Island Sound.

All the elevations on this property are approximately 7, 8, 9 feet above sea level until the mean high tide line and then there is the Sound, which is south of the property.

This property is approximately 12,000 SF in the R-7.5 zone. The elevation of the existing house is 11.93 on the first floor, which is below the 100-year flood event. So that would be at elevation 13, because it is in a VE zone. Photo No. 3 in the CAM report showed the existing house. The three resources that are on this site that are managed by the CAM Act are: Bluffs and escarpments, which are actually beaches and dunes, and some beach grasses. Photo No. 2 looks north.

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There is a two-foot dune and beach grasses. Photo No. 1 looks toward the water and it is very flat and there is a little wave at low tide.

The three elements that are present: Beaches and dunes; modified bluffs and escarpments and coastal flood area. The entire property is below the flood hazard line about 2-5 feet. The elevation of the first floor of the new house will be two feet above the 100 year flood event and will be much safer than the existing house.

There are four coastal resources on the site: One is adjacent that is in the tidal flats in Long Island Sound and the four coastal resource policies that apply are all conformed with.

Mr. Codespoti showed the existing concrete patio and the limits of construction for the new property will be at the same limit of the concrete patio. All the coastal resources of real value are south of that property line. There will be a construction fence and all activity will be beyond the existing patio. Conformance with the four coastal policies is described in Attachment A.

Attachment B refers to the use of the property. This is a single family residence, as are all the other homes on the street and this use has been existing in this area for many decades. The use is not being changed and competes with no waterfront use.

There is a consideration that there might be a piping plovers on the site. He referred to Attachment D which deals with this issue. A letter to Mr. Codespoti dated February 24, 2010, was received from Otto Theall, a professional wetland soil scientist, who suggested that a wildlife biologist make an inspection of the site on or around May 1<sup>st</sup>, to see if a plover nest is present. If so, the CTDEP should be notified. Mr. Theall's letter outlined what other measures would be necessary, should there be a piping plover nest. Mr. Codespoti stated the chances of there being a plover's nest on this property are rare. However, the applicant will comply with having a wildlife biologist come out on the First of May and if there is no nest, the construction can proceed.

Mr. Codespoti summarized that the improvements are very responsible. The house that is being taken down is a danger in flood times. The first floor level of the new home will be above the elevation of the 100-year flood event. Mr. Howell has been very responsible in dealing with the various agencies that are concerned with this site.

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**Ms. Harrigan:** The only thing that is in potential flux about the application is there is an area of existing dune, which was called out on the plan, to be replaced with rain garden, where there is an overlap between what was there and what is proposed to be instituted to assist with drainage on site. The last correspondence from John Gaucher was that in the area where there is existing dune, that should be reinstated. The issue that that area wraps around a corner of the house and when they excavate for the foundations, it is very likely that that dune will become unstable and have to be removed in order to not fall into where they are digging for the foundations. Mr. Gaucher feels reestablishing the dune will provide better protection for the house itself. It will keep the beach in place and plant beach grass in the area where the dune presently exists.

**Mme. Chair:** Is this currently stipulated on the site plan?

**Ms. Harrigan:** It is not on the site plan but it is on the last comment received from John Gaucher.

**Mr. Codespoti:** Pointed out on the display the area where the rain garden would be planted in accordance with Mr. Gaucher's remarks.

**Ms. Rose:** Anything else in the email from John Gaucher that needs to be addressed?

**Ms. Harrigan:** He approved everything else.

**Mr. Ferrante:** How does the beach side of this house line up with the surrounding properties?

**Mr. Codespoti:** Referred to Sheet SP-1, and Photo #2 which shows how the rear of the houses line up with the property in question.

**Mr. Ferrante:** Was there a waiver given for the side yards?

**Ms. Harrigan:** This property is considered a corner property since it fronts on a paper street, as well as Milford Point Road, which is an active street, it required a front yard setback from 20 feet to 10 feet.

**Mr. Ferrante:** The house goes as close as 3.7 feet to the other line, which is too close.

**Ms. Harrigan:** That was also granted by the ZBA.

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**Mr. Codespoti:** The distance is to the chimney, not to the house, which is five feet away, which is permitted according to the regulations.

**Mr. Mead:** Visited the property. Asked if the page fence on the southwestern side of Sand Street will be removed, as well as the tree on that side.

**Mr. Codespoti:** The page fence will be removed.

**Brett Howell 45 Milford Point Road:** The tree most likely will be removed. That was discussed with John Gaucher and a determination will take place after construction what landscaping should be done.

**Mr. Mead:** Doesn't the Board need to see a landscape plan?

**Ms. Harrigan:** For most of the coastal properties right on the beach, to introduce non-native species is generally not recommended. Where the rain gardens are proposed, a swale will be developed that will line with some material to help maintain the shape of it and plant some native plantings within that swale.

**Ms. Rose:** Received about 25 phone calls regarding this particular home and how it will line up with the other homes.

**Mr. Codespoti:** Showed on the survey where the house will be positioned in relation to those existing and that it will not protrude in the rear (beach side).

**Mr. Howell:** Stated he had a letter of recommendation from a neighbor who stated he had worked with the community to design the house to be in keeping with the rest of the street.

**Mr. Liddy:** How does the proposed house's height compare to the house on the right?

**Ms. Harrigan:** It will be slightly taller, but in the 35 feet allowed.

**Mr. Vetter:** Definition of how this is a three story, when there are four levels.

**Ms. Harrigan:** First level is the garage level. The second level is the main living area, the level above that is the bedrooms and the level above is considered attic space. Any portion of the attic level that is over six feet in height is limited to ten feet in width and less than 50% of the length of the total roof area. This house meets the requirement creatively. This space houses the mechanicals.

