

**COLLECTIVE STATEMENT OF REASONS FOR DENIAL
FINAL**

**LEDYARD ZONING COMMISSION
APPLICATION #3327 & #3328**

September 15, 2010

Review of Applications for Three Family Dwelling Unit
A Proposed Affordable Housing Development Pursuant to CGS §8-30g
83 Inchcliffe Drive, Ledyard, Connecticut

CGS Chapter 444 – Coastal Management

I. CAM Deficiencies and Omissions

A. The Application Form received on May 4, 2010 indicated that the parcel (83 Inchcliffe Drive) is not in the CAM Zone. However, the subject parcel (83 Inchcliffe Drive) is in the CAM Zone and is subject to CAM requirements.

B. The application failed to “assess the capability of the resources to accommodate the proposed use” (Zoning Regulations §12.1.2.3). (No assessment of capability of resources provided.)

C. The application failed to “assess the suitability of the project for the proposed site.” (Zoning Regulations §12.1.2.4) (No suitability assessment.)

D. The application failed to “evaluate the potential beneficial and adverse impacts of the project and describe proposed methods to mitigate adverse effects on coastal resources.” (Zoning Regulations §12.1.2.5) (No potential beneficial impacts listed, no potential adverse impacts listed.)

E. The application failed to “demonstrate that the adverse impacts of the proposed activity are acceptable and demonstrate that such activity is consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes.” (Zoning Regulations §12.1.2.6)

F. The application failed to demonstrate why the Zoning Commission should not find that the proposed 3-Family dwelling cannot reasonably be sited outside the coastal boundary. (CGS §22a-92-(a)-(10)-(A)).

G. The application failed to demonstrate why the Zoning Commission should not find that the proposed 3-Family dwelling unreasonably restricts visual access to coastal waters. (CGS §22a-92-(a)-(10)-(C)).

Although Exhibit NN, entered by the Applicant, states that the 432’ of water frontage of the site at 83 Inchcliffe Drive will be reduced by only 36’ by the 36’ long home, and would leave a remaining 396’ or over 90% (92%) visibility, the Applicant’s representation is in error.

Referencing Exhibit G – a pedestrian on Inchcliffe Drive, if centered and directly in front of the proposed 3-Family dwelling on the edge of the roadway at 26.25’ feet from the front edge of the proposed 3 family dwelling, will have an 83 degree angle of visual access sight lines to the water frontage and coastal waters blocked by the structure and its three deck extensions. When a pedestrian is in this location, the loss of visual access to the coastal waters caused by the structure and its decks will be over 220 feet, which would be a 51% loss.

If the pedestrian is located on the edge of the roadway at the north edge of the entry to the parking lot, and there are four cars on the parking lot, he will have a 51 degree angle of visual access sight lines to the water frontage and coastal waters blocked by the cars on the parking lot, the 3 family dwelling, and the three levels of deck extensions on the south of the structure, which is a loss of 260 feet, or a 60% loss. No evidence was introduced to show that the proposed three family commercial dwelling justifies the 51% to 61% loss of visual access to the water frontage and to coastal waters in this fully developed waterfront residential single family subdivision.

H. The application did not address why the proposed 3 family commercial dwelling's three story 40' height [5 feet higher than the limit in the zoning regulations – Ref: §9.1)] above ground level [all other dwellings on Inchcliffe Drive are single family one and two story homes in the fully developed residential subdivision], which will be four stories tall when viewed by residents across the pond, does not unreasonably restrict the visual access to the coastal waters from the neighbors, particularly the neighbor abutting on the north, and the neighbor directly across from 83 Inchcliffe Drive.

The neighbor directly across from the proposed structure alleges that she is taxed higher because of her water view. (Minutes, middle of Page 22). A reduced structure height, similar in size and height to other homes in the subdivision, would help mitigate the loss of visual access to coastal waters by the neighbors. (Ref: CGS §22a-92-(a)-(10)-(C))

I. No evidence was entered that showed the proposed structure was designed, and will be constructed and maintained, to minimize adverse impacts on coastal resources, sedimentation patterns, water quality, erosion, and to reduce the use of fill. (Reference policy specified in CGS §22a-92-(b)-(1)-(D).) This omission is significant due to the 20 degree to 26 degree steepness of the slope directly into the pond, and because, per the "Connecticut Impaired Waters List" (Exhibit FFF-page 2 & 3)), the pond is impaired. Photos (Exhibit WW) appears to show the slope to be much steeper.