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**Mr. Vetter:** This house is taller than the one next to it. This mechanical attic has complete access to it through an elevator and has two balconies which can become living space in the future.

**Ms. Harrigan:** New construction in the coastal properties cannot put mechanical equipment on the ground floor because it is not allowed by the flood hazard regulations, so they have to find another place to put that mechanical equipment. They are allowed to put the mechanicals in the highest level.

**Mme. Chair:** Asked for a motion from the Board.

(No reply)

**Mr. Liddy:** Asked for clarification of the 50% rule that Ms. Harrigan spoke about.

**Ms. Harrigan:** Reviewed the plans with the designer regarding the height and is satisfied that the plans meet that requirement.

**Mme. Chair:** This is a Coastal Area Management approval. The Board is limited as to what it can rule on.

**Mr. Codespoti:** The Coastal Area Management Act has to do with environmental issues. The applicant meets all those issues. There is nothing in this Act that says anything about a 35-foot requirement for a house. The zoning regulations do and that is something he has to meet. They are here tonight to have the assurance that the use of this property for another home has been met as far as protection of the coastal resources and that this is the proper use for that property. Mr. Howell has gone before a public hearing where the neighbors had the opportunity to ask about setbacks. The Zoning Board of Appeals granted that right after listening to the public.

**Ms. Rose:** The ZBA does not necessarily listen to what the people have to say. They do not have to go by the facts as this Board has to do in most cases. She thinks the Board is taking the third, attic story to the nth degree. Stated she knows there will be a room up there. Will work on getting that eliminated and would vote no on this application if she could. The house is too big for the property and a lot of the neighbors called her as they were not happy with the size of that home. However, they are within their rights on the CAM report.

**Mr. Liddy:** Made a motion to grant approval to Brett Howell for a Coastal Area Management Site Plan Review to construct a single family residence on Map 6, Block 84, Parcel 3, of which Brett Howell is the owner, with the stipulation stated in John Gaucher's letter to the Planning and Zoning Board.

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**Mrs. Golden:** Second.

**Mr. Ferrante:** The Board has to swallow this. The house is too big and too close. The applicant respects the law, but he should respect the neighborhood and the limited coastal resources. This house is 3.7 feet from an abutter. It closes in on the public access of the other side. It will be beautiful but enormous for the size of the lot. Asked Mr. Codespoti to ask his client to rethink the scope of this project.

Eight attending members voted in favor. Mr. Ferrante abstained.

**D. PUBLIC HEARING CONTINUED - CLOSE BY 4/20/10; exp. 5/19/10**

2. **90 HEENAN DRIVE (ZONE CBDD)** Petition of 90 Heenan Drive, LLC for Site Plan Review approval to construct affordable housing units pursuant to CGS Section 8-30g on Map 91, Block 807, Parcel 2, of which 90 Heenan Drive, LLC is the owner.

The Chair reviewed the format for the procedure of the continuing public hearing. Mr. Carroll and The Chair discussed how Thomas Ivers' response to the revised affordability plan for housing, received at tonight's meeting, would be addressed by the applicant's representatives.

**Leo Carroll, Esq.** representing the applicants, Louis and James D'Amato. This is a continuation the public hearing of the 8-30g application filed on 90 Heenan Drive. There have been many submissions made over the past two weeks. Mr. Miller could not be here tonight but he has filed a report dated April 1<sup>st</sup>, that addresses Mr. Sulkis' memo of March 16<sup>th</sup>. He asked that each member of the P & Z Board take the time to read this extensive report. Stated he will have some comments about this report after Mr. Wassmer makes his presentation.

Material was distributed to the Board prepared by Ron Wassmer. An explanatory letter from Mr. Wassmer, dated March 30, 2010, regarding drawings SK-1, SK-2, SK-3, SK-4, SK-5 and C14 were dated stamped into the record.

The following information was received and date stamped into the record: Storm Water Impact and Mitigation Analysis, and Preliminary Sanitary Sewer Force Main Pump Configuration.

**Ronald Wassmer, PE, LLS, CCG, 158 Research Drive, Milford.** Present on behalf of the applicant to respond to some of the questions raised at the last hearing.

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He prepared a cover letter dated March 30, 2010, to Leo Carroll in response to David Sulkis' memo dated March 16<sup>th</sup>. The drawings that have been presented are sketches that clarify some of the questions.

**Mme. Chair:** Asked if the board members had copies of the drawings.

**Mr. Sulkis:** The information that is being discussed were submitted to the Planning and Zoning office 3:30 this afternoon. They have not been reviewed by Staff. The cover letters and the report by Turner Miller have just been received as well.

**Mme. Chair:** Clarified that this was the first time the board will be seeing and hearing the material that is being presented tonight.

**Mr. Wassmer:** Stated the sketches are clear and try to address individual comments without putting a bunch of information cluttered on one sheet.

Mr. Wassmer outlined his letter as follows: SK-1, [Access Drive and Sidewalk Sketch], provides additional detail of the access drive from Research Drive to the private access drive, Golden View Terrace. In particular, he proposed a four-foot wide concrete sidewalk from Research Drive to Golden View Terrace. He has proposed pole lights along the sidewalk. He referred to and explained the displayed drawing of SK-1. He noted evergreen screening was added on the sketch. There had been a question about a building to the west of the access way. The building was sketched in. The other buildings were noted on the previously submitted plans. The intention of this sketch is to show the location of the proposed sidewalk.

With regard to a covered bus shelter for children, it is his understanding that the applicant proposes to restrict Phase II to occupants age 55 and older, therefore, he has not provided a covered shelter.

Snow removal along the public access drive, including sidewalks in the access drive to Research Drive, will be provided by the property manager of Rolling Meadows of Milford. The sidewalk has been extended from Research Drive to the site and around the western side of Golden View Terrace.

**[Mark Bender left the meeting at 8:19 p.m.]**

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SK-2 details the retaining walls throughout the site. To illustrate these features he indicated a cast-in-place concrete retaining wall, or equal. The intent of the drawing is to indicate the height of the wall, the grading at the wall location and the storm drainage required at the wall location. There are also several proprietary wall systems, which may be used at this project. Two examples are: Redi Rock Walls of New England, manufactured in Plainville, CT and Versa-Lok Retaining Wall Systems of New England, manufactured in Milford, CT. Catalog cuts for these two proprietary walls have been submitted. He will assist the applicant in final selection of the construction type. He will prepare and certify the final engineering design for the retaining walls when the plans are submitted to the City of Milford Building Department for a building permit.

Mr. Wassmer indicated on the display showing SK-2 the information he outlined. At unit 17 there is a sketch of the wall dimensions: 10 feet tall from the finished grade to the top of the wall. A four-foot chain link fence was indicated, as well as a swale along the top of the wall to control runoff and a footing drain at the base of the wall. These were some of the questions that were being posed in regard to drainage around the retaining walls.

As an alternative to the cast-in-place wall, for set wall #1, a sketch of a modular block wall has been indicated. These are commonly used today. Sketches have been provided for wall #2, which is 8 feet tall and wall #3, which is 4.8 feet tall.

The catalog cuts for the above-described retaining walls were submitted and date stamped into the record.

SK-3 indicates the revised location of the sanitary sewer pump system. There were some questions regarding the location of the pump system. It was behind one of the units. When this was reviewed with the On-Call City Engineer he suggested that it be made more accessible. This system will be a private system. It will be maintained by Rolling Meadows. This was a good suggestion and the proposed location of the pump station in the northwest corner of Cottontail Lane has been indicated on the sketch. The pump station will be completely underground. The only indication of the pump station will be three manholes and possibly a small electrical box.

SK-4 depicts the location of the snow shelf and garbage can storage location. A bubble has been drawn around locations where snow could be piled during or after a snow storm. They are located in any of the open areas that are adjacent to the driveway, and would be stored as any other homeowner would store the snow at his home. Because this was a question in Mr. Sulkis' memo, it was important that it be addressed.

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He stated in the beginning of the process he had talked with the assistant city planner at the time about providing sheds, because it was an issue that they discovered with Ryder Woods, that they did not propose any sheds and now it has created some administrative questions as to how to allow them. Therefore, on SK-4 there is a 6' x 6' shed indicated with each home site adjacent to the home and that is where the garbage cans will be stored.

SK-5 indicates additional proposed landscaping of white pine trees, particularly along the northeast portion of the site between Rolling Meadows and Ryder Woods.

Mr. Wassmer stated he had included copies of the Stormwater Impact and Mitigation Analysis prepared by the Connecticut Civil Group and Sanitary Force Main and Pump Calcs for Lots 16-28" prepared by Water and Waste Equipment of Rocky Hill, CT. These two reports were previously submitted to Codespoti & Associates through the Milford Public Works Department.

Summarized that the sketches submitted are rudimentary. The intent was to answer some of the questions that were posed at the last meeting.

**[Rob Dickman arrived at the meeting at 8:25pm]**

Mr. Wassmer read the letter he sent to Leo Carroll dated 3/31/10 outlining the Storm water Impact and mitigation analysis prepared by CCG as well as the Sanitary Force Main & Pump Calcs Lots 16-28" prepared by Water and Waste Equipment Rocky Hill, CT.

**Leo Carroll:** Reviewed Mr. Miller's report, which took Mr. Sulkis' comments and answered all the questions that needed a response. The access driveways are not roads, as Mr. Sulkis had stated, they are access driveways. There had been some consideration that Ryder Woods has private access roads far in excess of what the applicant is providing for this development. He and the Chairman had a bit of discussion about this issue at the last meeting. He did not understand why it was okay for Ryder Woods to have these private access driveways and not the applicant. It is important to understand that the maintenance of Cottonwood Lane and Goldenview Terrace, which are access driveways, will be the sole responsibility of Mr. D'Amato, the property owner. That will include pavement maintenance, storm drainage, snow removal, curb repair and maintenance of the sewer pump and internal sewer lines. The City of Milford will have absolutely no responsibility in this matter. There had been some discussion about whether or not this access driveway through industrial property would be prohibited by the Affordable Housing Act. He pointed out that Mr. Miller has clearly dealt with this issue in the area of reviewing the statute. There is a specific statute, 8-30g 2a, which says:

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“Under an appeal that is taken under this situation, the burden shall be on the commission [the Board] to prove that there is sufficient evidence in the record to prove that the public interest clearly outweighs the need for affordable housing and the public interests, which are trying to be protected, cannot be protected by reasonable changes in the affordable housing development”.

Mr. Carroll interpreted this to mean that the court looks at it and decides that there cannot be any situation where the board says, “well, maybe this will happen or maybe that will happen”. There has to be significant probability that the problems that the Board is looking at are going to arise. He stated that he believes this has not been shown. The court is clear that the burden of proof will be on the Board to prove that the affordable housing application is using industrial land. There is nothing in the affordable housing regulations that prevents access to an industrial zone. Milford has no regulation and the state statute does not cover the issue.

There had also been a comment about changing the use for the Research Drive properties. Right now the use for the property on Research is the 50-foot access way, which is for a driveway. That is what it will continue to be used for.

He pointed out that basically the entire project conforms to the Milford Zoning Regulations regarding parking, even though they do not have to do that. The use of the access driveway would not constitute the creation of a new private road. The application is in conformance with the standards of the current zoning regulations, which includes the specific intent of the Cascade Boulevard Design District, however, it is being submitted in accordance with Sec. 8-30g of the CGS, which specifies, that even if a proposal does not comply with all the specific requirements of the zoning regulation, the application must be approved, unless the denial is necessary to protect the substantial public interest in health, safety, or other matters, which the commission may legally consider, and such public interest clearly outweigh the need for affordable housing”, and that has not been demonstrated.