J. No evidence was entered that showed the proposed structure was designed to not cause an adverse impact on coastal resources in regard to the degradation of visual quality due to the alteration of the natural features of the [water view] vista. (Ref: CGS §22a-93-(15)-(F))

K. The Connecticut DEP, regarding DEP protected species, because of the site's location abutting Smith Pond, requires a "Connecticut Natural Diversity Data Base Review Request" form be completed. (Exhibit III). (Reference testimony from Mr. James R. Cowen, a Certified Professional Wetland Scientist, and Registered Soil Scientist, (Minutes, page 44)). Failure to make the mandatory request to DEP results in the following application deficiencies.

1. It is unknown if a biological survey for the site is or is not required.
2. It is unknown if any DEP listed species are or are not on the site.
3. It is unknown if mitigation or special procedures are or are not required on the site.
4. It is unknown if the partially clear-cut site by the Applicant requires any replanting or restoration of species habitat.

L. The application fails to include (i) an assessment of the capability of the resources to accommodate the proposed use, (ii) an assessment of the suitability of the project for 83 Inchcliffe Drive, (iii) an evaluation of the potential beneficial impacts of the proposed 3 family dwelling, (iv) an evaluation of the adverse impacts of the project, and (v) a description of proposed methods to mitigate adverse effects on coastal resources. (Ref: CGS §22a-105-(c)).

M. The application fails to provide the required information for the Zoning Commission to properly perform a CAM review or to make a proper decision (to approve, modify, condition, or deny) the proposed activity pursuant to the criteria listed in CGS §22a-106 to ensure that the potential adverse impacts on the coastal resources are “acceptable”. (Ref: CGS §22a-105-(e) & 22a-106-(a), §22a-106-(c))

N. The application fails to address or to demonstrate that the proposed activity is “consistent with the goals and policies of CGS §22a-92.” (Ref: CGS §22a-106-(c))

O. The application fails to address refuse management for his proposed three family dwelling. It appears that any garbage containers stored on the property may likely roll into the pond, and float away, or tip over and contaminate the pond, will be difficult to properly screen and secure, and/or will likely be difficult for residents to place on the curbside on pickup days due to the slope of the parcel. A refuse management plan for the three family dwelling should be addressed, especially as to how residential refuse will not pose a risk to Smith Pond.

P. The proposed site plan (Exhibit G) is deficient because it failed to include a mapped and/or written description of measures to be taken to minimize the erosion of soil and the deposition of sediments in drainage features both natural and man-made ... [for] after construction. (Reference: Zoning Regs §3.8.2 last sentence.)

CGS Chapter 126a – Affordable Housing Land Use Appeals

II. Affordability Plan – Proposed Text Amendments - Deficiencies

A. Per CGS §8-30g-(b)-(1)-(E), an applicant is required to submit an affordability plan which must include draft zoning regulations (proposed text amendments) that will *govern the affordable units*.

The only affordable unit for this application is unit #2 of a three family dwelling located at 83 Inchcliffe Drive. However, Exhibit MM – Schedule H – Text Amendment – does not limit applicability of the amended text to 83 Inchcliffe Drive. [The parcel’s address, “83 Inchcliffe Drive”, does not appear in the proposed text amendments.]

The Commission believes that there is no reason why it should not be clear in Schedule H that the Applicant’s proposed text changes to the zoning regulations are to be applicable only to 83 Inchcliffe Drive. The Applicant did not object to the Commission’s suggested change of limiting proposed text amendments to 83 Inchcliffe Drive. (Reference: Page 39 of minutes)

B. Exhibit MM, Schedule H – The proposed zoning text §3.1.7 “A Three (3) Family Dwelling containing up to three (3) dwelling units ... “ conflicts with the Applicant’s proposed text §18 definition for: “Three (3) Family Dwelling: A Dwelling containing three (3) Dwelling Units.” The Commission does not understand how a “Three Family Dwelling” can contain fewer than 3 dwelling units.

C. Exhibit MM, Schedule H – The Applicant omitted proposing a text amendment to reduce the minimum size (currently 850 square feet) for any dwelling unit (from §9.1.1 of zoning regulations) to 808 square feet.