Mr. Carroll stated he was handed a report just before this meeting, from Tom Ivers, the Fair Housing Officer for the City of Milford, regarding the applicant’s plan. He has not had adequate time to review the report and asked for additional time to review and respond to this report in writing and at a public hearing. Mr. Ivers speaks about a couple of deficiencies in the plan. He said, “There is another technical deficiency with the affordable plan. The proposed development involves a purchase and a lease.” He goes on to talk about how that violates the

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statute. The case that has been cited to Mr. Ferrante at the last meeting, Garden Homes v. Oxford P & Z, specifically says, "Here the applicant proposed to sell the dwellings and rent the land where the building is located. The Commission claims that the combination of sale and rental does not qualify. This argument must be rejected". The holding of the case is that leasing or renting of the underlying land, together with ownership of the building is a permitted use of the Affordable Housing Act. This decision can be accessed and he volunteered to file a copy, should the board request it. It was decided in November 30, 2009 by the Connecticut Superior Court.

Mr. Carroll commented that Mr. Ivers also had some questions regarding the affordable housing marketability plan and pointed out that if Mr. Ivers finds some problem with the marketing plan presented, that can be remedied by the imposition of conditions on applicant.

The third comment that the affordable plan's set aside prices become potentially greater than the actual market value of the unit. That statement in and of itself is counter-intuitive. The reason being that the market will determine the final price of the units. The applicant has only followed the affordable plan. That is what the statute requires. These homes might sell for less than the affordable plan. To deny the citizens of Milford and the surrounding communities in Connecticut the opportunity to purchase these units because they are not as affordable as they might be, or as affordable as Ryder Woods, flies in the face of the fact that affordable housing is needed in Milford.

Mr. Carroll asked that the public hearing be continued so that a response can be made to Mr. Ivers' report.

**Mme. Chair:** Said she thought it would be fair to keep the public hearing open. Asked Mr. Ivers for an overview of what is looked for in affordable plans and an overview of this application. Thanked Mr. Ivers for coming tonight.

**Thomas Ivers, Fair Housing Officer, City of Milford.** Clarified to Attorney Carroll that he did not suggest or imply that combining a land lease with a land lease is noncompliant. This is done all the time and he has personally done this in condominium and co-op housing, rental housing and single family home ownership and combining land leases, ground leases with ownership is something that is an excellent mechanism and he commended the developer for using this approach to achieve affordability.

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He stated his concerns as being: The affordability plan has two basic components to it. The affordability plan demonstrates that the proposed units are compliant with the mathematical formula definitions, as defined in the statute. In this approach to developing housing is somewhat of a hybrid. There is a rental aspect to it, as well as an ownership aspect to it. The statute is deficient in defining what affordable is in that context. So, you can be pulling from both and neither one really match. With the type of housing this is and the way that it is packaged, it is a very good mechanism for affordability to such a great extent that it's probably more affordable than the formula would dictate, but the formula does not really reflect the realities of what is going on here. Does the plan comply with the formula? Absolutely. There is no problem with that at all.

The Affordability Plan also includes an affordable fair housing marketing plan and what that says is that the units have to be sold in compliance with the Fair Housing Act, as a reasonably marketed product. What that means is that if these units are sold to the public they have to be sold fairly. There has to be fair plan as to how these units are sold. With the affordability compliance piece saying that the units that are set aside as affordable will not be sold for more than this, that tells us it complies with the affordability formula. It does not say that selling them at that price or less will necessarily meet the criteria of affordable fair housing marketing plan that says that they will be presented and sold in a fair and marketable fashion. My question to Attorney Carroll was, "How much are you going to sell the units for?" and "How much are you going to sell the affordable units for?". Based on what the market looks like, the formula would allow you to sell them for tens of thousands of dollars more than they are worth, so you can't sell them as affordable housing for more than they are worth. You have to sell them for what they will be fairly marketed for.

In conversations it was discussed what comparable properties might be. It was suggested the Oxford Commons Development which has been referenced earlier, might be considered a comparable.

Mr. Ivers stated he researched Oxford Commons. It has not been built nor marketed. However, there is another development by the same developer called Stonegate Village, which according to the developer is in the same market class and has the same level of amenity as what is conceived as Oxford Commons. In looking at those in detail and looking at the file that has been submitted, which does not have very clear guidance on what these units are going to look like, what their level of amenity will be and the fair marketing plan does not explain how these are going to be marketed to the public. It says that a notice will be sent to the Housing Authority, Department of Community Development, etc. promoting these units, but they did not provide a sample of what that would look

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like and what that would say. His question is: If someone calls him up and says he is looking for affordable housing, he does not know what he would tell them. He does not know what it looks like; how much it costs; how it compares to market rating; don't know if it's a good deal. It might be a bad deal. It might be something that runs contrary to your ability to implement a fair housing marketing plan because the people you are trying to reach out to would not think it is a good deal.

He gleaned what he could from the documents on file in terms of how big the units would be, what the level of amenities would be, how they sit on the lot, how they would compare market-wise. He put them side by side to see how they matched and priced out. He found that the discrepancies are enormous. The market rate units that appear to have a higher level of amenities, more attractive site plans with 40-50 feet of frontage instead 30 feet of frontage and larger lots and more conventional configurations are selling for \$20,000 a unit less than what has been proposed for the set-aside market units and the proposed market units are selling for \$40-60,000 more. It does not make any sense.

His concern is that you cannot have a marketing plan that is selling something that does not exist. There has to be some reality brought to it.

The deed technical deficiency is just a language technicality, presumably because the 8-30g statute did not anticipate this type of housing, it states you have to restrict the affordability by a deed restriction. These units do not have deeds. They get titles (like a car), so you cannot deed restrict by title, you have to deed restrict it by deed and there are no deeds. That can be structured to work out.

It is a matter of bringing the Affordability Plan to the realities of the actual market. It will take the developer to define exactly what it is they are going to build and the level of amenities. Normally, marketability would not be of concern in a land use issue, but to comply with an affordable housing marketing plan, these issues become fundamental to implementing an equitable plan that complies with the FHA.

**Mme. Chair:** What does 8-30g expect from the Board to appraise what makes an appropriate affordability plan? What components should the Board be looking for? Is it up to Mr. Ivers' department to say or for the Board to say it?

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**Mr. Ivers:** Ultimately it is the Board's decision. The statute says what the components need to be and it uses the language "at the very least". So, if they only submit the very least and the very least is not enough, and in this case an affordability plan that is more of a hybrid, cookie-cutter plan, leaves a lot of questions.

Mr. Ivers stated this is potentially a great housing resource and he hopes they can find a way to develop a good marketing plan for this, however, it needs to be brought into reality so as to be marketed to a real market, not a market that does not exist.

**Mr. Ferrante to Mr. Ivers:** What should the developer do to work with him so he can come back to the Board and say the plan is A-OK.

**Mr. Ivers:** It needs to show buying these homes is a good, financial thing to do. Buying a property that has restrictions on it does not have the same market value as a property that is unrestricted. How much that differential is really makes a difference. For this type of housing conventional financing is not available and 20% down is required. The developer can be creative in providing mortgage assistance.

**Mr. Ferrante to Mr. Ivers:** Where does the developer need to go to get a plan to satisfy his (Mr. Ivers) interpretation of the statute.

**Mr. Ivers:** They need to demonstrate that the set aside units are priced appropriately to the market and marketed to the target income people that they are required to market it to.

**Mr. Carroll:** Asked to respond to Mr. Ivers comments.

**Mme. Chair:** Stated that the hearing would remain open with a grant of extension from Mr. Carroll. The Board has not read Mr. Ivers' comments either. There will be ample time for Mr. Carroll to respond.

**Mr. Liddy:** Asked why the mortgages for these homes would not be conventional.

**Mr. Ivers:** Most lending institutions that he is familiar with do not do them because there is no collateral value that they can secure. There is no deed. It ends up being more like a commercial loan than a residential home loan. If you cannot collateralize your mortgage adequately, you don't have adequate security

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and presumably there will be issues with respect to foreclosure rights and ability to recover if you have to. There are mortgage guarantee programs like FHA and VA that will guarantee loans within certain parameters.

**Mr. Vetter:** Asked for model or benchmark plans that Mr. Ivers referred to that the Board could use as references.

**Mr. Ivers:** Housing complexes like this with ground leases, (co-ops, condos, single families), they have conventional financing mechanisms and there are subsidy mechanisms. You could potentially bring Section 8 into these units and have them lease with an option to buy, using Section 8 to help them make the monthly payments. That would be a great way to make it affordable.

The statute does not tell you how to do it. They tell you that it has to be affordable by their definition and there has to be a fair marketing plan. How that is accomplished is left to the developer.

**Mme. Chair:** Asked for a break to give the public and the Commission an opportunity to look at the plans displayed on the board.

[A recess was taken from 8:56 to 9:07 p.m.]

**Mme. Chair:** The Board will keep the public hearing open. Asked Mr. Carroll's permission to grant an extension because the application will be at the end of the 35 days required before the public hearing closes. Asked if May 4<sup>th</sup> would work as the date to continue to public hearing.

**Mr. Carroll:** Agreed to the extension and the May 4<sup>th</sup> continuation date.

**Mme. Chair:** Asked if there was anyone to speak in favor of the application. (No reply) Anyone to speak against the application.

**Linda D'Onofrio, 50 Quarry Road.** In favor of affordable housing. Does not understand the affordability aspect of paying a mortgage and also paying Mr. D'Amato \$500 per month. How is that affordable? A single person making under \$80,000 a year could not afford this type of housing.

People appear to be concerned about the affordable living aspect, but not worried about the neighborhood. Now talking about another 56 cars going up and down the street. There has been an increase in cars since Ryder Woods moved in. Not objecting to that either, but someone has to address the traffic.

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Confused about whether the housing will be 55 and over or have children in it. If there will be 28 homes, a pumping station, garbage sheds, what size is this lot? Can't figure out where the snow will be put. Thought these homes were going to be purchased outright. Not aware of a lease situation. How long is the lease for on these homes? Can a person sell their home when they are ready to sell it and if it is affordable, will that price be monitored so that it continues to be affordable?

**Stephen Provoznik, 17 Marble Lane.** Ryder Woods has no access ways. All the streets are private streets. Asked for clarification as to whether the application is for 55 and over. If there will not be children in the Research Drive area. Spoke to Mr. Wassmer and asked if there could be a notch put in driveways for car turnaround. Appreciates the tree border that was added in Drawing 5.

**Albert Hricz, 135 McQuillan.** Still concerned about the makeup of the slope and the hillside on the upper level that they want to develop. During the last rainstorm that lasted 3-4 days, it was like a river going down the side of the slope area. If that erodes, what stability will the homes at the top of the ledge have?

**Cindy Schroeder, 75 Quarry Road.** Biggest issue is the cars. There are small children in the area. Asked that the road be widened, as two cars can barely pass at once where the homes are. In favor of affordable housing in Milford but the traffic is a big issue.