The Applicant did not object to the Commission's suggested change in the minimum size of a dwelling unit, and verbally submitted such change request into the Record. (Page 39 of minutes). However, the Applicant failed to indicate that he desired it to be an amendment to the August 12, 2010 Revision to the Affordability Plan – Schedule H, and did not identify the exact location and text change(s) (verbiage) he was requesting.

D. Exhibit MM, Schedule H – Section 11. The Applicant proposed a text amendment to §13.3 “Apartments/Condominiums” of the zoning regulations that is unrelated to the Applicant's proposed development. This is because his proposed three family dwelling is not an apartment or condominium, and thus not subject to §13.3 of the regulations. The proposed text amendment to §13.3 is unnecessary, will not be used, and should be removed from the application.

E. Exhibit MM, Schedule H – Section 11. Proposes 1.3 parking spaces per dwelling unit. There will be three dwelling units. This is will yield 3.9 parking spaces. 9/10ths of one parking space is not a parking space.

F. Exhibit MM, Schedule H – Section 11. The proposed text amendment should address the number of a handicap parking spaces required, and if the oversize requirement for handicap parking will require a further reduction to the overall amount of on-site parking (from the proposed 3.9 parking spaces).

G. Exhibit MM, Schedule H – Section 11. The Applicant failed to provide a proposed text amendment to Zoning Regulation §16.4 “Finish Grading”. The first sentence states “All construction work must be graded to conform to surrounding occupied properties, commensurate with the building being constructed, and in keeping with accepted trades finish grading standards.”

Exhibit G (“Plan Showing Proposed House, Drive and Sewerage Disposal System on Property of Mark C. Coen”) shows a drop from 114' down to 100' in elevation in 34 feet, which is a 14' drop in 34 feet (24 degrees). There are other slopes that are as much as 31 degrees for short distances. Photos (Exhibit WW) appear to show some slopes to be steeper. Such steep slopes are not in keeping with accepted trades finished grading standard and thus conflict with §16.4 of the zoning regulations. As such, a proposed text amendment is required to §16.4 of the zoning regulations. Note that proposed text amendments to the finish grading regulations necessary to reflect the characteristics of the site at 83 Inchcliffe Drive may impose risks to public safety.

(The Commission notes that the statute, which requires an affordability plan to include proposed zoning text amendments, is contradictory to the Applicant's assertion that “zoning does not apply to any 8-30g application” (page 35 of minutes). The Zoning Commission, in its review of Application #3327 & #3328, has taken the position that an applicant must conform to all of the zoning regulations including those that he changes via proposed text amendments.)

III. §8-30g-(g)-(1)-(A) & (B) – Regarding Substantial Public Interests in Health & Safety

The subject parcel, 83 Inchcliffe Drive, is a steep waterfront property in the CAM zone in a fully developed almost 50 year old subdivision of single family homes. The Applicant is proposing a three story three family dwelling for 83 Inchcliffe Drive.

Per Exhibit MMM (Landmark Development Group vs. East Lyme Zoning Commission dated February 2, 2008), the Commission believes that there are several public health and safety issues associated with construction of the proposed three family dwelling at this location, and that there is sufficient evidence in the record that clearly indicates there is more than a theoretical possibility, but not necessarily a likelihood of specific harm to the public interest, if the application is granted. (Ref: Exhibit MMM page 9 Column 2).

A. Slope of driveway and slope of parking lot

1. On Exhibit G (Plan Showing Proposed House, Drive, and Sewage Disposal System ...”, the proposed 42.5’ wide driveway has a downward slope from the roadway to the entrance of the 42.5’ wide parking lot from about 119 feet down to about 116 feet, or about a 3 foot drop in 12.5 feet, which is a downward slope of 13 degrees. This is an unusually steep decline for a driveway entrance to a parking lot. It is obvious to the Commission that the design of the driveway will require users of the parking lot to back uphill and then back out and on to Inchcliffe Drive.

The 42.5’ foot wide parking lot has a downward slope from about 116 feet down to about 112 feet, or about a 4 foot drop in about 22.5 feet, which is a downward slope of about 7.5 degrees for the parking lot. The parking lot will use pervious pavers. (Ref: Exhibit G)

Per Exhibit G, the land is sloped from the end of the parking lot at about 112’ to the water’s edge at 100’, or about a 12 foot drop in what averages to be about 40 feet, which is a downward slope to the water of about 16.5 degrees.