**Mr. Vetter:** Asked if her problem was with the width of Quarry Road?

**Ms. Schroeder:** Explained the area of Quarry Road where there are homes that she was discussing. The road narrows in the residential area. No sidewalks to walk on so people have to walk on the narrow road. There is no room for sidewalks.

**Jim Flynn, 5 Marble Lane.** After the last heavy rainstorm, the incline of the rock area had a river pouring down into the area proposed for development. If homes were down there and had drains, it would not have helped.

Tonight he noticed there is oil coming from the top of the property where there is a stream that runs along the entrance at Heenan Drive. This is a concern because there are retaining ponds for the Eastern Box Turtle. That stream feeds those ponds. What will happen when that property is dug up. Will oil be taken out that is in the ground or will it be covered up? Also, there should be more than trees to stop runoff from the property into the stream, such as a small wall. Otherwise, trees will not stop the water from running into that stream.

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**Francis McGeary:** In favor of the application. It will afford him the opportunity to move back to Milford to his family. He has lived here for 52 years but was forced out of the housing market. This project will afford him the opportunity to move back to Milford.

**Mme. Chair:** Clarified that Mr. McGeary was speaking in favor of the application.

**Mr. McGeary:** Confirmed that he was in favor.

**Mme. Chair:** Invited Mr. Carroll to address the issues that were raised.

**Mr. Carroll:** Said he would like to address some of the issues in part, but would address them fully in writing before the next hearing.

Stated what the Board heard some misunderstandings concerning the issues of affordability. The issues of affordability are very complex and have resulted from a law that has been on the books for about 30 years and is a law in flux. It is a remedial statute and the statute defines certain things that you have to do. The issues with regard to what Mr. Ivers wants and what the neighbor from Quarry Road was asking are somewhat similar.

Mr. Carroll stated in response the applicant would restrict the upper 15 units that come off Research Drive to age 55 and over. The number of units will also be restricted to 26, based on the plans they have. If the Board was to approve a Special Exception or a regular Cascade Boulevard Design District project, they would also go along with that. However, they ask the Board, should it vote down the project, that their vote be based on the 28 unit plan. If they vote for the 26 unit plan with the over age 55 component on the top portion of the property, that would be acceptable to the applicant.

In response to Mr. Provoznik's comments regarding private streets in Ryder Woods, Mr. Sulkis has said on many occasions there are no private streets in Milford. He (Mr. Carroll) is puzzled as to how these got approved.

Asked that Mr. Ivers be present at the next hearing so there can be further debate, if necessary, concerning the affordable plan. It is the applicant's intention and belief that the affordability plan has been complied with. It is a very technical statute. The way it is drafted it may not be for the best, but don't let the best be the enemy of the good. They want to do something good for the Milford community. Trying to improve it may break it. He would suggest that the affordability plan be looked at as a basic outline. The details that Mr. Ivers is asking for, such as subsidized housing or subsidized down payments or that type

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of thing are not appropriate in the marketing plan. They do not believe it should be there. There is no requirement in the statute. That is Mr. Ivers' wish list. Mr. Carroll understands why Mr. Ivers has that wish list, but it does not comply with 8-30g of the Connecticut General Statutes, which is what they have done. He asked the Board to read Mr. Miller's report which he filed today and to look at the information that was filed by Mr. Wassmer and consider his information is an amendment to the application and will be part of the application process.

**Mme. Chair:** Asked for the public's rebuttal to Mr. Carroll's comments. (There was no rebuttal from the public).

**Mme. Chair to Mr. Carroll:** Asked if it was correct to say that Ryder Woods has private roads.

**Mr. Carroll:** They claim they do. He is not sure what they have. Mr. Sulkis has stated there are no private roads in Milford.

**Mr. Sulkis:** Corrected Mr. Carroll by stating he had never said there were no private streets in the City of Milford. He had said the Board had not approved private streets in a long time, but never said there were no private streets in Milford.

**Mme. Chair:** Stated the minutes confirm Mr. Sulkis' statement.

**Mr. Carroll:** The proposed roadways of the project are designated as private access driveways.

**Mme. Chair:** Stated it is a right of way and asked if there was striping for cars to go both ways.

**Mr. Carroll:** Answered he did not know if there was striping and the question is who maintained them. Mr. D'Amato will pave, plow and maintain the drainage on them. There will be striping around the cul-de-sac according to the fire marshal's requirements. Striping of the other roads will depend upon the Police Department.

**Mme. Chair:** Sgt. Sharoh, in this police report, refers to it as a private road.

The Chair and Mr. Carroll discussed the definition of right-of-way in the regulations and private streets and the way it is defined in the Turner-Miller report. Mr. Carroll thought the Chair was speaking about definition and he was

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talking about maintenance. Mr. D'Amato will maintain the roads no matter what they are called. He confirmed in accordance with the Chair's statement that the streets will be private and maintained, just as Ryder Woods has private streets that are being maintained and the public will have the right to pass and re-pass over these roads. No one will be prohibited from using these streets and they will be maintained by the applicant.

**Mr. Liddy to Mr. Wassmer:** Referred to photos from the brochure Mr. Wassmer had provided and questioned the damage that could be done by water to cinder block retaining walls over time.

**Mr. Wassmer:** Responded the walls would be made of concrete, not cinder block. There would be no basements in the proposed housing. A cast-in-place retaining wall requires maintenance and it has a useful lifetime. If they need to be repaired a property manager would be responsible for maintenance and repair of the wall. A modular block wall is easier to maintain, because portions of it could be repaired.

**Mrs. Patterson:** Asked on the SK-1 drawing where there was some lighting and a sidewalk, entering from Research Drive there is another driveway that runs parallel to the 225 entrance that is pitched down a bit more. Asked if there would be runoff in that area.

**Mr. Wassmer:** Responded that is correct and there is existing drainage at that access way (driveway). The existing driveway would be widened a few feet to put in the sidewalk.