Per Exhibit G, there are no guard rails at the edges of the parking lot.

It is the Commission’s consensus that the proposed driveway, parking lot, and sloping land constitutes substantial risks to public safety as follows:

a. Reference Exhibit G: Users of the parking lot will be forced to back uphill at about a 13 degree angle onto Inchcliffe Drive. Because of this angle, the driver’s view will be angled upwards (towards the sky) and over the top of vehicles parked on Inchcliffe Drive at about 13 degrees through his rear window and rear side windows. This upward angle will limit the driver’s visibility such that he will not be able to adequately view cars parked on Inchcliffe Drive directly opposite the driveway entrance, and will also not be able to adequately view oncoming traffic. This will be an especially substantial risk in the winter, when the driveway and Inchcliffe Drive are slippery.

b. In the event a driver does not or is unable to stop before reaching the end of the 7.5 degree downward sloped parking lot, he will drive (or slide) off the parking lot and enter upon a steep 16.5 degree downward slope leading to the edge of Smith Pond. If the parking lot is icy, it is likely that vehicles will slide off the end of the parking lot, down the slope, and possibly into Smith Pond. There are no guardrails (Ref: Exhibit G), and if there were guardrails, they would cause damage to the vehicles.

c. The 7.5 degree slope is too steep for a parking lot. Parking lots must be level or close to level to reduce the risk of slip and fall accidents, especially when the parking lot is icy.

[Pursuant to testimony of Mr. Cowen (Minutes, page 45), a Certified Professional Wetland Scientist (CPWS) and Registered Soil Scientist, there is a specimen of Red Oak approximately 2 feet in diameter located down slope 36 feet from the CL&P pole #1332 (on Exhibit V) two feet from the property line on the Applicant's neighbor's property. The Commission believes that fill, if used to mitigate hazards caused by the steep slope of the parking lot, driveway, and land, will have an adverse impact on the roots and health of the neighbor's tree.]

B. Danger to Children

1. Reference Exhibit G: The proposed site plan fails to provide a safe area appropriate for outdoor enjoyment (recreation) of the property, especially for children. The area behind the three family dwelling to Smith Pond, to the South, North, and between the roadway and the house, and both the driveway and parking lot, are all too steep to be safely used for any purpose. While this deficiency may be acceptable in an owner occupied single family home, it is not acceptable in a commercial three family rental dwelling.

2. Reference Exhibit G: The proposed site plan fails to protect young children from entering or falling into Smith Pond (an attractive nuisance) and drowning.

3. Reference Exhibit G: The proposed site plan shows a retaining wall on the Southeast corner of the proposed three family dwelling. However, no provisions are shown to keep a child from walking upon, and falling off, the retaining wall (attractive nuisance).

C. Dangerous Sight Lines

Reference Exhibit HH and Exhibit TT: Users of the parking lot, and oncoming drivers, will not have safe sight lines caused by undulations and the curve to the north (of the site) on Inchcliffe Drive. The 60 foot wide driveway curb cut (Exhibit G) for 83 Inchcliffe Drive will not satisfy the 250' sight line requirement of the Ledyard Road Ordinance #45 for a road designed for 25 MPH – Reference Exhibit HH. (Exhibit TT from the Applicant shows a maximum sight line of only 196 feet, which the Commission believes was measured improperly (too long) because its endpoint is to the far edge of the roadway, and not to the location where a driver would be located as he comes around the corner.

The inadequate sight lines constitutes a substantial risk for both oncoming drivers as well as for drivers backing uphill out of the parking lot and on to Inchcliffe Drive.

D. Risks Caused by Inadequate On-site Parking and Inadequate Sight Lines

The size of the proposed parking lot (42.5 feet wide by 22.5 feet in depth per Exhibit G) constitutes parking for one handicapped resident, plus three standard parking spaces (10' x 20').

Although Exhibit C submitted by the Applicant was represented to the Commission as justification for reduced parking for his proposed three family dwelling, Exhibit U (copy of four pages from Parking Generation, 3rd Edition) shows that the Applicant's justification is based on apartment complexes of 55 to 1,300 units, with an average size of 320 dwelling units. Exhibit U also cautions against the improper application of its data when applied to different situations and environments.

The Commission agrees with Mr. O'Neil's testimony (Minutes, page 52) that a large complex will statistically always have vacancies, residents at work and on vacation, and if in an urban location and public

transportation available, that many residents would not have cars -- and that 1.3 parking spaces per dwelling unit (Exhibit C) would be acceptable.

However, the Applicant's proposal is for a three family dwelling, one bedroom each, located on a small lot in a small older subdivision of single family homes in a suburban area. His representation that 1.3 parking spaces per dwelling unit is "reasonable" for his proposed "development" is a material error. The Applicant's proposed three family dwelling is not comparable to the large urban complexes referenced in the Parking Generation 3rd Edition report.

Based on the testimony of Mr. O'Neil, it will be reasonable to expect the three rental dwelling units, at various times, to each be simultaneously occupied by two adult residents, each having one vehicle due to lack of public transportation, and that the residents would often have visitors.

It is obvious to the Commission that there will frequently be on-street parking caused by the 3.9 on-site parking spaces proposed for 83 Inchcliffe Drive. The Zoning Regulations require 2 spaces per dwelling unit, not the 1.3 spaces per dwelling as proposed via text amendment by the Applicant. However, based upon testimony of Mr. Gorham, who has an engineering background and knowledge of statistics (Minutes, Page 17 & Page 20), the Commission believes that, for this particular development in this location, the proper number should be seven (7) on-site parking spaces, one space more than the number required in the zoning regulations.

Inchcliffe Drive is posted at 25 MPH (Minutes, page 38), and there is currently very little or no actual on-street parking on this street (Testimony from Sal Cardello, Vic Ascioffa, and Earl Davis, who live on or near Inchcliffe Drive -- Item G, H, and K on pages 55 & 56 of the minutes).

The consensus of the Commission is that, because the paved width of Inchcliffe Drive is only 24 feet (Minutes, page 17, Gary Snyder), any on-street parking will force same direction traffic to enter the on-coming traffic lane (Reference Exhibit WW), which will create a substantial risk due to insufficient sight lines at this location. (Exhibit HH and TT)

The consensus of the Commission is also, due to the 24 foot wide paved roadway, whenever there is parking on both sides of the street, it will be difficult or impossible for a large vehicle (school bus, fire truck, ambulance, garbage truck, snowplow) to safely proceed, especially in winter when road conditions are slippery, which constitutes a substantial risk to public safety.

It is also the consensus of the Commission that, due to the increase in number and frequency of vehicles and vehicle trips that will be caused by the proposed three family dwelling, and with only four off-street parking spaces, there will often be vehicles parked directly opposite the 60' wide driveway entrance, and there will be times when resident and visitor vehicles will be parked opposite each other in front of the property. As such:

1. The proposed three family dwelling will create a substantial risk to public safety due to the impediment of emergency vehicles, snow plows, refuse trucks, and school buses, especially during winter when roads may be hazardous -- whenever its resident's vehicles and their visitor's vehicles are parked opposite each other in front of the property.

2. The proposed three family dwelling will create a substantial risk to public safety because its resident's vehicles and their visitor's vehicle's on-street parking will force same direction traffic into the oncoming traffic lane without sufficient sight lines.

3. The proposed three family dwelling will create a substantial risk to public safety during snow storms when winter storm emergency parking regulations are in effect because there will be no place for all residents and their visitors to park.

4. The proposed three family dwelling unit will require residents and their visitors to back uphill and out onto a 12' wide single travel lane created by parked vehicles opposite the entrance to the driveway. The increase in risk is for collisions of vehicles backing uphill out of the parking lot with vehicles parked opposite the driveway entrance, and for collisions of vehicles backing uphill out of the parking lot into on-coming traffic traveling in either direction in the remaining single travel lane.

E. Undersized and Unapproved Septic System

Exhibit DD is a copy of a letter from Ledge Light Health District that documents its approval of a "Proposed 3 bedroom house, municipal water and septic system at 83 Inchcliffe Drive in the Town of Ledyard" The approval letter is dated September 22, 2006.

It is the consensus of the Commission that the "proposed house" identified on the site plan, Exhibit G, refers to the same "proposed 3 bedroom house" identified in the Ledge Light Approval letter of September 22, 2006.