**Mrs. Patterson:** Asked about another driveway to the right of 225.

**Mr. Wassmer:** That driveway will not be impinged upon at all.

**Mme. Chair:** Referred to the lengthy discussion and the difficulty in connecting the northern with the southern roadway at the last meeting.

**Mr. Wassmer:** The drawing displayed showed Cottontail Lane in plain view, looking down and Golden View Terrace in plain view, looking down. On another side of the drawing was an elevation view that showed the changes in the height of the ground between the two. He referred to a bolder line is the finished grade which follows the existing ground. No significant cut or fill. The same on Golden View Terrace. In between the two is a steep slope approximately 150 feet from

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one end of Golden View Terrace to another end of Cotton Tail Lane (**Mr. Wassmer indicated the views on the drawing displayed**) The change in grade between the two is from about elevation 74 down to about elevation 36. It drops about 40 feet. In the course of 150 feet they cannot build a road that can drop 40 feet. This plan shows that more or less with a wiggly line (on the drawing). A road would have to be built that dropped 40 feet over 150 feet, which is about a 50% slope. The maximum slope that the City of Milford recommends for a road or for a driveway is 10%. You physically do not have enough room to build a driveway, road, parking lot or any kind of a paved surface that a vehicle would travel over that would meet the maximum requirements of a 10% slope.

**Mme. Chair:** There are places where it says that while it could be done, it would not be desirable both in terms ...

**Mr. Wassmer:** It cannot be done. It is impossible to build a road from one section to the other (indicated) and achieve the slopes that would not exceed the maximum allowed by Milford's engineering regulations.

**Mr. Sulkis:** Obviously it would be impossible in a straight line, but would it be impossible to have something that switches back?

**Mr. Wassmer:** Even if there were switch backs. There would not be enough length to keep it less than 10%.

**Mr. Sulkis:** That would be connecting from the current existing end of Cottontail to the currently existing Golden View Terrace. But if it were reconfigured in some other way, it might be able to be done.

**Mr. Wassmer:** Stated in his opinion, regardless of how you try to reconfigure these roads the slope that bisects the property prevents one from getting from the Research Drive area to the Heenan Drive area in any type of vehicle. Via a stairway, maybe, but that's it.

**Mr. Sulkis:** Asked for confirmation that Mr. Wassmer was stating on no way on that site, no matter how that site is configured, you can get a roadway from the upper part to the upper part.

**Mr. Wassmer:** Stated in his opinion, yes.

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**Mr. Carroll:** Supplemented Mr. Wassmer's answer by saying the purpose of the Cascade Boulevard Design District is to preserve these natural features. So, if roads are built over them, the natural features are not being preserved. Referred the Board to the preamble of that section of the regulations.

**Mme. Chair:** Responded the Board would look at this to see what the best outcome of this would be and make its determination on that.

**Mr. Vetter:** He did not see an engineering report about the design and structure of the wall. Was that in the file?

**Mr. Sulkis:** Mr. Wassmer submitted at 3:30 today the proposed possible design for a couple of walls. He has submitted sample brochures as to what may be used on the site.

**Mr. Vetter:** The wall is an important point. Clarity around the structure of that wall and how comfort, safety and the ability to retain must be achieved.

Asked if the drawings presented tonight would be adequate for the city engineers to review for effectiveness.

**Mr. Wassmer:** Shop drawings would be provided when a permit is obtained to construct the way. The sketch is just to see what it would look like.

**Mr. Ferrante:** Neighbors have questioned the runoff and the slope. Has there been an analysis by engineering given the additional impermeability of the site?

**Mr. Sulkis:** Stated he is certain Mr. Wassmer will tell the Board the amount of runoff that is going to be created on the site will not exceed what is created there today. To his knowledge there has not been an analysis. The Board should look for this when it has just heard testimony about a very steep slope. It is one thing to say the amount of water going down that slope is not going to be worse than it is today, but it is another thing when there is a slope that comes to an abrupt end with a retaining wall and what is the velocity of the water coming down the slope. Will it actually stop at the top of the wall? The drawing shows a slight swale at the top of one of these walls. Is that going to be enough to retain the water or is it going to come flying off the hillside and hit the units that are immediately adjacent to it.

**Mr. Ferrante to Mr. Carroll:** Who polices the affordability?

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**Mr. Carroll:** The affordability is policed under the auspices of the statute. There are restrictions put in the land records regarding what the units can be resold for. They will actually in the lease. The lease will be the deed that contains the affordability restriction. They will be enforceable by Mr. Ivers and the land records in a title search.

**Mr. Ferrante:** How will the marketability plan be enforced?

**Mr. Carroll:** Mr. Ivers will be looking at it on a regular basis. There is no effective mechanism that he is aware of.

**Mr. Ferrante:** Mr. Ivers has already weighed in on this. Asked if the applicant will be changing the affordability plan based on Mr. Ivers' comments.

**Mr. Carroll:** The City of Milford does not have the required percentage of affordable housing under the statute. The applicant is submitting the plan under the state statute.

**Mr. Ferrante:** Who will police the agreement between the homeowners and the maintenance of Research Drive?

**Mr. Carroll:** The homeowners. They will be tenants of the owner of the property. They will have the ability to go to the landlord and say you are not meeting your obligations for whatever reason. The homeowners will have leases that say, "Mr. D'Amato is responsible for ...".

**Mr. Ferrante:** Who polices those leases?

**Mr. Carroll:** The homeowners.

**Mr. Ferrante:** Concerned that what has been stated to take place for the development will not be followed through for various reasons and what recourse would the homeowner have.