Ledge Light Health District (George Calkins, Senior Sanitarian) wrote a letter to Baker Salsbury, Director of Health, and to Stephen Mansfield, Deputy Director of Health, dated August 24, 2010, a copy of which was provided by Staff (Charlie Karno, Director of Ledyard Planning) to the Chair on or about August 27, 2010. The copy is identified as Exhibit RRR of this meeting, and is in regards to "Property of Mark Coen, 83 Inchcliffe Drive, Ledyard" It is a "report on the status of an application for, and development of, property of Mark Coen at 83 Inchcliffe Drive, Ledyard."

In this letter, under "Conclusions", item #5 (on page 4), it states "Based on the approval of the site plan dated March 14, 2006, revised September 22, 2006, a permit to construct a sewage disposal system was issued to Mark Coen by Ryan McCammon on September 25, 2006."

It also states that "To date, no building, septic tank, building sewer line or water service line have been installed or constructed. Consequently, no final system approval, permit to discharge or certificate of approval for a certificate of occupancy have been issued for this property".

In item #6 (on page 4), the letter states "On May 11, 2010, Mr. Coen submitted a new site plan to this writer for preliminary consideration. Although the title on the plan and the nature of the sewage system design were the same as previous plans submitted in 2006, the plan had a new date (December 2009), was signed by the licensed surveyor who designed the plan on December 19, 2009, and the building to be constructed was proposed as a 3 unit multi-family dwelling rather than a single family dwelling. Therefore, the plan has to be considered a new application rather than a subsequent revision of previous plans from 2006. site plans are reviewed relative to the applicable set of regulations or standards in effect at the time of application or submission. The Public Health Code Technical Standards were most recently revised effective January 1, 2009."

".... Section VIII(F)(1) Table 6 had been revised from the former requirements of 2006 to eliminate the provision for a reduced sized leaching area for lots in existence prior to January 1, 1994. The leaching area that was depicted in the December 2009 plan, and installed in October 2006, is sized based on the former provision and is, therefore, insufficiently sized to meet the current standards. The design is unsuitable for approval as submitted."

“... the permit to construct the sewage disposal system that was issued in 2006 (permit no. I-223-06) would be invalid for the new application”

The Commission, based on this new evidence (Exhibit RRR) dated August 24, 2010, which is more recent than the exhibits entered by the Applicant showing “approval” of the septic system, cannot approve the proposed three family dwelling at 83 Inchcliffe Drive until there is an approved sewage disposal system that conforms with current regulations.

(In the event the August 24, 2010 letter is excluded (Exhibit RRR), there remains substantial evidence in the record that shows the septic system permitted by Ledge Light in 2006 had never received final approval (no tank, no permit to discharge, etc.), and there is no evidence in the record showing that the septic system previously approved for a single family home would also be approved for the applicant’s proposed three family dwelling. When asked about this, the applicant failed to respond.)

F. IWWC Approvals

1. Exhibit CC is a copy of IWWC minutes dated March 21, 2006, which shows its initial approval was for a single family 3 bedroom home, not for a 3-family dwelling. The plans approved are dated September 7, 2006 and were part of application #6-06”.

Exhibit BB is a copy of IWWC minutes dated March 16, 2010, which approved an amendment to the previously approved application #6-06 to widen the proposed driveway from 20’ to 40’ for “additional parking”. The site plan (Exhibit G) shows a driveway width of 42.5’ instead of 40’ per the approval, a 6.25% difference (increase), and the applicant failed to explain why the site plan was not corrected to show the proposed “3-family dwelling” for 83 Inchcliffe Drive.

It is the consensus of the Commission that the 6.25% difference between the IWWC approved driveway width (40’) (Exhibit BB) and the proposed driveway width (42.5’) shown on the site plan (Exhibit G) is material and brings into question the IWWC approvals of application #6-06. The Commission cannot approve the proposed development for a three family dwelling at 83 Inchcliffe Drive until there is an IWWC approval and site plan that are consistent with each other.

2. The required changes to increase the capacity of the on-site parking lot constitutes a major change to the site plan (new drainage calculations, etc.) that requires the Applicant to amend its IWWC application, which must be reviewed and approved before the Zoning Commission can approve this application.

3. The required changes to redesign and increase the capacity of the septic system and to conform with current regulations constitutes a major change to the site plan that requires the Applicant to amend its IWWC application, which must be reviewed and approved before the Zoning Commission can approve this application.

G. Runoff into Smith Pond

1. There was credible testimony from Mr. Cowen, (Certified Professional Wetland Scientist and Registered Soil Scientist) that “the proposed parking lot and the handicap access are reasonably likely to result in adverse impacts to wetlands due to erosion, sediment, and degradation of water quality due to contaminate loading from the parking lot without any storm water management plan.” (Minutes, middle of page 43)

2. Mr. Cowen also reported “that [the site plan] does not comply with the Storm Water Quality Manual that DEP developed to protect wetlands from storm water runoff.” (Minutes, middle of page 43)

3. Mr. Cowen reported that “pervious pavers do not work well on a sloped environment, and that is more of a hazard for cars stopping.” (Minutes, near top of page 44). Mr. Cowen reported that (while) “pervious pavers can be beneficial ... it is not problem free. It needs careful design, and there is no design in the application for pervious pavers. There are studies that show that over time those pavers can become clogged and not function properly, or they lose effectiveness due to compaction. Essentially, they become somewhat of an impervious surface.” (Minutes, middle of page 44)

It is the consensus of the Commission that, due to the slope of the of the four car parking lot, and the expected high number of vehicles and vehicle trips expected for the proposed three family dwelling, that pervious pavers may not be adequate or appropriate to protect the soil or Smith Pond from leaking oil, leaking antifreeze, and leaking gasoline.

H. Parcel Not An Approved Building Lot

There is no evidence that the parcel has ever been approved as a building lot or is a lot of record. The evidence establishes that the parcel was first “created” by dividing it from a larger parcel prior to the enactment of subdivision regulations. However, the parcel was subsequently reconveyed to the original Grantor and merged into his larger parcel. This Grantor subsequently included this parcel in a plan of subdivision submitted to the Ledyard Planning Commission for approval. This parcel (identified as Lot 8 [Exhibit AA-4]] on the “Torrey Park” plan) was twice denied (too small, only 6,400 square feet available, much is underwater) as an approved building lot. The Commission takes the position that without approval of the Planning Commission the parcel cannot be built upon. (Exhibits EE and FF)

IV. Failure to Demonstrate a Need For Affordable Housing

A. The Commission stipulates that Ledyard is not exempt from an Affordable Housing 8-30g application because the Town does not have at least 10% of its housing (1) assisted housing, (2) currently financed by Connecticut Housing Finance Authority mortgages, or (3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at prices which will preserve the units as housing for which persons and families pay less than thirty percent of their income, where such income is less than or equal to eighty percent of the median income. (Ref: CGS 8-30g-(k)-(1), (2), & (3))

B. The Applicant strongly implied (Minutes, page 12) that failure to be on the 8-30g exemption list constitutes a “need for affordable housing” per CGS §8-30g.

C. The Commission disagrees. For example, it is quite possible that a wealthy community may not be on the CGS §8-30g exemption list, but at the same time have an insubstantial need for “affordable housing” as defined in CGS 8-39a because all or most of its residents have an income too high to qualify for the “affordable housing” units. Similarly, a less affluent community may be on the CGS §8-30g exemption list, and yet have a substantial need for more affordable housing as defined by CGS 8-39a.

This position is supported by Exhibit H “Connecticut Land Use Law for Municipal Land Use Agencies, Boards, and Commissions” March 2009. The Chapter on Affordable Housing (Attorney Joe Williams from Shipman and Goodwin) contains several viewgraphs. The viewgraph from page 276 states “The Ten Percent List – permanent exemption from affordable housing statute: ... “3. The list is NOT: A measure of local need for affordable housing””.

As such, a commission cannot assess a town’s local “need” for affordable housing as defined in CGS 8-39a unless sufficient evidence is entered into its record. And a commission must know the local “need” for affordable housing as defined by CGS 8-39a before it can properly address the criteria for its decision as listed pursuant to CGS §8-30g-(1)-(A), (B), & (C).

(The Applicant entered Exhibit O into the record – Town of Ledyard – Draft Affordable Housing Strategy dated May 2009. The Chair noted (Minutes, page 23) that the Plan has not been approved, was only a draft, was based on obsolete data, and that he believes it contains multiple errors. Attorney Landolina concurred and advised “The fact that there is a Draft floating around is really of no moment.”)

Pursuant to its definition (CGS 8-39a), “Affordable Housing is housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to the area median income.” The definition, per statute, is applicable to all of “Title 8 – Zoning, Planning, Housing, Economic and Community Development and Human Resources”, which encompasses Chapter 126a “Affordable Housing Land Use Appeals”, and particularly CGS 8-30g “Affordable housing land use appeals procedure.”