**Mr. Carroll:** Stated he disagrees with Mr. Ivers' statement that there is not money available in conventional financing. There is a whole market out there that is insured by the FHA. They will require a title insurance policy and there will be terms and provisions that protect the lender and the mortgagor. They will be policed correctly because they have to be. They will not be able to get title insurance to insure the loan if they do not have all the protections required by the law.

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**Mr. Ferrante:** Does not like the idea of granting anything that has so many ifs to it. Just heard tonight about the 55 and older plan. The Board is getting bits and pieces. Would have liked a cohesive plan from the beginning.

**Mr. Carroll:** Responded he respected what Mr. Ferrante was saying but this is a work in progress. Hopefully, if the project is approved there will be conditions.

**Mr. Liddy:** Concerned about the comment made by the gentleman about oil in the water going to Ryder Woods. Asked if a soil scientist could inspect the property.

**Mr. Sulkis:** Stated the City and State might have to make an inspection of this.

**Mr. Carroll:** Responded that there is no proof that there is oil running down that property. He has made a lot of statements based on a lot of facts and they are not necessarily accepted. If there is a problem the DEP can be called and take a look at it. Mr. D'Amato has an environmental report of the area and it can be submitted. Does not know the qualifications of the gentleman who said he saw the oil.

**Mr. Liddy:** Good eyesight can see oil from water. Asked if the environmental study was in the file.

**Mr. Carroll:** The report was not submitted.

**Mme. Chair to Mr. D'Amato:** Research Drive is an industrial zone that is being used as light industrial currently.

**Mr. D'Amato, 183 Quarry Road.** Correct. It is light industrial. Small users, 800 SF.

**Mme. Chair:** Mr. Miller's report refers to it as light industrial but it is zoned industrial, which gives it a whole range of activities that are permitted that would not be permitted in limited industrial zones. Does Mr. D'Amato foresee a time when this property will be used for its own purpose?

**Mr. D'Amato:** As long as he owns the property it will be used as it is. With the way heavy industry is leaving the State of Connecticut, he cannot see industrial use picking up in the future.

**Mme. Chair:** Will the buildings on the private road on Research Drive will never be trucks, warehouse, or anything like that?

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**Mr. Carroll:** They will continue to be used as they are being used right now. The only difference will be there will be an access to a residential development. The Planning and Zoning Board had rezoned that property as residential and required them to drive by there.

**Mme. Chair:** Goes by there every day and there are tractor trailers going to Eastern Bag in the morning. How will that impact that area? If there is an access into and out of Research Drive, how will it be impacted? If there is more wholesaling going on there will be more truck traffic, which is allowed in the industrial zone.

**Mr. Carroll:** The zone was changed and the applicant is between a rock and a hard place. Doing their best to make a worthwhile project but is getting a lot of resistance. Not sure why.

**Mme. Chair:** The Board received the second police report the day after the last meeting. He recommended in the first report that both roads connect for safety reasons. Subsequently Mr. Carroll wrote a letter to Sgt. Sharoh saying it was impossible to connect the two roads. In the second report Sgt. Sharoh changed his view due to the impossibility factor. However, Mr. Miller's report states it is not necessarily impossible.

**Mr. Carroll:** Mr. Wassmer has stated specifically that it is impossible.

**Mr. Ivers:** Discussed how the development would be overseen with regard to reports that must be submitted annually to Planning and Zoning, which Mr. Ivers reviews.

**Ms. Rose:** Noted there is a project in her neighborhood being built by Mr. D'Amato that was stopped and the foundation and rock piles are left on the site. Is there any way to make sure something like this would not occur on the proposed property.

**Mr. Sulkis:** The regulations specify once a project is started there is no deadline for completion.

**Ms. Rose:** So five homes could be built and sold; one affordable home built and build the next five and not build the affordable homes and then stop the project?

**Mr. Ivers:** It would have to be proportionate. Pro rata affordable units for every market rate unit that was sold. They have to satisfy the affordable units first.

**Mr. D'Amato:** Waiting for the market to recover to finish the project.

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**Mr. Dickman:** How is a private access driveway different from a private road?

**Mr. Carroll:** He had been talking about maintenance of the roads. The Chair was talking about the legal definition of the roads. Trying to make it clear these are not municipally maintained roads. He is calling them private access driveways so the city is not responsible for their maintenance.

**Mr. Mead:** If there is a portion of the development that is designated 55+, will that be under affordable housing?

**Mr. Carroll:** An age 55 and older with an affordable housing component.

**Mme. Chair:** Over age 55 does not preclude having children.

**Mr. Carroll:** That's true but it reduces the chance of having a larger number children there.

**Mme. Chair:** The hearing will be left open until May 4<sup>th</sup>.

**Mr. Carroll:** Will send a letter to Mr. Sulkis consenting to the extension, which is required.

**Mme. Chair:** We have asked that an environmental report be submitted. Is there any other information the Board is awaiting?

**Mr. Sulkis:** Would like plans presented tonight sent to the Board.

**E. PROPOSED REGULATION CHANGES - None**

**F. LIAISON REPORTS - None**

**G. APPROVAL OF MINUTES – (3/16/10)**

**MR. FERRANTE:** Made a motion to approve the minutes.

**MRS. GOLDEN:** Second.

All members voted in favor of approving the minutes.

**H. CHAIR'S REPORT:**

**Mme. Chair:** There was a problem that occurred at the taping of the last meeting by MGAT. Not clear exactly what happened, but there was audio

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difficulty and the meeting was not aired after the original hearing date. Will follow up on this service to the community to make sure the meetings are aired properly.

**I. STAFF REPORT**

Mr. Sulkis reported he will be attending the American Planning Association's national conference in New Orleans next week.

**MS. ROSE:** Motion to adjourn.

**MR. VETTER:** Second.

All members voted in favor of adjourning the meeting at 10:08 p.m.

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Phyllis Leggett, Board Clerk