CGS §8-30g-(1)-(A), (B), & (C) requires the Commission to prove, based upon the evidence in the record, that its decision (to deny) 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 (local) “need” for “affordable housing”; and such public interests cannot be protected by reasonable changes to the (proposed) affordable housing development.

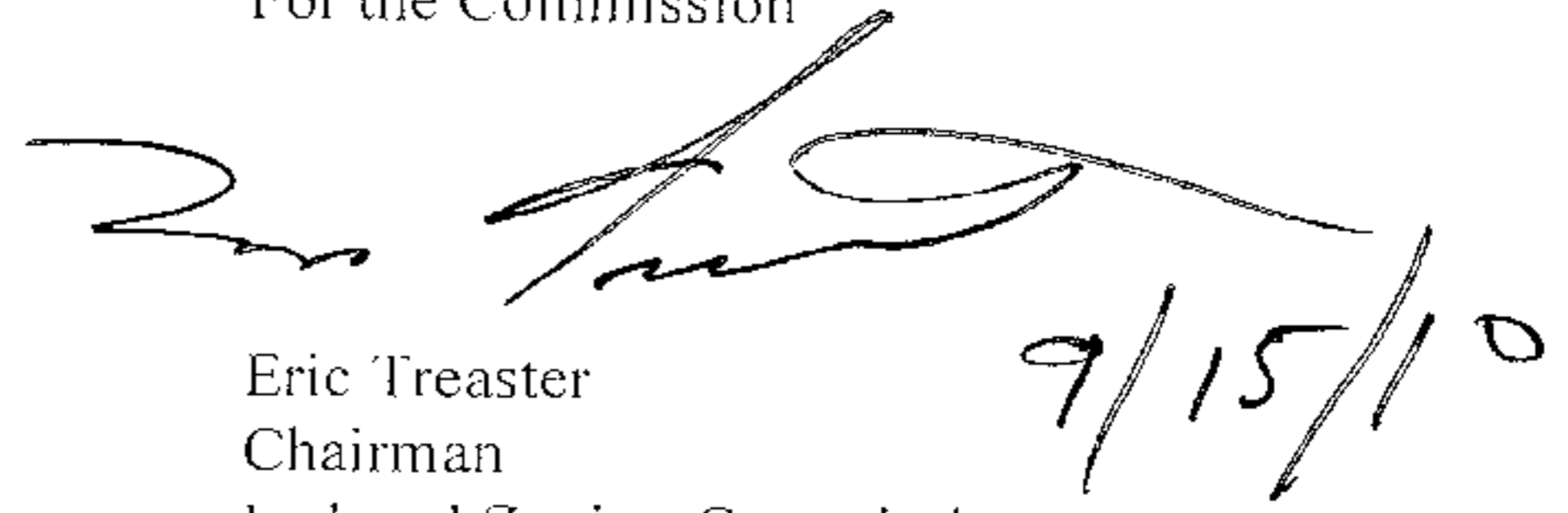
Based upon the record, the only constructive information regarding the “need” for “affordable housing” in Ledyard was from Linda Davis, who stated that she “has been a realtor in Ledyard for 33 years”. She stated that “while she supports affordable housing, in (her) opinion from (her) observations, the need is for more expensive rental housing. There are plenty of cheap rental units if you go onto Craigslist.Org, or if you look at peoples’ rental lists. It is the higher end rentals that are hard to find.” (Minutes, page 22 & page 23)

CONCLUSION

It is the finding of the Commission, based on the record, that the proposed development cannot be built at 83 Inchcliffe Drive in a manner compliant with the zoning regulations and text amendments as proposed. The Commission recommends the Applicant propose modifications as permitted by §8-30g-(h) consistent with the Commission's suggestions in §II.

It is the consensus of the Commission, based on the record, that Applications #3327 and #3328 both be denied because the (a) risks to public safety and to public health are substantial (as described above); (b) public interests in other matters (as described above) are substantial; (c) risks and public interests generally cannot be addressed by reasonable changes to the application due to the location, size, slope, and other features of the site; and (d) public risks and public interests clearly outweigh the local need for affordable housing.

For the Commission



Eric Treaster
Chairman
Ledyard Zoning Commission

9/15/10